

# **Selling Books: The League of Nations and the Globalization of Intellectual Property Rights in the 1930s**

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## **1. Introduction**

During the nineteenth century the use of books, works of art and music rose to ever greater heights in Western societies. Due to new technical opportunities to produce and reproduce cultural works, in the context of the alphabetization of broad sections of the population, and due to the emancipation of the middle classes, books, music and works of art became increasingly popular and an object of trade. Thus, modern liberal societies, states and nations increasingly had to deal with who was entitled to publish, exploit and receive literary and artistic works, which were cultural goods, political goods and commodities all at the same time.<sup>1</sup> Where this problem was settled by the legal standards and doctrines of the individual state and the nation, there arose the second question of what was to be done outside the national monopoly on rights and, vice versa, how foreign works ought to be handled, exploited and appropriated on home ground. Therefore, the cross-border trade with books and other printed works forced national governments in Europe to deal with matters of international law already in the first decades of the nineteenth century. After a series of bilateral agreements the main European book trading countries enacted in cooperation with culturally aware publishers and authors a multilateral agreement, the Berne Convention, in 1886. Although the American states passed the first Inter-American copyright agreement at the same time, the Convention of Montevideo in 1889, it was the Berne Convention, which proved to be a reliable political instrument in the course of the twentieth century pointing the way ahead when intellectual property rights were institutionalized on a global scale first with the *World Intellectual Property Organization* (WIPO) in 1967 followed by the *World Trade Organization* (WTO) in 1994.

Looking at the history of intellectual property rights in such an extended perspective, one might ask how World War I and II and the severe economic, social and political crisis of the interwar period affected both the international copyright protection and its legal globalization; secondly the question arises how representatives of the cultural industries such as authors and publishers reacted to the attempt to internationalize author's rights. What happened to copyright protection as a fundamentally international field of policy during the first half of the twentieth century?

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<sup>1</sup> A general introduction: Hannes Siegrist, *Geschichte des geistigen Eigentums und der Urheberrechte. Kulturelle Handlungsechte in der Moderne*, in: Jeanette Hoffmann (ed.), *Wissen und Eigentum. Geschichte, Recht und Ökonomie stoffloser Güter*, Bonn 2006, pp. 64-80.

Mostly, the decades following the outbreak of World War I are described as a break announcing an up-coming phase of de-globalization that superseded both, a period of intense economic and technical growth of the European states and the European military, political and economic dominance on a global scale.<sup>2</sup> In contrast, a glance on the history of intellectual property rights reveals that the interwar period has been characterized by serious efforts to search for globally applicable standards for copyright protection. The aim was to widen the scope of international copyright protection, to strengthen the rights of authors and publishers and to enlarge the geographical reach of copyright. These efforts were institutionally localized in the League of Nations. Due to its self-conception as an international organization with a claim of universal recognition it bundled already existing initiatives of state and non-state actors to globalize the European based Berne Convention bringing it in line with the multilateral copyright conventions of the Pan-American Union. It will be shown how the League performed fundamental preparatory work for a global copyright protection that was subsequently realized in the second half of the twentieth century. In so doing the League re-shaped the field because it introduced a structure for governing intellectual property rights on a global scale, which included professionals, experts, diplomats and permanent civil servants all at the same time.

First, there will be a short introduction to the history of international copyright and its embeddedness in economics, politics and cultures of Western societies. Thereafter, I will describe the situation of international copyright in the 1920s and the attempts of the League of Nations to establish a global copyright convention during the 1930s. Special attention will be paid to the structures and networks of the League of Nations that enhanced the project providing the institutional and organizational framework for a transnational political communication between the European and American state and non-state actors. Finally, it will be shown how this attempt performed fundamental preparatory work for the post-war period in spite of the fact that it paralleled the severe economic, social and political crisis of the interwar period.

## **2. International Governance of Intellectual Property Rights**

The international dimension of intellectual property rights did not emerge during the twentieth century although there has been a significant development of new information

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<sup>2</sup> For example, see a critical debate: Jürgen Osterhammel/ Niels P. Petersson, *Geschichte der Globalisierung. Dimensionen, Prozesse, Epochen*, München 2003, pp. 63-70; Carl Strikwerda, *Reinterpreting the history of European integration. Business, labor and social citizenship in twentieth century*, in: Jytte Klausen, Louise A. Tilly (eds.), *European integration in social and historical perspective. 1850 to present*, Lanham/ Boulder/ New York/ Oxford 1997, pp. 51-70.

technology. Once cultural goods (books and other printed works) were exchanged in large quantities between different states and different legal and linguistic areas, it turned out to be a necessity for the national legislators in Europe not only to design national laws for the protection of intellectual property rights but to endeavour simultaneously to create international regulations for the disposal and handling of cultural goods. The main problem of intellectual property rights is their restriction to a national territory because law, legislation and jurisdiction are bound to the territory of a state. This turned out to be a major problem for copyright because the book trade at the beginning and new media later on, crossed state-boundaries and overcame national legal spheres of influence.

An early attempt to solve this problem included bilateral trade agreements. Since the middle of the 19<sup>th</sup> century, they determined mutual acknowledgement of copyrights and protection from reprinting between different European states. The first inter-state agreements were concluded in linguistically homogeneous but politically splintered areas such as pre-national Germany and pre-national Italy in 1832/37 and 1840. In both regions, the authors and original publishers of the northern states wished to be protected against illegal printers in the “south”.<sup>3</sup> However, these bilateral and multilateral agreements were restricted to the short term and their implementation was uneven. Thus, it became increasingly necessary to introduce long-term, multilateral legal standards that covered the most comprehensive area possible on a European level.

Driving forces for the internationalization of copyright were enterprising and politically aware publishers, authors, musicians, scientists, artists, and lawyers who stressed the necessity of an international alignment and for acknowledgement of their individual author and publishing rights outside their own country. From the middle of the nineteenth century onwards states actively included them in the processes of negotiation and international legislation because they were the target group of the internationalization of author’s rights as they permanently crossed state-boundaries and connected different national legislations, cultures and nationalized publishing industries by producing, disseminating and receiving cultural goods in everyday life. Organised in national and international interest groups and trade associations, publishers and authors held congresses and campaigned from the 1850s onwards for cross-border acknowledgement of copyrights.<sup>4</sup> In 1878, these congresses resulted in the foundation of the *Association littéraire et artistique internationale* (ALAI), the

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<sup>3</sup> Barbara Dölemeyer, *Wege der Rechtsvereinheitlichung. Zur Auswirkung internationaler Verträge auf europäische Patent- und Urheberrechtsgesetze des 19. Jahrhunderts*, in: *Aspekte europäischer Rechtsgeschichte. Festgabe für Helmut Coing zum 70. Geburtstag*, Frankfurt/ Main 1982, pp. 65-85.

<sup>4</sup> For a more detailed survey of international congresses and campaigns between 1850 and 1886 see: Jean Cavalli, *La genèse de la Convention de Berne pour la protection des oeuvres littéraires et artistiques du 9 septembre 1886*, Lausanne 1986.

most important international interest group of publishing industries and authors in Europe.<sup>5</sup> In 1882, the campaigns and congresses of the ALAI marked the beginning for a series of international governmental congresses resulting in the foundation of the Berne Convention in 1886. The Berne Convention was a multilateral contract for the legal protection of literary and artistic works; at the same time the contract founded a union of states with an international office, located in Bern.<sup>6</sup> For the first time, the Berne Union established an internationally negotiated standard for the protection of intellectual property rights, guaranteeing that the work of each author who was citizen of a member state and published his works in another member state of the Convention was treated on an equal legal standing with domestic authors. By harmonising national and international law, authors and publishers were ensured binding rights above and beyond national boundaries that should make cross-border trade more calculable.<sup>7</sup> Thus, the states boosted the scope of their national rights by institutionalizing the distribution and reception of cultural works across borders and expanding the area of legal protection to cover the entire territory of the Berne Union. Also, they handed over parts of their function in institutionalizing culture to a specialized international institution.<sup>8</sup>

In order to take the needs and interests of the private publishing industries and authors into account, the Berne Union allowed including professionals from culture and economy and experts in the negotiations of the international rules for the protection of author's rights. The aim was to design an international convention for the distribution and handling of cultural goods that effectively supported the publishing and trading of books and other printed works across national boundaries. Thus, the inclusion of professionals and authors into the governmental deliberations was one of the key elements of the Berne Union.

The inclusion of non-state, profit-orientated actors was made possible because of the institutional structure of the Berne Union. It was one of the international public unions, which were created in the second half of the nineteenth century. Generally, these unions were occupied with technical, social and economic tasks that occurred due to increasing cross-border trade and movement of people, goods and ideas from the middle of the nineteenth

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<sup>5</sup> Claude Masouyé, *Le rôle de l'ALAI dans l'évolution du droit d'auteur*, in: *Le Droit d'Auteur* 91 (1978), no 4, pp. 122-128.

<sup>6</sup> Sam Ricketson, *The Berne Convention for the protection of literary and artistic works: 1886-1986*, London 1987.

<sup>7</sup> Bénigme Mentha, *Berne Convention*, in H.L. Pinner, *World copyright. An encyclopedia*, Leyden 1953 pp. 1029-70.

<sup>8</sup> *L'Union internationale pour la protection des oeuvres littéraires et artistiques, Sa fondation et son développement*, Berne 1936 pp. 109-26.

century onwards.<sup>9</sup> Accordingly, they intended to provide a legal and organisational framework guaranteeing internationally negotiated and acknowledged rules to calculate transnational trade, to minimize transaction costs and to create incentives for actors in commerce and industry, culture and society to risk business activities within and between different world-regions.<sup>10</sup> Consequently, international copyright protection was from the beginnings considerably a subject of transnational cooperation between state and private actors from culture and economy in order to regulate the book trade, translation rights and the transfer of rights across national borders with the aim to strengthen the national cultural economies. The international governance of intellectual property rights was thus determined firstly by the cross-bordering diffusion and reception of cultural works; secondly, by the different linguistic, cultural and scientific areas of reference for producers, exploiters and public, which were not necessarily covered by the nationally defined area; and thirdly, by a newly established international institution and legal standards institutionally and legally acknowledging this twofold frame of reference for professionals, experts and nation states.

To realize these aims, the Berne Union was openly structured. From its steering point it aimed for extension and strengthening of the multilateral copyright norms, legally and geographically, its adjustment to technical innovations and for the admission of new member states, which was realized by means of continuous revision conferences. Hence, the contract had no limit in time and space. Also, unanimous agreement was a main principle of the union in order to separate it from the political will of single, powerful member states.<sup>11</sup> Thus, the Berne Union – and the other international public unions – did no longer address a circle of exclusive states but nominally all states being involved in international trade and concerned with problems of international law.<sup>12</sup> The international office, which was set up in Berne was the institutional contact for member states, experts and professional associations of authors and publishers guaranteeing a permanent discussion of current problems of international

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<sup>9</sup> Well-known international public unions are the International Telecommunication Union and the Universal Postal Union. A review of all international public unions and commissions between 1815 and 1964 in an enumerative style give: Michael Wallace/ David J. Singer, Intergovernmental organization in the global system, 1815-1964. A quantitative description, in: *International Organization* 24 (1970), pp. 239-287.

<sup>10</sup> Wolfram Fischer, *Die Ordnung der Weltwirtschaft vor dem Ersten Weltkrieg. Die Funktion von europäischem Recht, zwischenstaatlichen Verträgen und Goldstandard beim Ausbau des internationalen Wirtschaftsverkehrs*, in: *Zeitschrift für Wirtschafts- und Sozialwissenschaften* 1 (1975), no 4, pp. 289-304.

<sup>11</sup> Madeleine Herren, *Governmental internationalism and the beginning of a new world order in the late nineteenth century*, in: Martin H. Geyer/ Johannes Paulmann (eds.), *The mechanics of internationalism. Culture, society, and politics from the 1840s to the First World War*, Oxford 2001, pp. 142.

<sup>12</sup> Ines L. Claude, *Swords into plowshare. The problems and progress of international organizations*, New York 1971, p. 29.

copyright protection. The office developed to be the key element for the maintenance and progress of the union because it provided a staff of permanent civil servants who administered the union and who were obliged only towards the multilateral convention. This way the office embodied permanence in the handling of international copyright protection and it allowed authors, publishers and experts in copyright law to address their concerns and interests.<sup>13</sup>

### 3. The Berne Union after the Great War

The Berne Union was revised by means of revision conferences, which took place irregularly. At the beginning of the 1920s, a revision conference was necessary after it had already been postponed due to World War I. Even though the national interest groups of authors and publishers had maintained the Berne Union in cooperation with national governments during wartime so that the Great War did not affect the validity of the Berne Convention, there was a cluster of legal reasons to urgently re-adjust the convention.<sup>14</sup> First, experts and governmental delegates were disillusioned regarding the actually existing degree of the multilateral copyright protection because the resolutions of the 1908 revision conference in Berlin were ratified only by a minority of member states without reservations and consequently the copyright protection within the union was in a disparate shape. Second, new media such as radio, records and film had evoked fundamental loopholes both in national and international law and the revision conference had to re-negotiate the rules for the new methods to reproduce and circulate cultural goods.<sup>15</sup>

The revision conference took place in 1928 in Rome, jointly organized by the international office and the Italian government.<sup>16</sup> Although the conference offered solutions for some pressing problems concerning the legal stability and coherence of the convention, there remained critical and conflicting voices about the value of the results as a whole with only a few states approving the amended paragraphs without reservations and some states even precluding the ratification of several paragraphs before the conference had been

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<sup>13</sup>Jaques Secretan, L'évolution structurelle des unions internationales pour la protection de la propriété intellectuelle, in: Les unions internationales pour la protection de la propriété industrielle, littéraire et artistique, 1883-1963, Genève 1962, pp. 15-18.

<sup>14</sup> Isabella Löhr, Geistiges Eigentum in Kriegszeiten. Der Schutz von Urheberrechten und die Berner Übereinkunft im Ersten und Zweiten Weltkrieg, in: Hannes Siegrist (ed.), Entgrenzung des Eigentums in modernen Gesellschaften und Rechtskulturen (= *Comparativ* 16 (2006), no 5/6), Leipzig 2007, pp. 234-248.

<sup>15</sup> Friedrich Dencker, Gedanken vor Rom, in: *Archiv für Funkrecht* 1 (1928), no 3, pp. 193-200.

<sup>16</sup> Union internationale pour la protection des œuvres littéraires et artistiques, Conférence de Rome. Propositions avec exposés des motifs préparées par l'Administration Italienne et le Bureau International de Berne, Berne, 1928.

concluded. For that reason the future development of the Berne Convention was called fundamentally into question.<sup>17</sup>

Besides the improvement and deepening of its legal principles and their embodiment in the member state's national legacies, one future perspective was the extension of the geographical reach of the convention. Jointly initiated by the French and Brazilian delegations, this idea was presented to the assembly on the conference's final meeting. The two delegations proposed to unify the Berne Convention and the already existing Inter-American copyright agreements so as to align the two copyright systems.<sup>18</sup> These Inter-American agreements were institutionally framed as South American and Pan-American Conventions. The South-American Conventions, including the Convention of Montevideo (1889) and the Convention of Caracas (1911), literally indicated the geographical origin of its member states and were, from a legal perspective, only of limited importance. After the Convention of Montevideo, the Pan-American Union placed the multilateral copyright protection on its agenda, just a few years later than the European book trading states, subsequently passing a whole series of multilateral conventions: the Convention of Mexico in 1902, the Convention of Rio de Janeiro in 1906, the Convention of Buenos Aires in 1910 and finally the Convention of Havana in 1928.<sup>19</sup> However, the Pan-American agreements did not constitute a coherent system of multilateral copyright protection analogue to the Berne Union because both the legal emphasis and the combination of member states changed each time.<sup>20</sup>

For the European states committed to the Berne Union the fact was important that nearly all of these conventions were restricted to the American continent so that joining for non-American states was rigorously excluded.<sup>21</sup> Alternatively, authors and publishers in Europe would have to push their governments for bilateral agreements on their own if they wished their works to be protected against unauthorized reprints or translations in America. But also, this was not a satisfying solution because both bilateral and multilateral negotiations with American states proved to be difficult and tended to fail.

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<sup>17</sup> Marcel Plaisant, Oliver Pichot, *La conférence de Rome. Commentaire pratique de la nouvelle convention pour la protection internationale de la propriété littéraire et artistique*, Paris 1934.

<sup>18</sup> *Vœu de la Conférence de Rome pour la révision de la Convention de Berne (2 juin 1928)*, in: *Conférence diplomatique pour la préparation d'une convention universelle sur le droit d'auteur. Fascicule 1: Documents préliminaire publiés par l'Administration Belge et l'Institut International de Coopération Intellectuelle*, Bruxelles 1938, p. 7.

<sup>19</sup> For a survey of the inauguration dates and members see: Ernst Röthlisberger, *Der interne und internationale Schutz des Urheberrechts in den Ländern des Erdballs*, Leipzig 1931.

<sup>20</sup> A brief description of the legal requirements of the Inter- and Pan-American conventions: Claude Royer, *La Protection internationale du droit d'auteur en Amérique et les tentatives de rapprochement des conventions panaméricaines et de la Convention de Berne*, Toulouse 1942, pp. 113-22.

<sup>21</sup> *Ibid.*, p. 120.

These political and administrative difficulties did not advance cooperation between the European and American copyright regimes. Nevertheless, the South American book markets were of certain importance for the predominantly culture-exporting states and publishing industries such as Great Britain, France, Germany, Spain and Italy. After a collapse of the book trade during the Great War, most of the European publishing industries recovered quickly and had increasing growth rates during the 1920s. But after 1918 all national publishing industries had to compete with new leisure activities such as radio, film, sport events and dance, which developed to be the preferred leisure activities of the new middle classes becoming established quickly after the war. Thus, extending the export of books to the American states was one option to balance the changing circumstances on the European book market. At the same time, the South American states appeared economically attractive because they did not have an extended cultural production or publishing industries at that time, so that in consequence they were dependent on imports from European and, on a smaller scale, from U.S. American publishing industries.<sup>22</sup> Consequently, the members of the Berne Convention had a special interest in ensuring the remuneration of their cultural economies on the territories of the South American states through legal protection. Therefore, the revision conference in Rome formulated the striving for the harmonization of the European and American copyright law by means of a global copyright convention closing the legal gap between the two continents.<sup>23</sup>

#### **4. The League of Nations and Intellectual Property Rights**

If the European states pursued to preserve the rights of their authors and publishing industries on the American continent, it was advisable to start a concerted action bundling up their economic and cultural interests. Brazil, one of the initiators, was the only American country that was member both of the Berne and the Pan-American conventions and thus the Pan-American Union was the institutional contact through which the proposed unification of the European and American copyright systems could only be realized. In trying to implement the resolution of the conference in 1928, the main question remained who should be entrusted with the project. The International Office of the Berne Union had to be ruled out because of its executive mandate excluding any legislative competences or permission for

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<sup>22</sup> Letter of the German delegation in Argentina to the Foreign Office on October 8<sup>th</sup> 1923 (PoIArch, R 43761). For the dependency of Brazil, Argentina and Mexico on the European publishing industries see: entry for Central and South America in: Joachim Kirchner (ed.), *Lexikon des Buchwesens*, Stuttgart 1952, pp. 23-26.

<sup>23</sup> Union internationale pour la protection des oeuvres littéraires et artistiques, *Actes de la conférence réunie à Rome du 7 mai au 2 juin 1928*, Berne 1929.



independent action.<sup>24</sup> In comparison, the League of Nations was able to take responsibility for the project as it maintained the diplomatic networks and a thematically specialized sub-organization, the Intellectual Cooperation Organization, which was required in order to engage both the American and the European governments and interest groups.

In 1922 the General Assembly decided to create the International Committee on Intellectual Cooperation (*Commission Internationale de Coopération Intellectuelle*, CICI, hereafter referred to as Committee). Its task was to complete the disarmament policy of the League by setting up a close cooperation between the member states in the field of cultural and social policy. For that reason, it consisted of outstanding intellectuals who were appointed to the Committee because of reputation and not because of nationality.<sup>25</sup> Once a year the Committee's members met in Geneva and discussed the projects of its sub-committees. Only, its efficiency suffered from the honorary work of its members. Even though it disposed of a small budget, it was just enough to keep up its work, but not to finance the realization of its projects on a larger scale.<sup>26</sup> After several appeals to the League's member states to financially support the Committee's work, France decided in 1926 to create and finance the International Institute of Intellectual Cooperation (*Institut International de Coopération Intellectuelle*, IICI, hereafter referred to as Paris Institute) seated in Paris. The Paris Institute was intended to execute the envisaged projects on behalf of the Committee, fulfilling its instructions in sections that were constructed analogically to the Committee's sub-units in Geneva: arts and letters, university interchanges and an educational service completed by a legal section, an archive and a section for public relations.<sup>27</sup> Therefore, the Institute consisted of a group of permanent civil servants and a budget for research, congress organisation and travel costs that should enable it to build up thematically grounded networks in the League's member states including experts, professionals and representatives of civil society. In order to transport the Committee's projects into civil society and to link them to already existing initiatives, the Paris Institute used its budget to assemble experts, professionals and interest groups on certain topics, to collect and publish information on these issues and to participate in conferences and meetings dealing with questions that were

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<sup>24</sup>Petra Buck, *Geistiges Eigentum und Völkerrecht. Beiträge des Völkerrechts zur Fortentwicklung des Schutzes von geistigem Eigentum*, Berlin 1994, p. 109.

<sup>25</sup> Accordingly, the committee has been the only institution within the League in which Albert Einstein and G.E. Hale represented Germany and the United States from the beginning on: Margarethe Rothbarth, *Internationale geistige Zusammenarbeit*, Sonderdruck Nr. 25 der Deutschen Liga für Völkerbund, in: *Wörterbuch des Völkerrechts*, vol. III, Berlin/ Leipzig 1928, pp. 3-4.

<sup>26</sup> *Völkerbund* (ed.), *Das internationale Institut für geistige Zusammenarbeit*, Paris 1927, pp. 6-7.

<sup>27</sup> A detailed insight in history, tasks and fields of interest of Committee and Institute gives: Jean-Jacques Renoliet, *L'Unesco oubliée. La Société des Nations et la coopération intellectuelle (1919-1946)*, Paris 1999.

of importance for the Committee.<sup>28</sup> In order to optimize the cooperation between the League and its members beyond a purely intergovernmental dispute, the Committee stimulated the foundation of National Committees on Intellectual Cooperation. The National Committees consisted of politically aware persons who supported the League and its aims of disarmament and peaceful international dialogue and who therefore were willing to continue the work of the committee on a national scale. Together with the National Committees, founded in rapid succession during the 1920s, the Committee and the Paris Institute constituted the Intellectual Cooperation Organization of the League of Nations (*Organization de Coopération Intellectuelle, OCI*).<sup>29</sup>

Since its beginnings the Committee was continuously concerned with intellectual property rights because they were considered as a crucial part of the Committee's program to improve the dialogue between nations by optimizing the legal conditions under which literature, music and art was exchanged. Subsequently, the sub-committee for intellectual property rights met for the first time in December 1922.<sup>30</sup> Due to its permanent examination of problems related with intellectual property rights, the Paris Institute was invited to participate at the revision conference of the Berne Convention in Rome in 1928, which was a quite remarkable invitation as the Institute was the only non-governmental delegation that was allowed to join the deliberations.<sup>31</sup> After the Rome conference the Committee decided to take over responsibility for the conference's final wish to harmonize the Berne Convention with the copyright agreements of the Pan-American Union. In contrast to the International Office of the Berne Convention the OCI disposed of the required networks to national governments and to private associations of authors, publishers and experts; also it was statutory authorized to prepare such an initiative and to introduce it into the League's General Assembly. Finally, the Council of the League officially commissioned the Committee in December 1928.<sup>32</sup>

## **5. Global Governance of Author's Rights: International Organizations, Professionals and Experts in the Intellectual Cooperation Organization of the League of Nations**

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<sup>28</sup> Secrétariat de la Société des Nations (ed.), *La Société des Nations et la coopération intellectuelle*, Genève 1926.

<sup>29</sup> League of Nations, *National Committees on Intellectual Co-operation*, Geneva 1937; Henri Bonnet, *L'oeuvre de l'Institut International de Coopération Intellectuelle*, Paris 1938, pp. 26-9.

<sup>30</sup> Report of the sub-committee's first meeting on December 18th to 19th 1922 in Paris (United Nations Organization Geneva Archives, hereafter referred to as UNOG LoN, R 1044: 13/ 24053x/ 2256); *La Société des Nations et la coopération intellectuelle*, Genève 1926, pp. 17-19.

<sup>31</sup> Letter from the Italian Foreign Office to the General Secretary of the League of Nations, October 28th 1927 (UNOG LoN, R1045: 13C/ 59932/ 22526).

<sup>32</sup> Records of the IX. Assembly 1928, League of Nations Official Journal, Special Supplement No. 64, p. 134.

On behalf of the Committee the legal section of the Paris Institute was charged with the harmonization of the Berne Convention and the Pan-American copyright agreements. How did the institute proceed? It put the plan into action by operating on two levels: First it consulted the involved states primarily assembled in the League of Nations and in the Berne and Pan-American Union. In this respect the Institute acted on behalf and as the executive organ of an intergovernmental organization substantially subordinated under the community of states assembled in the League's General Assembly. But the institute did not content itself with the role of a purely intergovernmental organization. Due to its structure allowing professionals and experts to be addressed directly by bypassing national governments, the institute searched for cooperation beyond the intergovernmental level. Therefore, it established close ties to private actors and to other international organizations also occupied with questions of international law, in order to fundamentally engage them in the shaping and implementation of the new convention. This way, the institute drew on its twofold institutional setting as an intergovernmental and as a transnational organization supposed to maintain a close contact to governmental authorities, to the concerned groups in civil society such as publishers, authors, musicians and lawyers, and finally to specialized international organizations in order to consult their expertise and to take into consideration their needs and recommendations for a realization of the global copyright convention.

Accordingly, the Paris Institute mainly conducted the rapprochement by coordinating the interests and tasks of the involved parties and structuring the communication. On the one hand it pursued a close and mutual cooperation between the American and European continent; on the other it sought to assemble professionals such as copyright experts, authors and publishers as the group which had been directly affected through the new convention in order to reconcile their ideas with the political aims of the involved states of the Pan-American and the Berne Union. The drafts for the convention were worked out under the auspices of the Paris Institute, which constituted special committees consisting mainly of international organizations and private actors from culture and economy. At the same time the institute continuously informed the state authorities in the League's General Assembly and cared for their general approval for particular plans of action. In this way, states were not directly involved in the deliberations of the global convention but only indirectly either through the League's Assembly or through the Pan-American or the Berne Union; the member states of both Unions restricted themselves to primarily approving the drafts or making recommendations.

What were the problematic disparities between the European and American conventions and what was the agenda of the European publishing industries and the European

governments, assembled in the Berne Union? First, the Pan-American states followed the Anglo-Saxon legal tradition regarding authorship as a right bestowed by the state whereas the Berne Convention states regarded it as a natural personal right of the author. Accordingly, the Pan-American copyright law required a formal application for copyright protection and only after having registered a book or another printed work the copyright protection was valid.<sup>33</sup> In contrast, the Berne Convention states did not require any formalities. At the revision conference in Rome in 1928 the member states introduced the moral right of the author, the *droit moral*, into the Berne Convention; it acknowledged the author as individual and exclusive owner of his work. Accordingly states had to respect the exclusive right of an author to decide whether to exploit his work or not and the states were not authorized to impose any formalities on the author or publisher. Consequently, the Berne Convention states had a strong interest in abolishing the formal restrictions so that the American book market had been open for the European publishers and book sellers whereas the Pan-American states intended to keep the registration procedure and in order to save their idea of copyright not as a personal right of the author but as a right solely bestowed by the state.

Secondly, the right to translate a work was a contentious issue. The European publishing industries strived for the exclusive right of an author to decide where and when to publish translations of his work; according to the rules of the Berne Convention the exclusive translation right was valid during the author's life span plus 30 years. On the other hand the Pan-American states insisted on a restriction of the author's translation rights. They argued for a translation right that had run out ten years after the first publication of a work. Whereas the Berne Union members sought to bind the American publishers to the European authors and publishers possessing the exclusive right to translate a work, the Pan-American states wished to liberalize the translation rules so that they had had better access to the cultural and scientific knowledge of the European states in order catch up in economic development.<sup>34</sup>

On the European side the institute engaged associations of authors and publishers at an early stage because they were the primarily concerned interest groups and the distribution and reception of their works would fundamentally be affected by the copyright rules of the new convention. Therefore, delegates of the institute, especially the legal adviser and main driving force of the project attended their annual conferences, gave reports on the state of

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<sup>33</sup> Röhliberger, Ernst, *Der interne und internationale Schutz des Urheberrechts in den Ländern des Erdballs*, Leipzig 1914.

<sup>34</sup> Uruguay gave this as a reason for refusing Germany access to the Convention of Montevideo in 1927: Letter of the Uruguayan government to the German Foreign Office on February 8th 1927, in: *Politisches Archiv des Auswärtigen Amtes Berlin/ Archive of the German Foreign Office (PolArch, R 43761)*.

the deliberations and consulted expert opinions. Thus, the institute secured the approval and active support of two important international organizations of authors and publishers for the project: the *Association littéraire et artistique internationale* and the *Confédération internationale des sociétés des auteurs et compositeurs*.<sup>35</sup> Since 1932 these two associations took regularly part in the meetings and committees assembled by the institute in order to work out drafts for the global copyright convention and consequently they considerably contributed to the shaping of the new convention.

Consequently, the institute elaborated the global copyright convention in close cooperation with the International Institute for the Unification of Private Law in Rome (hereafter referred to as Rome Institute), which was also part of the League's Intellectual Cooperation Organization. The cooperation of the Rome and Paris Institute was institutionally embedded in a network of international organizations and international offices dealing with intellectual property rights. The network, awkwardly entitled 'Réunion des représentants des institutions s'occupant des droits intellectuels et problèmes juridiques connexes', was created on behalf of the Committee in 1930 and included the International Office of the Berne Union, the International Labour Organisation, the legal section of the League's secretariat in Geneva, the Rome and the Paris Institute and finally a Committee's representative. The aim of the annual meetings was to discuss and coordinate programs, to avoid double activity and to start concerted actions.<sup>36</sup>

On the American side the Paris Institute tried to involve member states of the Pan-American Union through the General Assembly of the League. In order to address copyright experts and professionals from South America the institute relied particularly on the American National Committees on Intellectual Cooperation with the aim to engage the support of non-governmental interest groups for the League's efforts. It was hoped that these groups would push the project in their home countries. But in contrast to nationally and internationally organized associations of authors and publishers in Europe, there were few such associations especially in the South American states because the production of cultural goods (books, art, music) and the publishing industries were not extended.<sup>37</sup> For this reason the Paris Institute had to predominantly rely on the Pan-American Union and experts for international copyright protection. Nevertheless, the Paris Institute was able to successfully involve the North American Committee on Intellectual Cooperation. It managed to inscribe a

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<sup>35</sup> For example see: Letter from Raymond Weiss to Wilhelm von Schmieden, 24 January 1930 (UNOG LoN, R 2217: 5B/ 17220/ 942) and letter of the *Confédération* to the General Secretary of the League, 23 February 1935 (UNOG LoN, R 4022: 5B/ 8576/ 4181).

<sup>36</sup> Report to the executive committee on the first meeting of the institutions preoccupied with intellectual property rights in Mars 1931 (UNOG LoN, R 2217: 5B/ 34691/ 942).

<sup>37</sup> Entry for Central and South America in: Kirchner op. cit., pp. 23-26

proposition for the rapprochement of the two copyright systems on the agenda of the seventh Pan-American Conference that took place in December 1933 in Montevideo.<sup>38</sup> At the same time, the Pan-American Union also took the initiative. In 1931 it entrusted the *Institut Américain de Droit International* with the drafting of a comparative study of the Berne and Pan-American copyright rules that was subsequently submitted to the conference in Montevideo.<sup>39</sup> Although the report pointed out that the divergences between the two conventions were not numerous and the Union's member states showed a willingness to harmonize their copyright rules with the rules of the Berne Convention, deliberations did not manage to reconcile the different ideas of how to revise the Pan-American copyright treaties in order to create a common ground for the rapprochement. Due to this disagreement the conference decided to install a committee consisting of five South American experts, the so-called Montevideo Committee, with the task of working out a draft for a global copyright convention. Due to the less developed book-market of the South American states, the Montevideo Committee did not include the regional publishing industries or interest groups of authors, musicians or journalists; instead it consisted mainly of copyright experts who were authorized by the Pan-American Union to work out a draft for the global copyright convention.<sup>40</sup>

Between 1928 and 1936 the shaping of the global copyright convention, the elaboration of a reliable draft was a predominantly transnational interaction due to the diverse economic, political and cultural interests and ideas. On behalf of the League's General Assembly the Paris Institute established multilevel ties beyond conventional diplomatic channels. The institute sought involvement of international associations of authors and publishers in the deliberations by calling on their expertise and inviting them to meetings of the respective committees; it drew upon the efforts and competence of other international organizations and offices preoccupied with questions of intellectual property; the institute engaged the National Committees on Intellectual Cooperation with the intention of influencing political and professional authorities in America and convincing them of the mutual advantages of a global copyright statute; finally the Paris Institute managed to create committees of experts. Even though these committees were officially created on behalf of the Pan-American Union and the League of Nations they did not consist of diplomats or politicians but of experts, the staff of international organizations and, at least on the European side, of professionals and

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<sup>38</sup> Raymond Weiss, *Vers un droit d'auteur universel*, in: *Journal de Droit International Privé* (1931), p. 787.

<sup>39</sup> Royer, *op. cit.*, p. 182.

<sup>40</sup> Raymond Weiss, *Le mouvement américain en faveur d'un statut universel*, in: *Nouvelle Revue du Droit International Privé* 3 (1936), pp. 229-35.

interest groups. Thus, the preliminary texts for the envisaged global copyright convention were established with the help of a dense transnational network aiming to delay intergovernmental participation in the discussion for as long as possible. This was facilitated by the League's General Assembly and by the principal approval of the Pan-American and the Berne Union, which authorized the Intellectual Cooperation Organization and the committees of experts to complete the groundwork of the global copyright convention as far as possible before it became open to intergovernmental discussion.

In 1936, the drafts were in a sufficiently advanced state to be submitted for intergovernmental debate. The Belgian government, which had planned to combine the next revision conference of the Berne Convention with a second diplomatic conference to which all member states of the Berne and the Pan-American Union were to be invited in order to inaugurate the new convention, decided to postpone the conference, which had been planned for 1936. Instead, the conference was postponed to an indefinite date in order to gain some time for the preparations of the global convention and also to give the American states enough time to examine and comment on the drafts.<sup>41</sup>

In May 1938 the Belgian government officially handed over to all member governments of both the Berne and the Pan-American Union a collection of documents related to the upcoming diplomatic conference and inquired of them whether or not they were willing to participate.<sup>42</sup> The documents included several drafts for the global copyright convention, which each time offered altering solutions for the regulation of translation rights and the formal registration. Most of the Berne Union's member states confirmed their participation, with even the fascist regimes not formulating any objections. The Pan-American Union critically discussed whether to participate or not on its conference in Lima in December 1938. Finally, the conference argued in favour of a global copyright regime and encouraged its member states to take part in the diplomatic conference in Brussels.<sup>43</sup> The Committee in Geneva welcomed this decision, assuming that no more serious obstacles would stand in the way of a global copyright regime. In June 1939 the Committee charged the Paris Institute with the preparations of the diplomatic conference so that it could take place as soon as

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<sup>41</sup> National committee on intellectual cooperation (United States), *op. cit.*, p. 6.

<sup>42</sup> Conférence diplomatique pour la préparation d'une convention universelle sur le droit d'auteur, *op. cit.*

<sup>43</sup> Les résolutions de la conférence de Lima, Décembre 1938, in: *Geistiges Eigentum. Copyright. La Propriété Intellectuelle* 4 (1938), pp. 239-40.

possible.<sup>44</sup> The conference was finally prevented from happening by the outbreak of World War II.

## 6. Conclusion

Even though the outbreak of the war prevented the inauguration of the global copyright convention, a closer look at the advanced preparations makes it possible to draw several conclusions about the role of the League of Nations as a locus for private actors from culture and economy to introduce their ideas about the international protection of author's rights in international politics in the interwar period.

A closer look at the actors reveals three major groups. The persons in charge has been the staff of international organizations such as the Committee and Institute of Intellectual Cooperation, the International Institute for the Unification of Private Law, the National Committees on Intellectual Cooperation (especially the one for North-America), the International Office of the Berne Convention and the office of the Pan-American Convention. The second group delegated the first. It consisted of the nation states, represented by the League of Nations, and in the Berne and the Pan-American Union. Hereby it is striking that they behaved reserved because they defined themselves as mainly to approve and support the international organizations and committees. The third group drew on non-governmental actors such as national and international associations of authors and publishers who were intensively included in the preparatory work.

The foundation of the Berne Union at the end of the nineteenth century was already based on a close cooperation between governmental authorities and interest groups of authors and publishers, which were organized on a national and international level. This way, the member states of the Berne Union intended the improvement of international book trade and legal acknowledgement of author's rights by involving the representatives of national cultural economies in the deliberations. That is to say, states accorded transnational actors from economics, science and culture an important function on account of their specialist knowledge and the role they had in establishing close social and economic ties across state boundaries in everyday life. These professionals and experts took part in diplomatic conferences on behalf of national administrations, thus substantially contributing to the shaping of international treaties, despite the fact that states remained the ultimately legitimating power.

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<sup>44</sup> Resolution of the Committee: Droit d'Auteur. Préparation de la 2ème Conférence internationale pour la révision de la Convention de Berne et la publication des documents (UNOG LoN, R 4032: 5B/30610/8174).



The Intellectual Cooperation Organization of the League of Nations considerably reinforced this tendency because states consented to delegate the process of negotiation to a network consisting mainly of international organizations and non-governmental actors. The Committee and Paris Institute were the organizations in charge, establishing the institutional infrastructure to engage private interest groups of author's and publishers and to consult their expertise and their legal and economic needs.

Thus, publishers and authors benefited from the technical service of the League of Nations, allowing them to contribute to the globalization of western copyright standards. Unlike the diplomatic conferences of the Berne Union that took place irregularly and excluding independent delegations of the publishing industries, the Paris Institute was able to permanently concentrate all its resources on this project, to stay in close contact with political and professional authorities and to include business associations in the deliberations. The Paris Institute established a transnational political network mostly consisting of international organizations, committees and interest groups and it mediated between legal norms, national interests, societal groups and international politics. This way, the League's Intellectual Cooperation Organization introduced a structure for multi-level governance in international politics in order to regulate the disposal and handling of cultural goods on a global scale.

Nevertheless, the states remained of crucial importance for the work of the international organizations, because the globalization of intellectual property law in the form of multilateral contract definitions remained entirely dependent on implementation in national legislation and jurisdiction of the member states. However, the willingness of member states to align their national laws and regionally anchored multilateral copyright regimes in a global framework was a fundamental political and legal acknowledgement of the needs of national publishing industries trading with cultural goods across state boundaries.

UNESCO restarted the project immediately after the war in 1946 and it based its work upon the already existing preparatory work of the League's Intellectual Cooperation Organization. This demonstrates a strong continuity between the League of Nations and the United Nations in the field of intellectual cooperation so that at least in this sphere of influence the end of World War II did not necessarily implicate a break – the dominant narrative in the post-war writing of history – but rather a passage towards the globalization of intellectual property rights which was subsequently realized and anchored in international politics during the second half of the twentieth century.

The continuation of the project over the war allows drawing two final conclusions. Regarding the League of Nations, it implicates that the diagnosis of a political failure of the League is confronted with a positive evaluation of its technical organizations that helped the

League to intervene in the politics of international law so that it seems to be recommendable to precisely analyze the League's strengths and weaknesses. Second, the League's involvement in international copyright protection shows that the interwar period was not only a period of economic protectionism and growing nationalism announcing an up-coming phase of de-globalization but also a period of advancing harmonization of international law between Europe and America. From this point of view, it makes sense to describe the interwar period as a time of conflict but also of a form of international cooperation, which was an inevitable result of the growth of cross-border trade.