

TERESA ŚWIĘĆKOWSKA  
<https://orcid.org/0000-0002-3979-5600>

# PUBLISHING ACROSS BORDERS: THE POLISH DISCUSSION OF LITERARY PROPERTY AND COPYRIGHT IN THE ERA OF THE BERNE CONVENTION

DOI: 10.36155/PLib.8.00005

## INTRODUCTION

This article presents the findings of research into how literary property and copyright were viewed by Polish publishers and writers in the era of the negotiation of the Berne Convention.<sup>1</sup> In countries with advanced publishing markets such as England, France, or Germany, the discussion over the concept of literary property was initiated in the 18<sup>th</sup> century, and by the time the Berne Convention was negotiated and signed, those countries had already established discursive traditions in this field. In Congress Poland, discussions of this topic started later, in the second half of the 19<sup>th</sup> century, spurred by the rapid growth of a Polish publishing move-

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1 The project *Literary property and copyright in Poland in the time of Berne Convention* was financed by the Polish National Science Centre (project number: 2014/15/B/HS2/00082). This article synthetically summarises the most important results of a research project. For a broader and more detailed presentation, see T. Święćkowska, *Kochani krwiopijce. Własność literacka i prawo autorskie w XIX-wiecznej Polsce*, Universitas, Kraków 2018.

ment with a centre in Warsaw.<sup>2</sup> The Polish publishing market was shaped not only by relatively late commercialisation but also by the fact that it developed under three different administrative and legal systems, without the support of a national state but with a strongly defined mission of the printed word. The Polish cultural élites who inhabited a vast area divided between Russia, Austria, and Prussia since the end of the 18<sup>th</sup> century saw the public reproduction of Polish language and culture as a means to organise the survival of a stateless nation. A stable publishing market was seen not only as an economic asset but also as an important stake in the political struggle. One of the important factors of the growth of the Polish publishing market was unauthorised translations of foreign literature, which was also one of the main points of controversy in the negotiating process for the Berne Convention.

### THE POLISH PUBLISHING MARKET IN THE 19<sup>TH</sup> CENTURY

Most studies of 19<sup>th</sup>-century Polish publishing focus on one partition only. The timeframes of those studies are defined by key political events, wars, and uprisings, which also had an impact on the situation of writers and publishers, the ever-moving borders, and the changing censorship systems.<sup>3</sup> But even though each of the three publishing markets had its own dynamics, with varying degrees of political repression or economic situation, they behaved as parts of one linguistic and cultural whole. At times, it was very difficult to distribute literary products across partition borders, but it was not impossible. Information, ideas, and also books, journals, and pamphlets penetrated borders and circulated in sometimes strange ways.<sup>4</sup>

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- 2 This was also a time of economic revival in Congress Poland, accompanied by an upswing in readership figures, development of Professional authorship, and a general acceleration of the processes of the commercialisation of literature.
  - 3 The important historical events influencing Polish book publishing included the Napoleonic Wars, the Congress of Vienna, the November Uprising (the Polish armed rebellion against the Russian Empire in 1830–31), the Revolution of 1848, the January Uprising of 1863 in the Kingdom of Poland, and the Russian Revolution of 1905.
  - 4 For example, Polish publishers from Galicia in the Austrian partition did not send books to Poznań in the Prussian partition directly but via Munich. W. Gottlieb, "Z doli i niedoli księgarstwa polskiego przed r. 1918", *Przegląd Księgarski* 1933, no. 25, pp. 187–192.

Throughout the first half of the 19<sup>th</sup> century, the Polish publishing market remained economically weak, and printers lacked sufficient capital to increase circulation. In Warsaw, no more than 100 books per year were published in the late 1820s, and in the 1830s, after the November Uprising, even fewer titles appeared in print.<sup>5</sup> Popular schoolbooks and calendars had a circulation of up to 1,000 copies, while novels translated from French usually appeared in 500 to 700 copies.<sup>6</sup> Publishers shied away from editorial risk, so Polish authors took on editorial tasks themselves, taking manuscripts to the printers, deciding about the form and cost of publications, and supervising their print. One of the main forms of publishing literary or scientific works in the Polish territories in the first half of the 19<sup>th</sup> century was subscription publishing.<sup>7</sup> In that era, writing and publishing books in Polish was considered a patriotic activity aimed at upholding and reproducing national culture and seen as a moral contribution. Subscription announcements appealed to the sense of duty to preserve and support national culture.

The most important works of Polish romanticism were written in the 1830s outside of the Polish territories by authors living in exile after the defeat of the November Uprising. Their works could not be printed or sold in Poland, especially in the Russian partition, but they were smuggled in.

Literary production on the Polish territories revived in the 1850s and then grew significantly over the last three decades of the century, mainly thanks to the development of the press and serial publications in newspapers and journals.<sup>8</sup> The centre of publishing

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5 K. Estreicher, *Bibliografia polska od 1800 do 1862*, *Gazeta Polska*, Warszawa 1863, p. 40.

6 J. Kamionkowa, *Życie literackie w Polsce w pierwszej połowie XIX w.*, Państwowy Instytut Wydawniczy, Warszawa 1970, p. 177.

7 According to E. Słodkowska, between 1815 and 1830, at least one third of Polish publications were sold as subscriptions. E. Słodkowska, *Produkcja i rozprowadzanie wydawnictw w Królestwie Polskim w latach 1815–1830*, Biblioteka Narodowa, Warszawa 2003.

8 In the Kingdom of Poland, the number of journals titles grew threefold between 1864 and 1900. J. Kostecki, "Czytelnictwo czasopism w Królestwie Polskim w II połowie XIX wieku", in: *Problemy literatury polskiej okresu pozytywizmu*, ed. E. Jankowski, J. Kulczycka-Saloni, Zakład Narodowy im. Ossolińskich, Wrocław 1984, p. 278.

activity was Warsaw, the third-largest city in the Russian empire at the end of the 19<sup>th</sup> century. In Galicia, which belonged to Austria, there was a revival of publishing activity after the introduction of autonomy in the 1860s. The region remained economically weak, but increasing cultural autonomy sparked the development of Polish language education and Polish scientific and cultural initiatives. This and the liberalisation of censorship had a positive influence on publishing activity, especially in Lvov, Galicia's administrative capital. In the Prussian partition, publishing activity developed less dynamically due to the economically weak position of Poznan and the policy of Germanisation.<sup>9</sup>

### COPYRIGHT PROTECTION ACROSS BORDERS

The legal aspect of the Polish publishing market was rather complex. Although all three partitioning powers had already introduced copyright laws in the first half of the 19<sup>th</sup> century (Russia in 1828, Prussia in 1837, and Austria in 1846), these were only partially effective in the Polish territories. Until 1870, the Russian law was not in force in the Congress Kingdom (Kingdom of Poland), founded after the Congress of Vienna in 1815. This was because the Kingdom of Poland had not adopted the Russian Empire's civil code, but the Napoleonic Code, which had been previously introduced in the Duchy of Warsaw by Napoleon in 1807. In 1825, the Napoleonic Code was also introduced with minor changes in the Congress Kingdom. However, the Napoleonic Code adopted in the Polish territories did not include the law on literary property introduced in 1793 in France. The legal situation in the Congress Kingdom was made even more complicated by the fact that the Russian criminal code from 1845, which came into force in the Kingdom in 1847, contained clauses stipulating fines for the violation of literary property, but there was no definition of literary property in

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9 A. Jazdon, *Wydawcy poznańscy 1815–1914: kształtowanie środowiska i repertuaru wydawniczego*, Wydawnictwo Naukowe Uniwersytetu im. Adama Mickiewicza, Poznań 2012, p. 378.

civil law. In 1861, Russia signed an agreement on the mutual protection of copyright with France, and a year later, it signed a similar agreement with Belgium. Both treaties were also in effect in the Kingdom of Poland. In 1867, in one of the first Polish texts on the topic, Seweryn Markiewicz joked that “in the countries which have signed agreements with the Empire the interests of our [Polish] writers and publishers enjoy the protection of the law and the courts which they do not enjoy in their own country. Therefore, the position of an inhabitant of the Kingdom of Poland is more favorable in France and in Belgium than in his own country”.<sup>10</sup>

Despite such theoretically unfavourable regulations, publishers from the Kingdom of Poland neither complained about reprints nor did they demand changes. They were quite efficient at self-regulating the publication and sale of books amongst themselves, relying on customary trade practices, while at the same time translating French literary production to Polish, as the treaties with France and Belgium did not protect translations. Russia did not take part in the negotiations of international copyright and did not sign the Berne Convention. The bilateral agreements with France and Belgium signed in the early 1860s were never renewed, and thus reprints and translations by foreign authors were not prohibited in the Russian Empire, just as works by subjects of the Czar were not protected from unauthorised translations abroad.

In the Duchy of Poznan, another state created by the Congress of Vienna, the Prussian Intellectual Property Protection Act from 1837 came into force after 1848 when the Duchy lost its legal autonomy and came under direct administration of the Prussian state.<sup>11</sup> Simultaneously, the publishing law introduced in Prussia in the late 18<sup>th</sup> century was put into force.<sup>12</sup>

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10 S. Markiewicz, “Prawa autorskie, czyli tak nazwana własność literacka i artystyczna w Królestwie Polskim i zagranicą”, *Ekonomista* 1867, no. 3, p. 152.

11 Gesetz zum Schutze des Eigenthums an Werken der Wissenschaft und Kunst gegen Nachdruck und Nachbildung.

12 Allgemeines Landrecht (ALR) of 1794: I. 11 § § 996–1036 ALR, I20 § § 1294–1297.

The latter was more important for Polish publishers not only in the Prussian partition but also in the others because it was the basis of the customary law observed by all Polish publishers across the different legal systems. There was no mutual protection between the Polish partitions belonging to Russia, Austria, and Prussia. Russia had no bilateral agreements with either any of the German states or with Austria, while the agreement on mutual protection between Prussia and Austria was only effective in their territories belonging to the German confederation. Since neither Galicia nor Poznan belonged to the German confederation, there was also no mutual protection between Austria's and Prussia's Polish territories. Yet reprints circulating between those territories were not much of a problem, and although joining the Berne Convention might have seemed attractive to publishers supplying a market divided by the borders of the partitioning states and subject to three different copyright laws, they mostly opposed it. They saw the freedom to publish translations of foreign works as more important than the protection against reprints.

#### FOREIGN TRANSLATIONS AND THE FIRST POLISH LITERARY PROPERTY LAWSUIT

The importance of foreign translations to the Polish publishing market can be illustrated by the first Polish literary property lawsuit. In 1866, *Gazeta Polska*, a Warsaw newspaper, took *Kłosy*, another Warsaw newspaper, to court over the right to publish a Polish translation of Victor Hugo's novel *Toilers of the Sea*. Both papers had planned the publication of their translations at the same time. *Kłosy*, however, was the first to announce that it would publish *Toilers of the Sea* in its free supplement. The next day, *Gazeta Polska* demanded *Kłosy* to stop the project, showing a document according to which it had purchased the exclusive right to translate and print Hugo's novel in Polish.<sup>13</sup> As mentioned earlier, foreign

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13 The contract of purchase had been signed only a few days before *Kłosy's* announcement.

translations were not protected in the Kingdom of Poland, similar to the Russian Empire. To gain earlier access to new novels by Victor Hugo, who was exceptionally popular in Poland, the editors of *Gazeta Polska* had paid Hugo's foreign publishers for the manuscript. But even though *Gazeta Polska* had bought the manuscript early, it could not immediately start printing the translation because when Hugo's new novel came out in French, bookstores it was busy printing Dickens's *Our Mutual Friend* and needed to complete the title first.<sup>14</sup>

*Kłosy* proposed to reimburse *Gazeta Polska* for the purchase of the rights, saying they could not pull back because they had already announced the publication of the novel as a bonus to their subscribers. However, *Gazeta Polska* did not accept the proposal and brought a lawsuit against *Kłosy*. From a legal perspective, there was a precedent. At the time, Polish newspapers published translations of foreign novels in instalments without asking the authors of the original works for permission. The court ruled that translating and publishing texts by foreign authors without their permission was not illegal.<sup>15</sup> At the time of the lawsuit, the protection of translations appeared as one of the issues in the ongoing discussions about international copyright in Europe. Both sides could thus easily find arguments in contemporary foreign publications, especially French ones.<sup>16</sup> *Gazeta Polska*'s lawyers based their claim

14 Because the transaction did not have any legal foundation, the price was not high. It was 600 French francs.

15 First, *Gazeta Polska* filed a suit in the Court of Commerce, which ruled in favour of its claim and prohibited *Kłosy* from publishing *Toilers of the Sea*. But then *Kłosy* filed an appeal and the Court of Appeal overturned the decision, ruling against *Gazeta Polska*'s claim in favour of *Kłosy*. The Supreme Court upheld this decision. The decision was based mainly on the convention with France from 1861 and on the fact that the convention did not protect translations.

16 For discussions about international copyright in Europe, see C. Haynes, *Lost Illusions the Politics of Publishing in Nineteenth-Century France*, Harvard University Press, Cambridge, Mass-London 2010; C. Seville, *The Internationalisation of Copyright Law: Books, Buccaneers and the Black Flag in the Nineteenth Century*, Cambridge University Press, Cambridge-New York 2006; S. Ricketson, J. C. Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond*, Oxford University Press, Oxford-New York 2006.

on the concept of literary property as natural law.<sup>17</sup> *Kłosy* did not deny that authors had a right to the recognition of their achievements and earnings but argued that literary property was not the same thing as property in general.<sup>18</sup> To demonstrate the different character of literary property, *Kłosy*'s lawyers showed that in many countries, literary property was governed by special acts of law and that the terms of authors' rights varied from country to country. They pointed out that only a few countries had signed agreements on the protection of translations so far and that they were only those countries that had an interest in the mutual protection of translations, like France and Britain.<sup>19</sup>

One of the main reasons given for the judgment was the need to guarantee access to world literature and knowledge to the inhabitants of the Kingdom of Poland.<sup>20</sup> The court was not convinced by

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- 17 They claimed that the exclusive right to the translation of Hugo's novel, which *Gazeta Polska* bought from the French publisher, was now its property, just as any other thing becomes the buyer's property when he has bought it. They also argued that this property deserved special protection because it was the expression of a great writer's spirit and genius. According to *Gazeta Polska*'s lawyers, the recognition of literary property was an expression of morality, of the rule of law between civilised nations, and of supreme truth. These arguments could also be found in the rhetoric of Western European publishers supporting literary property and treating it as natural and universal law and as a standard for civilised nations. Haynes, *Lost Illusions the Politics of Publishing in Nineteenth-Century France*, pp. 50, 71-71, 195, 203; Seville, *The Internationalisation of Copyright Law*, pp. 53, 254.
  - 18 Literary property could not be the exclusive property of an individual because its creators took inspiration from stocks of common goods like nature, culture, or human thinking, which could not be taken into possession and could not be restricted. This kind of argumentation appeared earlier in P. Proudhon, *Les Majorats littéraires*, Alph. Lebègue, Brussels 1862.
  - 19 Russia, in its convention with France from 1861, had only agreed to protect reprints and reproductions but not translations. The Russian-French convention was also effective in the Kingdom of Poland. Therefore, *Kłosy*'s lawyers argued that translations were not protected in the Kingdom. They also pointed out that one of the reasons why the freedom of translations from foreign literature had never been questioned in the Kingdom of Poland was the need to develop education and science.
  - 20 The court cited an opinion given by the Warsaw District Office for Science in 1858 regarding the convention with France which was being negotiated at the time. The District Office for Science was responsible for education policy in the Kingdom. It wrote that protecting translations would bring advantages only to France. It would bring only disadvantages to the development of science in the Kingdom.



*Gazeta Polska's* argument of literary property as natural law. That concept, borrowed from France with its powerful publishers' lobby, did not suit the interests of the inhabitants of the Kingdom of Poland at the time, just as it did not suit the interests of the other inhabitants of the Russian Empire, where access to education, science, and literature was much more difficult than in Western Europe.

#### POLISH DISCUSSIONS ON LITERARY PROPERTY AND UNIVERSAL AUTHORS' RIGHTS

With the exception of the lawsuit described above, we find little information about lawsuits concerning the violation of authors' rights in the Polish territories in the 19<sup>th</sup> century. Those lawsuits were quickly resolved and did not have major consequences for the book trade.<sup>21</sup> Reprints were limited by the self-regulation of the publishing trade. One of the regulating mechanisms was the organisational structure of the Polish publishing market, where publishers usually were also booksellers interconnected through a network of trade contacts. The threat of exclusion from this network was an important disciplinary tool.<sup>22</sup> Publishers were also afraid of moral condemnation in the press and being accused of harming the Polish printed word.<sup>23</sup>

Conflicts, including copyright violations, were also settled out of court. Information about this can be found in the correspondence of authors of the era. For example, Ignacy Maciejowski, a writer living in Galicia, described to his friend Maryla Wolska how his wife was able to get compensation for unsolicited use of his work from a publisher and owner of a printshop in Warsaw, thanks to the intervention of a representative of the Warsaw literary soci-

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21 For example, see *Obrona własności literackiej księgarń Gubrynowicz & Schmidt*, Gubrynowicz & Schmidt, Lwów 1880; "Echa Warszawskie", *Przegląd Tygodniowy* 1872, no. 48, p. 378.

22 "W obronie własności literackiej", *Kurier Poznański* 1907, no. 3, p. 2.

23 "Prawo autorskie", *Tydzień Literacki, Artystyczny, Naukowy, i Społeczny* 1878, no. 48, p. 23.

ety. He had been informed about the reprint by another Warsaw publisher.<sup>24</sup>

In 19<sup>th</sup>-century discussions in Poland, like elsewhere in Europe, nobody really questioned authors' rights to their works throughout their entire lives. There were different opinions about how to handle the rights to a work after the author's death and to whom these rights should belong. The majority of authors who wrote about the topic supported a temporal limitation of copyright. Proudhon's pamphlet *Les Majorats littéraires*,<sup>25</sup> which criticised the concept of eternal protection of literary property, received very positive reviews in the Polish press, and many Polish texts on the topic called upon the arguments of the French philosopher.<sup>26</sup> During the discussion sparked by the demands of the Brussels congress in 1858, the Warsaw writer and publisher Franciszek Salezy Dmochowski argued, like some French authors, that after an author's death, his heirs should inherit unlimited financial rights but only limited rights controlling the publication of his works.<sup>27</sup> If a book was not available for the reading public, publishing rights would pass into the hands of a specially convened government commission, and the author's heirs would receive a certain part of the proceeds of the publication. According to Dmochowski, such a solution would be better than a limited but long protection period because, as he expressed it,

whether we awarded an eternal property right or whether we turned it into a privilege for a limited number of years, from 20 to 50 like it is currently practiced, we would not avoid a severe damage to public

24 "Korespondencja Ignacego Maciejowskiego (Sewera) z Mieczysławem Pawlikowskim (1870–1892)", in: *Miscelanea literackie 1864–1910*, ed. S. Pigoń, Zakład Imienia Ossolińskich, Wrocław 1957, pp. 46–407.

25 Proudhon, *Les Majorats littéraires*.

26 "Przegląd literatury zagranicznej", *Gazeta Warszawska* 1862, no. 199; "Proudhona Majoraty literackie", *Gazeta Polska* 1862, no. 124, p. 2; W. Spasowicz, *Prawa autorskie i konterefakcja*, Biblioteka Umiejętności Prawnych, Warszawa 1874, p. 20.

27 F. S. Dmochowski, "O własności literackiej i artystycznej", *Biblioteka Warszawska* 1860, no. 4, pp. 576–599. See also G. de Champagnac, *Étude sur la propriété littéraire et artistique précédée d'une lettre de M. le vicomte A. de La Guéronnière*, E. Dentu, Paris 1860.

education if a work for all those years was withdrawn from the sale of books and hence could not serve for public use.<sup>28</sup>

Markiewicz, the author of the previously mentioned essay on copyright, was a staunch supporter of a limited protection period but held that its length should be determined by “the representatives of authors’ and book sellers’ interests themselves” with a greater “guarantee of knowing the subject” than him.<sup>29</sup> When Włodzimierz Spasowicz, a Polish lawyer and writer living in Petersburg, weighed up different positions and analysed the law effective at the time, he advocated shortening the period effective in Russia to 25 years after the author’s death, that is to the period which had been introduced in the first Russian act from 1828. He argued that the extension of the protection period to 50 years after the author’s death introduced in 1857 had led to a situation in which no good, cheap edition of Pushkin’s works was available in Russia in the 1860s.<sup>30</sup> He was also worried by the speed at which the protection period was extended in some countries. Looking at the changes in French law in the 19<sup>th</sup> century, he wrote:

If this development continues at the current speed and scope one could conclude that in the 20<sup>th</sup> century it will reach its Columns of Hercules, that is that copyright will be eternal in time and encompassing the whole world in space; that for example, should my book not be completely outdated and unfit for reading, only my descendants will be able to draw a gain from it and nobody will dare to reprint it, not even on the Sandwich Islands, even though neither I nor my descendants will be able to deliver this product to the denizens of the other half of the globe.<sup>31</sup>

An even more radical position on the protection period was held in an unsigned editorial piece in the journal *Tydzień* in Lvov.

Let us only remark that the number of years introduced on behalf of the heirs, 50 years in France and 30 years in Germany, is too big,

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28 Ibidem, p. 588.

29 Markiewicz, *Prawa autorskie...*, p. 186.

30 Spasowicz, *Prawa autorskie i konterefakcja*, p. 110.

31 Ibidem, p. 92.

and if we have to leave anything to the heirs it would be absolutely enough to leave them the right to a one-time edition within a period of no more than 10 years after the author's death, and if they did not make use of it they would lose it to society which would give everyone the freedom to make ever cheaper editions under the pressure of competition.<sup>32</sup>

However, positions like this were fighting a losing battle against the development of legislation in the era. The Berne Convention, passed in 1886, set the standard protection of copyright to 50 years after the author's death.

### THE ISSUE OF THE RIGHT TO TRANSLATIONS

While opinions about the theoretical concept of literary property Polish writers, publishers and lawyers held different they generally agreed with regard to the protection of translations. Most of them decidedly supported the freedom to translate foreign authors. As the lawyer representing *Kłosy* against *Gazeta Polska* said:

In our country the possibility of making translations in the widest sense has not been put into question by anyone so far. Ever since the most ancient times up to this very day everyone could make translations from foreign languages without asking anyone's permission, because in our country this is a question related to the question of education and its promotion. The greater part of historical, economical, legal, philosophical, medical, mathematical and works of all special sciences have been translated from foreign languages, and the same is taking place in lighter literature like the arts of theater, novels and romances.<sup>33</sup>

Lawyer and writer Włodzimierz Spasowicz argued that

a translation, which costs much time and independent work of the translator, can rather be considered a rewriting than a reproduction of the original: it appears in circulation at a time when the original

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32 *Prawo autorskie*, p. 23.

33 "Proces redakcyi Gazety Polskiej z redakcyą i wydawcą czasopisma *Kłosy*", *Kłosy. Dodatek nadzwyczajny* 1867, no. 87, p. 6.

has already been widely distributed and enjoyed success, it does not therefore substantially damage the sales of the original work. In any case, the complete freedom of translations considerably contributes to the quick exchange of thought and the development of science and education between nations. For some literatures, especially those which produce few original works, the permission of translations is a vital question on which their existence and development largely depends. For example, what would today's Russian literature be if one were to exclude from it the enormous number of translations whose production incessantly occupies hundreds of hands and even entire literary societies?<sup>34</sup>

Translation rights were also discussed in the Polish press on the occasion of the 1879 literary congress in London.<sup>35</sup> At the congress, the demand was made that the right to translations belonged exclusively to the author and for the same period as the protection against reprints. *Gazeta Polska* presented the participation of Polish writers at the congress as an occasion for Polish literature to join the family of "European literatures". At the same time, it pointed out that the road to joining might involve recognising literary property and accepting the right to translations. The author of the text argued that it would be worth paying the price for the right to translations in exchange for the international recognition of Polish literature, whatever publishers might say against it.<sup>36</sup> However, this view was not shared by the editors of the opinion-making Warsaw weekly *Przegląd Tygodniowy*, who criticised Polish delegates for silently agreeing to solutions that were to the detriment of Polish literature and firmly announced that it would continue to stick to prevailing law and adapt foreign literature to the Polish language for free. The article accused Polish delegates of not having a man-

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34 Spasowicz, *Prawa autorskie i konterefakcja*, pp. 61–62.

35 *Gazeta Polska* wrote about the London congress in its numbers 137 and 138 under the heading "Korespondencje Gazety Polskiej". One of the participants of the congress was Waław Szymanowski, an editor of *Kurier Warszawski*, in which he published daily reports. W. Szymanowski, "Z Londynu", *Kurier Warszawski* 1879, no. 131.

36 "Z literatury i sztuki", *Gazeta Polska* 1879, no. 173.

date to accede to the congress's demands in the name of all concerned, especially since these demands were to the detriment of Poland, which did not have the means to buy translation rights.<sup>37</sup>

The *Tydzień* editorial quoted earlier took a similar stance on the subject. The editors expressed the opinion that the protection of foreign translations was not necessary and did not provide the authors themselves with any advantage because they usually sold off all rights to the publishers, including the right to translations. They emphasised that translations fulfilled an important function of "familiarizing readers with the most outstanding works of foreign literature".<sup>38</sup> At the same time, the editorial made it clear that *Tydzień* did not support the translation of low-value foreign novels appearing in instalments in journals that had been founded specially for that purpose. On the other hand, as critic Antoni Sygetyński observed in 1884, only a very small proportion of foreign translations were scientific works:

The publishers who would permit themselves to bore their readers with translations or summaries of the positive results of scientific studies are few. Most hide behind the hypocrisy of resisting harmful Western influences [...] In compensation they are so freethinking and tolerant when it comes to pillaging fiction, to numbing the minds of their readers with the most diverse ideas or tendencies - as long as their form is artistic and easy to digest, like a novel, a play or a comedy.<sup>39</sup>

Sygetyński claimed that unlimited freedom to translate foreign authors harmed Polish literature flooded by cheap translations. He wrote that Polish authors were already pillaging the stock of Western fiction not only with full hands but by the wagonload.<sup>40</sup> Such opinion was not, however, generally shared.

The right to translations was also relevant for those Polish authors who were beginning to enjoy international fame in the last

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37 *Przegląd Tygodniowy* 1879, no. 34.

38 *Prawo autorskie*, p. 24.

39 A. Sygetyński, "Nasz ruch powieściowy", *Wędrowiec* 1884, no. 38, p. 454.

40 *Ibidem*, p. 453.

decades of the 19<sup>th</sup> century and who were translated into foreign languages. Some of them wrote in private letters that they would have welcomed any additional income from foreign translations, but none of them openly demanded the international protection of translations, and some even publicly opposed it.

Bolesław Prus, one of the greatest realist Polish writers, openly made fun in the press of the French Literary Society's attempts to prohibit unsolicited translations of French authors in the Russian empire. In 1881, Petersburg bookseller P. Michelet announced to the press that the French Literary Society had authorised him to take to court any translations from French done without a permit from that Society. Prus joked that this way, the French were doing the Polish a favour because

if we cannot translate French authors for free then we will have to turn to Italian, Spanish, German, and best of all, to English authors – and we will win! ... Your genuinely brilliant author will surely not enrich himself at the cost of a poor nation. And if he likes to demand a road toll, ha! ... Then we will ask him to take his fee out of those sums which France herself granted us after the Napoleonic Wars.<sup>41</sup>

Józef Kraszewski, a Polish writer living in exile in Dresden, was elected one of the vice-chairmen of the 1881 literary congress in Vienna. Although he lived outside of Poland, he was the best-known and most widely published Polish author of the time, an unquestioned literary and political authority. In his address to the congress, he said, "I am honored to belong to a nation which, because of its language, has very little to gain from the recognition of literary property. As a Pole I have no interest in the matter, but as a man and a Pole I am taking part in efforts which bring us closer to each other and serve the goal of unity and justice".<sup>42</sup>

For Poles struggling to develop and strengthen the publishing market in their national language, the importance of free trans-

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41 B. Prus, "Wyprawa francuskich literatów na polskich Krumirów - tłumaczy", *Kurier Warszawski* 1881, no. 113.

42 *Kurier Warszawski* 1881, no. 213.

lations was obvious. Translations of foreign works made up one-third of fiction published in Warsaw, the most important Polish publishing centre. Although slogans put forward by the supporters of the Berne Convention referring to universal author's rights and civilisational standards rang true to the ears of some Polish writers and lawyers, public opinion leaned towards the view that the protection of translations would harm the development of Polish culture. This conviction was tacitly or openly shared by many authors who were often also editors of periodicals making use of foreign works. The development of the press created jobs for editors and translators and perspectives for authors writing in Polish, for whom the press was their main source of income. Before Henryk Sienkiewicz became one of the most widely translated Polish novelists, he was head of the literary section of the newspaper *Słowo*, and his responsibilities included choosing foreign novels for the literary pages.<sup>43</sup>

#### TO JOIN OR NOT TO JOIN THE BERNE CONVENTION?

Independent decisions about joining international treaties were impossible in the Polish territories - even in Galicia, which enjoyed some political autonomy. They were bound by the decisions of the partitioning powers. In the Prussian partition, Polish publishers were subject to the Berne Convention from the start,<sup>44</sup> while publishers operating in Russia and Austria remained outside the Berne Convention until independent Poland joined it in 1920. Germany had a high output of cultural and scientific literary production, while Austria-Hungary and Russia were on the receiving end of foreign literature and science, which were translated without permission. Both states were multicultural and multilingual empires encompassing various local and national publishing markets, whose development depended on foreign translations. According to Sibylle Gerhard, the main reason why Austria-Hun-

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43 Sienkiewicz's sister Helena was one of the translators working for the *Słowo*.

44 Germany was one of the initial signatory states of the Berne Convention.



gary remained outside of the Berne Convention was the widely differing opinions on the subject in the multinational empire. Opponents of the convention included Poles and other Slavic nationalities, while German-language authors and publishers demanded joining the convention because they found that remaining on the outside was against their own interests.<sup>45</sup> The latter brought forth not only economic arguments, complaining about material losses caused by the lack of international protection, but also called upon morality and reputation. They argued that remaining outside of the convention would exclude Austria from the circle of civilised countries and that piracy would hurt its reputation abroad.<sup>46</sup>

Meanwhile, the opponents of joining the Berne Convention claimed that it would inhibit local education and science. To them, freedom of translation was a necessary condition for the progress of education and access to culture. The Austrian government sided with these arguments because they were in line with the historical tradition of enlightenment promoted by Maria Teresa and Joseph II<sup>47</sup> and fit in well with the Austrian government's self-promoted image as a mediator of the interests of all lands and nations in the empire.

Faced with repeated petitions and questions from authors and publishers regarding joining the Berne Convention, in late 1899, the Austrian ministry of justice sent out a questionnaire to institutions potentially interested in the matter. It was distributed to academies, universities, authors' and artists' associations, as well as publishers in Vienna, Prague, Cracow, and Lvov. The questionnaire included questions like: "Is joining the convention in the interest of authors and creators, will it be profitable from the per-

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45 Austria only joined the Convention in 1920 after the dissolution of Austria-Hungary.

46 Gerhard, *Vogelfrei*, p. 231.

47 Maria Teresa and Joseph II supported reprints in Austria as part of their politics of Enlightenment in the second half of the 18<sup>th</sup> century. They also condoned the activities of Johann Thomas Trattner, a publisher from Vienna and the biggest book pirate of the German language area, who supplied classical works of German Enlightenment to readers not only in Austria but in all of Central and Eastern Europe. U. Giese, "Johann Thomas Edler von Trattner. Seine Bedeutung als Buchdrucker, Buchhändler und Herausgeber", in: *Archiv für Geschichte des Buchwesens, Buchhändler-Vereinigung*, Frankfurt am Main 1960, vol. XXIII, pp. 2153-2366.

spective of publishers, and what will be the results for the public?" Or, "Will it further or weaken the cultural needs of the empire's denizens?" Responses revealed considerable differences in interests. One-third of the respondents were against joining the Convention; another third was for joining but maintaining current Austrian law, which permitted unsolicited translations, while the last third was for joining the Convention under the conditions already established by the Convention.<sup>48</sup> Outspoken opponents of joining the Convention included Polish institutions and associations from Lvov and Cracow, which were also supported by Polish members of the parliament in Vienna.<sup>49</sup>

The discussion about the questions posed in the questionnaire also took place in the Polish press. Cracow weekly *Czas* wrote that the only question that should decide about joining the Convention was whether it was harmful or not for the interests of the empire, that is, whether it would have a "vitalizing influence on the literary and artistic activity in the country".<sup>50</sup> The editors of *Czas* published the most important points of an expertise prepared by lawyers Fryderyk Zoll and Stanisław Wróblewski, which was ordered by the Cracow-based scientific society Academy of Skills. Zoll and Wróblewski argued that Polish authors would not profit from joining the Berne Convention because their works were not often translated abroad and that those that were, e.g., by Henryk Sienkiewicz, were mainly published in countries with which Austria already had bilateral agreements. On the other hand, publishers would suffer significant losses, as would Polish language readers at large. The protection of translations would lead to the rise of theatre ticket prices and negatively influence the working conditions of actors. Publishers, especially of newspapers and journals, would publish "translations of the cheapest things, that is, of less value". The authors argued that Polish literary production was not

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48 Gerhard, *Vogelfrei*, p. 240.

49 Ibidem, p. 243.

50 "Przystąpienie Austrii do Konwencji Berneńskiej", *Czas* 1900, no. 120, p. 122.

sufficient to satisfy the needs of the Polish public and that a limitation to Polish production would also lead to the “severance of intellectual ties with Western civilization”.<sup>51</sup> Joining the Convention would not only weaken publishing activity in Galicia but also make an exchange with the Kingdom of Poland more difficult.

Not all Poles in Galicia were so unequivocally against the Convention. Michał Rostworowski, also writing in *Czas*, criticised the stance taken so far by Austria. He accused Austria of passivity towards the negotiations and also of selfishness, ordinary calculation of interests, and ignorance towards the principles of civilisational progress in establishing universal law.<sup>52</sup> Rostworowski, who studied law in Petersburg, Paris, Berne, and Vienna, specialised in international law and was evidently less interested in locally defined interests of Polish publishers and audiences.

Poles living in territories under the authority of the Russian administration had little political and cultural autonomy after the lost insurrection of 1863–1864 and little influence on Russian foreign policy. In press discussions referring to international literary congresses preceding the conclusion of the Berne Convention, most authors openly opposed the protection of translations, while some of them, especially those who took part in international literary congresses, were concerned about the place of Polish literature on the international literary scene. They suggested that if Poles supported international literary property regulations, this would place them on the side of progress and civilisation. On the other hand, such declarations had a rather symbolic meaning because they did not have any considerable influence on the policies officially pursued by Russia. Spasowicz, who was a Polish man of letters but, at the same time, also a well-known and respected lawyer in Petersburg, thought that internationalisation of copyright was an inevitable process and that it was only a question of time

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51 Ibidem.

52 M. Rostworowski, “Kilka uwag w kwestii przystąpienia Austrii do Konwencji Berneńskiej”, *Czas* 1900, no. 135–136.

until Russia would join the Berne Convention. Yet, he was still convinced that a strong and long-term protection of copyright was generally bad for literature. He spoke out in favour of compensating foreign authors for translations of their works but suggested that such regulations should be introduced gradually and protection periods should be short.<sup>53</sup>

### CONCLUSIONS

While remaining under three diverse administrative orders and separated by state borders, Poland formed a unified linguistic publishing area, with a successful exchange of publishing and literary production despite the customs and censorship difficulties. The rights of authors were predominantly respected, and reprints of works published in a different partition were rare, even though they were not formally forbidden.

The Polish publishers were generally not supporters of an eternal protection of literary property and did not call for longer protection. If the issue of the length of authors' rights was broached at all in relevant Polish discussions, it was to call for its limitation. That position was in line with the economic and structural conditions of the Polish publishing movement. Although it had grown dynamically in the last three decades of the 19<sup>th</sup> century, publishers did not have much capital at their disposal and were very cautious regarding the publication of books. They did not hoard authors' rights either but usually bought the rights to individual editions.<sup>54</sup>

The most contested question was the protection of translations. While the lack of relevant regulations was considered a serious problem, especially in reference to the author's moral rights and sometimes led to disputes between publishers, the introduction of

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53 W. Spasowicz, "Rzecz o tak zwanej własności literackiej", in: *Pisma*, Księgarnia Br Rymowicz, Petersburg 1892, vol. 4, p. 106.

54 The late 19<sup>th</sup> century, cheap editions of the most popular novelists with a run of 10,000 to 25,000 copies were published on the initiative of philanthropic bankers who waived profit. The price of the books covered production costs and authors' royalties were higher than those normally offered by publishers.

the full protection of translations was seen as an unfavourable solution. For some authors, especially those invited to international literary congresses, the question of the protection of translations was inconvenient. On the one hand, international literary societies whose members included world-famous writers, such as Victor Hugo, promoted universal copyright as a civilisational standard and appealed to writers' solidarity, calling on them to join the struggle for international protection. On the other hand, the protection of translations was criticised by public opinion and regarded as harmful for Polish culture, science, and education. Unauthorised translations would not only strengthen the economically weak Polish press and publishing market but would also give readers almost immediate access to popular and *avant-garde* world literature and the latest scientific developments.

#### SUMMARY

The article deals with the Polish discussion of literary property and copyright in the second half of the 19<sup>th</sup> century. Because of the partitions, Polish publishers in that era were subject to different legal systems (Russian, Prussian, and Austrian) while the Polish language publishing market was divided by customs borders. On the other hand, there was a flourishing cooperation between Polish publishers based on unwritten customary publishing practices that were observed across borders. In contrast to countries with more developed and concentrated publishing markets, there were no significant differences in the views of Polish publishers on literary property or the duration of copyright protection. In the international debate on the protection of translations, Polish publishers, lawyers, and also writers usually opposed the full protection of translations because they saw it as a threat to the development of Polish culture, which depended on access to world literature and science.

**KEYWORDS:** Copyright history, literary property, publishing history, Berne Convention, Polish culture, 19<sup>th</sup> century

