In the years immediately following the Napoleonic Wars, the issue of international copyright was of little concern to America. She imported most of her general literature from England at a time when comparatively few books were published at home. By the mid-1820s the situation had changed considerably. The writings of Porter, Edgeworth, Scott and Byron had become extremely popular and were the subject of many an American reprint. An increase in the tariff on imported books had also encouraged the American manufacture of books. Carey & Lea of Philadelphia dominated the reprint market; a pre-eminence they were not to relinquish to Harper & Bros of New York until the mid-1830s.

Occasionally during the 1820s some slight interest in international copyright was manifested. James Fenimore Cooper, one of the few American authors to make an impression on the British reading public, quite naturally showed some sympathy for the cause. In 1826 he raised the question with his London publisher, John Miller:

> We are about to alter our [copyright] law and I hope to make it more liberal to Foreigners – Verplanck (the author) is in Congress, and chairman of the Committee – he is a friend, and indeed, connexion of mine, and has written me on the subject – As I shall go to Washington in a few days I hope to be in time to throw in a hint to that effect – There are some strong Literary Men in both Houses at present, and as the President [John Quincy Adams] is a good deal of a Scholar, I am in hopes of a more liberal policy; than heretofore will prevail.

Cooper’s interest in international copyright was certainly not typical.
If Americans thought of the topic at all they were concerned with protecting domestic copyright and not the rights of foreigners. As a country, nineteenth-century America was akin to a present-day underdeveloped nation which recognizes its dependence on those more commercially and technologically advanced, and desires the fruits of civilization in the cheapest and most convenient ways. Reprinting English literature seemed easy and inexpensive, and so America borrowed voraciously.

Some Americans took an interest in improving the terms of domestic copyright as an incentive to native authors. Both the Federal Government and the States had shown an early willingness in this direction. As far back as the 1780s, prior to the adoption of the Constitution, several States had their own copyright laws or conferred copyright on the works of specific authors. The Constitution itself embodied a general provision for the encouragement of literature and science, and in 1790 specific federal legislation was passed establishing literary copyright throughout the nation. Citizens and residents of the United States only were guaranteed protection for fourteen years, with the option of a further fourteen years if the author was still living. In the latter 1820s, there was some wish to extend the term of copyright and to allow the heirs of a deceased author to renew the protection. 2 On 3 February 1831 ‘An Act to Amend the Several Acts Respecting Copyright’ was signed. The normal term was extended from fourteen to twenty-eight years, again with the option of renewal for an additional fourteen. If an author died, his widow or children could apply for the extension. For the first time musical compositions were covered by copyright legislation. But not a word on international copyright. In fact, foreign authors were explicitly barred from protection, which in essence safeguarded reprints.

The details concerning the passage of the Act of 1831 indicate what sort of battle was ahead for the advocates of international copyright. Among the American literati, Guilian C. Verplanck was best placed to promote copyright legislation. Elected to the House of Representatives in 1824, he was, as Cooper noted, Chairman of a committee considering the subject. He later summarized his role in the affair at a banquet honouring him for his stewardship of the successful bill. 3

My only merit is that of having almost four years ago during the first session of the 20th Congress [1827–8], called public attention to this subject of having with some industry collected the requisite information from those who had practically experienced the difficulties and imperfections of the laws then in force, and of
having framed and introduced a bill for the purpose of correcting those evils.

... Although, therefore, the bill I prepared received the approbation of some of the most distinguished Senators and Representatives, of both political parties, I found it utterly impossible during the whole of that Congress to act upon the bill, or even to draw the attention of any large portion of either house to the measure. [During the next session of Congress] the Judiciary Committee of the House of Representatives, at an early period, consented to adopt my bill of the last year, and, with some useful modifications, introduced it as their own. In doing this, they not only gave to it the great weight of their unanimous sanction, but also added to its support the very ardent and able assistance of the member of their body [Judiciary Committee] who reported the bill, Mr Ellsworth, of Connecticut.

Verplanck did well to give some of the credit to William W. Ellsworth (1791–1868). He had been a practising lawyer in Hartford, Connecticut, and then a teacher of law at Trinity College. Elected to the House of Representatives in 1828, he was to supersede Verplanck as the member of the Judiciary Committee most dedicated to promoting the cause of domestic copyright. Ellsworth came by his interest, one might even say vested interest, quite naturally since he was married to the eldest daughter of Noah Webster, the patriarch of American school books and dictionaries. As long ago as 1783–5 her father had trudged from one state legislature to another seeking copyright protection for his spelling books. When the 1831 law was passed Noah gave his son-in-law most of the credit, and in this case parental pride was not misplaced, for Ellsworth seems to have been one of the most conscientious supporters of the bill.

Webster himself contributed much to the effort. He prodded Congress from time to time and devoted about ten weeks of 1830–1 to supervising the measure personally in Washington. Once the bill passed both Houses of Congress and was waiting the President’s signature, he wrote,

*This law will add much to the value of my [literary] property... My presence here has, I believe, been very useful and perhaps necessary to the accomplishment of the object. Few members of Congress feel much interest in such a law, and it was necessary that something extra should occur to awaken their attention to the subject. When I came here I found the members of both houses coming to me and saying they had learned in my books, they were glad to see me, and ready to do me any kindness in their power. They all seemed to think, also, that my great labors deserved some uncommon reward. Indeed, I know of nothing that has given me more pleasure in my journeys, the last summer and*
this winter, than the respect and kindness manifested towards me in consequence of the use of my books. It convinces me that my fellow citizens consider me as their benefactor and the benefactor of my country.

And elsewhere he noted,

_In my journeys to effect this object, and in my long attendance in Washington, I expended nearly a year of time. Of my expenses in money I have no account._

From his description several things emerge. Members of Congress were generally indifferent to copyright, and it took something 'extra', in Webster's word, to goad them into legislative action. It was convenient to have men like Verplanck and Ellsworth placed on key committees, but even more important was their willingness to devote much time and trouble to the measure. A distinguished author like Webster being present in Washington fostered good public relations. On the other hand, the Act succeeded partly because it avoided high controversial issues such as protection for foreign authors.

In the 1820s there was still confusion over the rights of foreign authors, but by the mid-1830s the policy was clear. In 1826 Cooper wrote to Carey & Lea, his American publishers, describing his recent conversation with Sir Walter Scott.

_I was of opinion that by proper assignments and with sufficient care in publishing, copyrights might be obtained by an English subject for the same work both in England and the United States. — I fell into the error by my recollections of an examination which I had once made with a view to ascertaining what privileges an American might enjoy, in a similar situation — I still think that he [a foreign author] is permitted to control the sale of his works in the two countries, but I regret to see that a narrow, and as I conceive an impolitic jealousy, has confined the rights to works which are written by Citizens in our statute on the subject._

American authors may have been confused, but any American publisher could have told Cooper that foreign authors had no rights in America. The best they could hope for was an occasional honorarium for advance sheets. Carey & Lea were apparently the first to make a systematic effort in this direction. In the 1820s they paid their London agent, John Miller, to forward the novels of Sir Walter Scott to them as soon as they were published. However, due to the vagaries of trans-Atlantic sailing, it was feared that some other American publisher would receive copies before Miller's found their way to Carey & Lea, so the Philadelphia firm decided
to go straight to the source of supply, the Edinburgh publisher, and contracted to receive the sheets in instalments as they were printed, not waiting for the complete volume before setting type.\textsuperscript{6}

During the last decade of his life Scott or his publishers generally received some sort of payment from Carey & Lea for advance sheets. The amounts paid varied from as little as $250 for \textit{Canongate} to $1,475 for the \textit{Life of Napoleon}, the usual reimbursement for a three-volume novel being $375 or £75. In due course this arrangement proved valuable to the Philadelphia firm because other American reprinters abandoned the competition for Scott's writings and purchased complete copies from Carey & Lea at wholesale prices. For example, Carey & Lea reprinted 5,750 copies of \textit{Ann of Geierstein} in 1829, of which they kept only 3,250 for their own customers. Another 1,250, on cheaper paper and without title pages, went to Harper & Bros, and a further thousand to J. Crissy of New York. These firms subsequently inserted their own title pages and imprints before distributing them to their own customers. So although Scott's income from the sale of advance sheets was modest, it is certainly inaccurate to say, as the \textit{Knickerbocker} did in 1835, that 'Walter Scott never received a cent on the sale of his works in America'.\textsuperscript{7}

At about the time Scott died, Edward Lytton Bulwer began receiving similar payments from Harper & Bros of New York. This culminated in a formal written agreement dated 7 April 1835.\textsuperscript{8}

\textit{Memorandum of Agreement between Edward Lytton Bulwer Esq of London, and Harper & Brothers, publishers, of New York. Mr Bulwer agrees to forward to Harper & Brothers early copies in sheets, as they come from the press in London of all works hereafter to be written and published by him, so as to ensure to them possession of the said copies, a sufficient time before the works can be received by any other person in America, to enable them to reprint for publication in that country. And Harper & Brothers in consideration thereof, agree to pay for the said copies at the rate of Fifty pounds sterling per volume, to be remitted by Bill of Exchange or otherwise, on the receipt of the first sheets forwarded by Mr Bulwer.}

Since Bulwer's novels usually consisted of three volumes he received £150 for each new work of fiction with lesser amounts for short stories, poetry, or plays.

The first work to come under the provisions of this Agreement was the historical novel, \textit{Rienzi}. Published at the end of 1835, it sold well in America and Bulwer received his £150. The Harpers pointed out,
however, that something had gone wrong with the transmission of the early sheets resulting in the Philadelphia firm of Carey & Hart procuring a copy of the book before all the sheets from Bulwer had reached the Harpers. This was not the first time that Bulwer had been urged to take more adequate precautions. Since English copyright could be secured only if a work was first published in Britain, Harpers often had to hold back their reprint in order not to anticipate the date of publication in England. But as soon as the English edition was out, Harpers rushed into print before any other American publisher. The same communique which reprimanded Bulwer for allowing a competitor to reprint *Rienzi* also presented another awkward problem. In an attempt to impress Bulwer with their strong position among American publishers, Harpers warned him not to accept offers from competitors.

*We have invested a large amount of capital in your productions, having stereotyped them all — an unusual measure by the way — and given assurances, both publicly and privately, to our customers in all parts of the United States, that they should be supplied by us with uniform editions of all you might write hereafter. For our own interest, as well as to redeem this pledge, we should be under the necessity of reprinting them upon the publisher to whom you might give the preference; and as delay would necessarily subject us to the risk of loss, by suffering the market to be stocked before we could appear in it with our editions, we should, of course, put in requisition all our means of competition; from the magnitude of our disposable force, we could throw before the public one of your novels in twenty four hours after obtaining a copy — which no other house in the U.S. could do — and even then sell it cheaper than any other, getting it up in the same form. Add to this the fact that the booksellers who have hitherto been supplied by us, would give our Editions the preference, and we think that no responsible publisher would feel willing a second time to pay a higher sum than we could afford, for a priority which would be little more than nominal. We have always made it a rule not to pursue any course that must prove injurious to another publisher, unless driven to it by aggression, but in this case we should have no alternative. We have too much already invested, and you will perceive at once how important it is for us that booksellers who have been for years dependent on our press for suppliers of a popular series, should still be able to obtain them from us.*

Not unnaturally, Bulwer took offence at what he considered an implied threat. In the heated exchange that followed Harpers reiterated their position.
Nothing could be farther from our intentions than presenting to you anything that even savoured of a threat; neither our respect for you nor our judgment would permit us to think of adopting such a course. We presented that postscript to you, merely as a plain and candid statement of facts, serving to show, first how much we feel and acknowledge it to be for our interest to continue the publication of your works; for although we have said, and truly, that we could prevent the priority from being any great advantage to any other publisher, we have not said, and do not say, that we should not be the losers by the operation. Our only motive for doing it would be the imperious necessity of keeping our editions complete, for the sake of continuing to sell those which we have already incurred the expense of stereotyping, and of maintaining our connection with the booksellers who now look to us for supplies. Secondly that it was likely to be quite as advantageous, to say the least, to you, to have your works republished by us as by any other, inasmuch as our interests are identified with yours to a certain extent, and therefore yours would be studied by us with a vigilance proportioned to that we should bestow upon our own. And lastly we designed, with the best intention in the world, to furnish you a criterion by which you might judge whether it would be any respectable and responsible publisher in this country who would interfere between you and us, knowing as they all do, how much capital we have invested in your works, how much it would be in our power and how strongly interest would urge us to diminish or prevent the injury we should sustain from a transfer of them from us. We know perfectly well that there are publishers, who, having nothing to lose would be willing to incur any risk — agree to any terms — make any promises. But we also know that there would be but small advantage to you in having the promise of higher terms from men whose performance would depend upon the issue; who would remit if they made money by the publication, but fail to remit if, from any cause, it should not prove equal to their expectations.

This warning was not without substance, for in the spring of 1836 Nahum Capen, one of the partners in the Boston firm of Marsh, Capen & Lyon, was in London and sought out Bulwer with just this purpose in mind. By way of vouching for his firm’s reliability, Capen asked the representative of another American publisher, William H. Appleton, to write to Bulwer. Appleton gave assurances that Capen’s firm was one of the oldest and most respected in America and that they would honour any agreement. Bulwer was somewhat receptive to Capen’s overtures. Although he had an agreement with Harpers, he was always seeking higher remuneration because he felt that the Harpers undervalued his writings.
A new proposal to reprint his forthcoming works in America pleased and flattered him. Furthermore, a confusion among the Harper Brothers led to their rejecting one of Bulwer's new plays. Although the details are vague, it seems that James Harper personally turned it down when passing through London on his way back to New York from Italy. This presumably occurred in late February or early March 1836, about the same time that Capen approached Bulwer. Six months later the Harpers apologized but the damage was done. Had Bulwer directed the volume to the New York office rather than submitting it to James Harper personally, it would have been published in accordance with the terms of the agreement.

By August 1836 a draft of a contract between Bulwer and Marsh & Co. was drawn up. Although no specific remuneration was mentioned, Bulwer probably would have received as much if not more than he did from the Harpers. Capen, who by this time had returned to the United States, insisted that distinct safeguards be taken in the transmission of advance sheets: the London printers were to enforce strict security regulations so that no unauthorized person would obtain them; duplicates should be sent from London and Liverpool; publication in London had to be postponed for at least twenty to thirty days in order to give enough time for the advance sheets to reach America. In a letter accompanying the draft contract, Capen alluded to some correspondence between Bulwer and the Harpers which might be injurious to Harpers if the contents were known. Capen seemed to suggest that Bulwer publish them if Harpers tried to intimidate him for having had dealings with Capen. The letters referred to may well have been those in which the Harpers told Bulwer that they would brook no resistance in the American reprint market.

Three months later Capen temporarily suspended negotiations with Bulwer as there was no legal way to prevent the Harpers from interfering with Marsh & Co.'s reprints, and he had decided that the best tactic would be to lend support to the proposed Anglo-American copyright agreement. 'Perhaps it would be quite as well for your interest not to take your books from the Messrs. Harpers until Congress shall have decided on the new bill.'

By this time things were even further complicated by Bulwer's London publishers, Saunders & Otley, opening a branch office in New York. If they had succeeded in this endeavour they would have been able to pay Bulwer more than either Harper & Bros or Marsh & Co.
To appreciate Bulwer's predicament fully one must realize the events which led Saunders & Otley to attempt the New York venture. The idea seems to have originated with the American author and publicist, Nathaniel Parker Willis. During the mid-1830s he spent a good deal of time in Britain sending home newspaper dispatches describing whom he met and what he saw. He also arranged to publish several of his own volumes with Saunders & Otley. This liaison provided Willis with a natural and convenient opportunity to discuss Anglo-American literary relations with his London publishers. He urged them to establish a branch office in New York, in part in order to shame the Americans into acknowledging the legitimate rights of British authors and publishers. Accordingly Simon Saunders, the senior partner, persuaded his son Frederick to manage such an office. Frederick later recalled,

I had but little time for preparation and, after a hurried farewell to wife, child and home circle at 16 Argyle Street, I, accompanied by my father, soon reached Portsmouth and saw the packet ship, the 'Montreal'; Capt. Champlain, was to carry me across the broad Atlantic. After parting with my father, I found myself for the first time in my life on the deck of an ocean-going ship; I know a feeling of utter loneliness came over me.

After thirty-nine days at sea he reached New York on 14 May 1836 and relates how he would have preferred to take things slowly and size up the New York book trade, but I was compelled to follow instructions of the London house and commenced my business agency by opening an office in Ann Street near William Street, where I had my operations arranged for the publishing of my father's London publications simultaneously with him in London. This was a work of no easy accomplishment however, for it took too long to correspond on the subject.

Saunders was frustrated by the problems arising from distance, but he always felt that the chief obstacle to success came from the 'opposition of some unscrupulous publishers'.

A good start was made with the agency; but soon trouble began; for the N.Y. publishing firm of Harper & Bros got hold of proof sheets of our books; our own pressmen having been tampered with; and published books that were the property of Saunders & Otley, several days sooner than we could get them out ourselves. This action of the N.Y. firm was widely announced with placards proclaiming 'great American enterprise'.
His only recourse, he felt, was to appeal to the American conscience through the public press.

Mr William Cullen Bryant kindly gave me free access to the columns of the 'Evening Post' and that afforded me an excellent opportunity for urging upon the public the Equity of our claims in seeking simply the protection of our personal property.

But even this aroused a spate of letters to the editor criticizing the interloping London firm and its attempted invasion of the American book trade. Saunders sometimes stood next to the compositor of the Evening Post and dictated his replies to such letters so that his rejoinders would appear alongside the incoming letters.

Among the works which Saunders & Otley brought out during the summer of 1836 were the Memoirs of Prince Lucien Bonaparte, two plays by Bulwer - Cromwell and the Duchess de la Valliere - Hazlitt's Literary Remains, Memorials of Mrs Hemans by Chorley, and Madrid in 1835: a guidebook. Unfortunately the Harpers were in direct competition over Bulwer's plays and Bonaparte's memoirs. In an attempt to buttress his moral claim to the Bonaparte work, Saunders published a letter in the Evening Post from the author stating that Saunders & Otley were his only authorized agents. An anonymous parody of this appeared soon thereafter.18

PROCLAMATION TO THE WORLD - The Americans are a ridiculous people, and their Government is a ridiculous government; both which facts are abundantly proved by the absurd laws made by that government, excluding foreigners from the advantage of copyright in books, charts, etc., and the pertinacity of the people in availing themselves of the benefits thus reserved and secured to them, especially in the matter of getting books at fifty cents a copy, for which, but for those laws, they would have to pay two dollars and fifty cents, and as much more as the London publisher could squeeze out of them. The American publishers are ridiculous too, in preferring the system of large sales and small prices, to that of small sales and high prices, so wisely and properly followed in Europe, and especially in London. - It must be evident that nothing can be more preposterous than the notion entertained by the American people, government and publishers, namely that the interests of the American people should be consulted in preference to that of the foreign author and publisher. Clearly it is better that these last should get a few thousand dollars more by the sale of a book than that the ridiculous Americans should be able to buy it for a fifth of the price that they would have to pay, if it were not for the absurd Laws
aforesaid. These barbarians of the western world are getting knowledge at little cost, and the system must be amended.

Therefore, Pope Joan, Prince Cunningo, of the Pope's bedchamber, and the Hon. Lady Dorothy Dawdling, authoress of 'Flirtation and Philosophy', being of a high distinction in rank and literature, and having very important secrets to communicate, but determined that the Western barbarians shall not have them without paying handsomely, hereby declare that they have appointed Messrs Pica and Blackletter, of London, to be the publishers of their 'Memoirs' and other invaluable productions in England, France, Kamschatka, the land of the Hottentots, all the rest of the universe, and that anywhere and everywhere, they, the said Messrs P. and B. are the only authorized publishers of the same. And the deuce is in it if the Americans get cheap books much longer.

J. POPE OF ROME,
D. DAWDLING, A.O.F.A.F. ETC.,
I. PRINCE DE CUNNINGO.

Theodore Foster, the periodical reprinter, also harassed Frederick Saunders. A new work about London entitled The Great Metropolis was published by Saunders & Otley in New York for the very low price of $1.25. Foster reprinted the work in a 50¢ edition, adding some notes especially directed towards the American reader. In a letter of 31 January 1837 to the Evening Post, Foster reminded readers that the passage of an Anglo-American copyright agreement would preclude such an inexpensive reprint and that they would be forced to pay much more for their reading.

Bulwer became the pivot around which all of these recriminations revolved. As Harpers began to receive advance sheets of his next work, Athens: Its Rise and Fall, they reacted predictably.19

Your favour of the 27th of July has been received. In reply, we beg leave to inform you, that only ninety-four pages of the copy of 'Athens' have as yet arrived – And we are at a loss to know (not having been informed) of how many volumes the work will consist. This, of itself, would be a sufficient reason for not making the payment in advance. But, in the present instance, there are other reasons why we prefer delaying to remit. You are probably aware that your publishers in London have established a branch House in this city. Its agent has claimed it as his right, and has announced it as his intention, to republish exclusively in this country the works published by the House in London. We can recognise no such right. But we are threatened, by Mr Saunders, in case we do not respect his claims – (which we shall certainly feel ourselves
under no obligations to do) — that, among other works, he will reprint upon us your 'Athens' — We expect him to do so. But if we pay for the work, we wish to be put in possession of the first copy that arrives in the country. This, you will recollect, was the main condition of our agreement. We were to receive the copy ‘a sufficient time before the work could be received by any other person in America to enable them to reprint for republication’. With Mr Saunders' facilities for obtaining an early copy, and thus executing his threat we trust that you will not consider us unreasonable in wishing to receive the work in the manner and time specified, before we render the consideration therefor.

Thus Bulwer had three options which, on the face of it, were mutually exclusive. He could continue with the Harper arrangement; accept a new one from Marsh, Capen & Lyon; or work through his London publishers, Saunders & Otley. Quite understandably, he was reluctant to sever his connection with the Harpers before knowing whether either of the other two alternatives would succeed. His only hope was to temporize and await a clarification of events.

By the autumn of 1836 it was becoming increasingly apparent that Saunders & Otley would have to abandon their agency in New York if an international copyright law was not soon forthcoming. With the accumulation of gloomy reports from Frederick Saunders, the London firm did what it could to enlist the help of its prominent authors like Harriet Martineau. She agreed to ask a number of distinguished British writers to sign two formal petitions which would be submitted to the American Congress — one to the Senate and the second to the House of Representatives.

In a letter to Henry Brougham she related,

I never met with an American (not a bookseller) who did not agree with me on this subject. Mr Webster and Col Preston moved for a copyright law in the Senate the winter I was at Washington [1835–6]. They only want to be backed by the English authors. Messrs Saunders & Otley set up a house in New York a few months ago. They have been stoutly fighting our battle but such aggressions are made upon their property that they must give up unless the desired law can be obtained.

She then went on to explain that Saunders & Otley hoped to have his name at the head of the list along with that of Maria Edgeworth and William Wordsworth. She argued that the signatories to the petition would form a glittering array and added ‘I rather think both Houses
[of Congress] will fall on their knees on the receipt of our petition'. This was on 5 November, and when Brougham failed to respond Miss Martineau urged him on.

We are disposed to persevere, – but have changed our petition to an address. This removes the objection about us who are not legislators. I am afraid it will not remove yours but we can but try. I believe this mode will succeed. If it does not, the other remains – by the one you propose, we could not have the law for a year and a half; whereas, the excitement in America is now great, and favourable to our object; and the publishing house there [Saunders & Otley] must be sustained, if it is in human power to do it. The Americans in London give us their sanction completely so far.

Brougham was never fully convinced, and therefore apparently did not sign, but fifty-six other British authors led by Thomas Moore eventually put their signatures to the statement.  

Before all the British signatures were collected, Harriet Martineau sent a number of printed copies of the memorial to influential acquaintances in America. Among those who received them were the scholar, Edward Everett; the editor of the Evening Post, W. C. Bryant; former President of the United States, John Quincy Adams; Supreme Court Justice, James M. Wayne; the physician, Dr James Rush; and the historian, Jared Sparks. Each printed text was accompanied by a personal letter from Miss Martineau along the lines of her letter to Brougham. She asked their support in petitioning Congress and promoting an international copyright agreement.

On 16 January 1837 Everett acknowledged Harriet Martineau's letter. He wrote that he was under the impression that John Quincy Adams intended to make a formal presentation of the British authors' memorial to the House of Representatives but that he doubted that anything could come of it during this session. Congress was due to adjourn in early March and there were major issues demanding attention. 'You propose a petition of American writers in aid of that of their British brethren. A movement to that end was talked of, last autumn, but I have not lately heard anything of it.' He promised to speak with a few authors in Boston to see what could be done.

The signed copies of the British Address made their way to Washington through the assistance of Frederick Saunders. Senator Henry Clay of Kentucky presented one of them to the Senate on 2 February 1837, while
a Representative from New York State, Churchill Cambreleng, submitted the other to the House on 13 February.\(^23\)

In response to the presentation of the British authors' Address, the Senate approved the appointment of a Select Committee on 2 February to look into the question of international copyright. Clay became its Chairman, with William C. Preston of South Carolina, James Buchanan of Pennsylvania, Daniel Webster of Massachusetts, and Thomas Ewing of Ohio, as co-members. Two days later Clay presented another petition favouring international copyright signed by American citizens, and we now know that it was Frederick Saunders who supplied the Senator with these signatures. Clay also requested that another Senator be added to the Select Committee, and John Ruggles of Maine was duly designated. Finally Clay submitted additional signatures of British authors which had just reached him and which reinforced the already imposing list of two days before.\(^24\)

When the members of the Select Committee scrutinized the British authors' memorial they could not help noticing the allusion to Saunders & Otley.

*That certain authors of Great Britain have recently made an effort, in defence of their literary reputation and property, by declaring a respectable firm of English publishers in New York to be the sole authorized possessors and issuers of the said works, and by publishing, in certain American newspapers, their authority to this effect. That the object of the said authors has been defeated by the act of certain persons, citizens of the United States, who have unjustly published for their own advantage the works sought to be thus protected under which grievance the said authors have at present no redress.*

The British authors went on to urge the adoption of an international copyright bill which would end the indiscriminate pirating and mutilation of their writings.

On 16 February Clay's Committee reported that justice required protection for foreign authors and it was time that America entered into an agreement to this effect with Britain and France, both of whom were in a position to give reciprocal safeguards to American authors. It also suggested that copyright legislation need not raise the price of books, but even if it did Americans would not begrudge fair compensation to foreign authors. American publishers in turn could look forward to protection through increased tariffs. The Committee buttressed its case with a popular analogy.\(^25\)
A British merchant brings or transmits to the United States a bale of merchandise, and the moment it comes within the jurisdiction of our laws, they throw around it effectual security. But if the work of a British author is brought to the United States, it may be appropriated by any resident here and republished without any compensation whatever being made to the author. We should all be shocked if the law tolerated the least invasion of the rights of property, in the case of the merchandise, whilst those which justly belong to the works of authors are exposed to daily violation, without the possibility of their invoking the aid of the laws.

Their report concluded with the recommendation that copyright legislation be adopted. Clay presented Senate Bill 223 which extended copyright privileges to British and French authors on condition that their works were reprinted and published in the United States within a month of their appearance abroad. As one historian has noted:  

Thus, by making the protection of foreign authors' works dependent upon the manufacture of their books in the United States, the first American measure for international copyright attempted the task of reconciling the rights of authors with the interests of the American book trade. Its failure to do so to the satisfaction of the latter was, and continued to be, the chief obstacle in the path of the movement for international copyright.

Before the close of the second session of the Twenty-Fourth Congress a few more petitions arrived favouring international copyright. There were none for the opposition. On 16 February Clay's Bill had its first and second readings in the Senate and was passed by unanimous consent, but there was scarcely any time to submit it for a third reading and full discussion since the session was due to end on 3 March. Even though the Senate could be persuaded to stay longer in executive session, the House of Representatives would adjourn, and as the Bill required the sanction of both Houses of Congress, it was virtually doomed during the shortened 1836–7 session. Clay knew this when he proposed the Bill, but he apparently thought the gesture would enhance the cause of international copyright.

During the following few decades Clay's achievement stood out as a landmark of hope. Between 1837 and 1868 Congress issued but two reports on international copyright, Clay's being the only favourable one. Coming on the eve of the panic of 1837, his was not tainted by that melancholy event. Advocates of international copyright later looked
back with envy to the masterful way in which he had presented the various petitions from British and American authors, secured a Select Committee, issued a favourable report and Bill.

The realities of the situation were far different. Clay actually had planned no clear strategy. He was probably taken by surprise when Harriet Martineau entrusted the task to him, and when he submitted the British petition to the Senate he casually referred it to the Library Committee. In the debate that ensued Senator Preston disagreed on this designation, and proposed that the Judiciary Committee consider it. But Senator Grundy, the Chairman of this Committee, said that it had quite enough business on hand and could not be bothered; why not a Select Committee? Had Clay given more thought to it, he could have arranged with the President of the Senate to appoint a committee friendly to the matter at hand, since this was the usual courtesy extended to members of both Houses. Instead the President of the Senate asked both friends and foes to serve on the Select Committee. One of the latter was James Buchanan who clearly indicated his negative position during the course of the debate.

he saw an interest involved far beyond that of publishers, ... and that was the interest of the reading people of the United States. Cheap editions of foreign works were now published and sent all over the country so as to be within the reach of every individual; and the effect of granting copyrights asked for by this [British] memorial would be, that the [British] authors who were anxious to have their works appear in a more expensive form would prevent the issuing of these cheap editions; so that the amount of republications of British works in this country ... would be at once reduced to one half. But to live in fame was as great a stimulus to authors as pecuniary gain; and the question ought to be considered, whether they [British authors] would not lose as much of fame by the measure asked for, as they would gain in money.

Although one cannot be certain, it is quite probable that Clay and Preston were the only two supporters of international copyright on the Select Committee, while the other four demurred. If this was so, how did it happen that the Committee issued both a report and a Bill supporting the rights of foreign authors? The answer was revealed by Clay in a conversation with the young New York attorney, John Jay, ten years afterwards. Knowing that the Select Committee was divided, Clay persuaded them to endorse the report and the Bill with their 'permission' but not their 'concurrence'. Since the Senate as a whole must have dis-
covered this discrepancy, it is no wonder that it never took action on Bill S. 223.28

Once it was apparent that the efforts to petition Congress had failed, Saunders & Otley began to limit their operations in New York. The exact termination date is unclear since Frederick Saunders remained in the city to take up permanent residence.29 In 1838–9 he was in partnership with George Adlard, a New York bookseller, and for a time thereafter had his own bookshop. By 1846 he was employed as a publisher’s reader by, of all firms, Harper & Bros of New York. He stayed with them for three years and then went into journalism, eventually securing the post of Assistant Librarian for the newly created Astor Library.

In the meantime, Bulwer had seen the handwriting on the wall. He decided to retain his connection with the Harpers and made sure that they were supplied with advance sheets of *Athens*. Although their relationship was sometimes uncertain and occasionally stormy, it continued virtually intact until Bulwer’s death. Capen was undaunted by his failure to wean Bulwer from Harpers and tried to work out a publishing agreement with Frederick Marryat. As for the Harpers, they managed to emerge from the various episodes stronger than ever, and continued to dominate the reprint trade for decades to come.

By 1837 it was also apparent that the quest for an Anglo-American copyright agreement was not a purely national affair. Authors, publishers, and politicians on both sides of the Atlantic were taking an active role in its support or opposition. This interrelationship was part of a growing sense of an Atlantic community in which both Britain and America shared the same language, the same literature, and even the same economic cycles. There were times when these similarities fostered as much antagonism as co-operation, but in either case the significant areas of contact and influence increased.

During the spring and summer of 1837, there were still some, like Harriet Martineau, who remained optimistic about a forthcoming copyright agreement. As she told Clay on 15 May:

> It gives me great pleasure to acknowledge, on behalf of many authors, besides myself, your exertions on the copyright business. I thought I was sure, both of what your convictions and your efforts would be; and I rejoice that my confidence has been justified. We are exceedingly pleased with your Report, and have strong hope that our object may be obtained next session. The American newspapers seem to show a more and more favourable disposition toward our claim,
and some solid proofs have reached the hands of one, at least, of our authors (Professor Lyell), of the feeling which honorable American publishers entertain of the injury we suffer. Several hundred copies of Lyell's fifth edition of his Geology, in four volumes, have been ordered from England by booksellers in Boston, New York, and Philadelphia, and the money, in full, transmitted with the order. A highly creditable proceeding. It was transacted through Professor Silliman.

Edward Everett and Jared Sparks were not so hopeful. For one thing they complained that it was far from clear whether an American could secure a valid copyright under existing British law, and urged Miss Martineau to seek clarification on this point.10

A special session of Congress was summoned in the autumn of 1837, primarily to cope with the banking crisis and collapse of the currency. There was no time to deal with such peripheral matters as copyright. But once the regularly scheduled session in December opened, Clay lost little time. He reintroduced his Copyright Bill on 13 December and this time it was assigned to the Standing Committee on Patents. As a normal session of Congress would continue until the following summer, there was ample time to consider the Bill. Clay himself was far from confident, however, as revealed in a letter to Epes Sargent.

I concur with you in opinion entirely about the expediency of passing the bill. But the Booksellers, or rather some of them, are making effort to defeat it by procuring signatures against it, and if they are not counteracted they may possibly succeed.

His words were prophetic, for two days later the first of a flood of negative memorials reached Washington. Both Houses of Congress were deluged by petitions objecting to the Bill. Not until the latter half of April did the supporters of international copyright begin to make themselves known. However, the petitions continued to be clearly against Clay's Bill in a ratio of about three to one.

Clay's tactic throughout was to speed things along and secure an early report. The more delay, the greater the opportunity there would be for organized opposition. On 24 April he said:

The Committee to which this subject had been referred, had had it under consideration for some time, and he believed that they had been working with very proper motives under a desire that all the parties interested should be fully heard, before making their report. But as every thing that could be said or written
on the subject had been exhausted, he hoped they would report the result of their deliberations to the Senate at an early day.

By contrast, the opponents of international copyright played for time. On 19 March petitioners urged the Senate not to act hastily but to await the report of the Patent Committee. Philip H. Nicklin, in his Remarks on Literary Property published at about the same time, wrote: \[31\]

*It is therefore to be hoped, that Congress will do no more at this session than appoint committees of inquiry, to report at a future time, when enough information has been obtained to form a solid basis for sound legislation.*

The *New World*, temporarily advocating international copyright, described the rise of the opposition:

*In the meantime, some of the great publishing houses in Philadelphia saw fit to raise an alarm on this subject. . . . A counter-petition was got up, and a host of artisans connected with the business of printing and publishing were called upon, and not without success, to attach their names. Every person, who came into the book-stores to buy a book, was also requested to subscribe to the memorial.*

Few were surprised by the report of the Patent Committee issued on 25 June 1838. While reporting Clay’s Bill out of committee without amendment, it issued a supplementary report emphatically rejecting the intention of the measure. This was scarcely to be wondered at, at a time when trade was stagnant throughout the country and many members of the book trade unemployed. Few Senators were brave enough to invite competition from abroad when American commerce languished. \[32\]

Nevertheless, it is valuable to explore the composition of the Patent Committee in order to assess their predilection in the matter of copyright and to trace some of the ideas expressed in their report. Prior to the Civil War no other Congressional committee was to bring itself to the point of issuing a report, thus giving added significance to the remarks of 1838.

The Patent Committee contained five Senators, most of whom were far more obscure than those who served with Clay the year before. The Chairman was John Ruggles, a Democrat from the state of Maine who had been in the Senate since 1835. He had helped to frame the law for the reorganization of the Patent Office in 1836, but had secured little reputation beyond that. Like so many of his Congressional colleagues he was a lawyer by training. It will be recalled that he was co-opted on to Clay’s Select Committee of 1837 and was probably one of those who
basically disliked the prospect of an Anglo-American copyright agreement. If this was the case, Clay would have been well advised to direct his Bill to another committee.

John M. Robinson of Illinois and Samuel Prentiss of Vermont were not necessarily predisposed one way or the other. But John Davis of Massachusetts had already established himself as an ardent protectionist, and so one might infer that he extended these principles to safeguarding the American book trade. On the other hand, he was the brother-in-law of George Bancroft, the promising young historian, and perhaps Bancroft influenced him to support international copyright. However, in these years the historian took little interest in the topic, therefore the likelihood was that Davis opposed the measure.

The fifth member of the Committee was the only potential supporter of international copyright. A Senator from North Carolina, Robert Strange was also a budding novelist. He negotiated an unusual publishing contract with Peter Force of Washington, D.C., whereby the profits from the novel would be divided equally between them, and Strange would receive $600 before publication in what eventually became known as the now familiar publisher’s advance. Even more interesting was the stipulation that they would share the profits from the English as well as the American sales. The novel, *Eoneguski: or the Cherokee Chief; A Tale of Past Wars*, made its appearance in two volumes in 1839. Clearly Strange was aware of the implications of an Anglo-American copyright, and like other American authors he probably felt that American literature would thrive best in an atmosphere free of literary piracy.\(^33\)

Unfortunately we do not know how often the Patent Committee met nor how they arrived at their negative report. When it comes to analysing this document, however, one thing becomes very apparent. The arguments against international copyright bear a striking resemblance to P. H. Nicklin’s *Remarks on Literary Property*. The preface of this work was dated 17 March 1838 and its publication was clearly designed to influence the Committee’s deliberations.

Nicklin enjoyed a long-established relationship with one of the chief opponents of international copyright and a leading reprinter of English works, the firm of Carey & Lea of Philadelphia. In 1822 Henry C. Carey explained the connection:

> We have consolidated all the law [books] of Riley, Nicklin and our own into one stock under the management of Nicklin as our agent. By this arrangement
nearly all the law in the Union has come under our control and as Mr N. has devoted nearly the whole of his attention for many years to this business we think it may be carried on to great advantage. We have the exclusive control of nearly 200 volumes of law.

Since many of their publications as well as others handled by Nicklin were American reprints of British works they had a distinct vested interest in the status quo. In 1829 when Carey & Lea decided to discontinue handling lawbooks and to concentrate on general literature Nicklin more or less fell heir to the law side of the business. Thus, when he wrote his Remarks on Literary Property he was hardly an impartial observer.34

Both Nicklin's book and the Patent Committee report concentrated on the British authors' petition which Clay presented to the Senate. Each claimed this as interference from abroad and predicted that a copyright agreement would promote higher book prices and smaller editions. The point was driven home by comparing retail prices of new books in England and America, for it was universally acknowledged that English books were disproportionately more expensive. One of Nicklin's key arguments was that

an immense amount of capital is employed in publishing books [in America], in printing, in binding, in making paper and types, and stereotype plates, and printing presses, and binders' presses and their other tools; in making leather and cloth, and thread, and glue, for binders; in copper plates, in copyrights, and in buildings in which these various occupations are conducted.

He estimated that 'the whole of this investment' amounted to $30 to $50 million and that 200,000 Americans were employed in various branches of the book trade, of whom 50,000 were women and children.35

It is probable that one-fourth of the business done by the publishers is in reprinting foreign books and this large portion of their business would be reduced perhaps as much as nine-tenths, certainly as much as three-fourths, if copyright be granted to foreign books.

The Patent Committee report leaned heavily on Nicklin's statistics but ignored the fact that foreign reprints comprised only one-fourth of the total American printing and publishing output. Both Nicklin and the report also agreed upon the lack of reciprocity which would exist under an international copyright treaty since the term of domestic copyright could extend to forty-two years while England's lasted for only twenty-
eight. They went further. Many more English authors stood to gain by such a treaty because American authors rarely if ever received favourable publishing terms in Britain. The report cited Nicklin: 'It is stated in a recent publication that two hundred and fifty copies of Marshall’s Life of Washington’ had to be returned to America for lack of interest in the English market. Finally the Patent Committee echoed Nicklin’s warning that a copyright agreement would still not prevent cheap foreign reprints from flooding the American market due to the reduction in the 1833 tariff on imported books.

Only in one major respect did the Patent Committee depart from Nicklin’s line of argument. He urged a limited right of exclusive control over publications followed by perpetual copyright during which anyone could reprint by paying a small royalty. It is hard to know how serious Nicklin was, for he must have known that the whole tendency of the time was away from perpetuity and in favour of statutory limitation on copyright. His plan was in fact a way of justifying reprinters sharing in domestic as well as foreign productions. Understandably, the Committee took little interest in this aspect of Nicklin’s treatise.

On its own, the Patent Committee presented several negative arguments not prompted by Nicklin. Although not alluding specifically to the report of Clay’s Select Committee of 16 February 1837, it sought to refute one of Clay’s leading contentions and in its report made special mention of Saunders & Otley’s attempt to establish a branch in New York.

As between nations, [copyright] has never been regarded as property standing on the footing of wares or merchandise, nor as a proper subject for national protection against foreign spoliation. It has been left to such regulations as every government has thought proper to make for itself, with no right of complaint or interference by any other government. . . . It is true the proposed [copyright] bill provides for the printing of the first edition in this country; but that does not remove the objection. The memorial of foreign authors states that there is already established in New York an English house of publication, to whom they have endeavoured to secure the exclusive benefit of publishing their literary productions, ‘by declaring them to be the sole authorized possessors and issuers of the works of the said petitioners; and by publishing in certain American newspapers their authority to this effect’ [British authors] only want the aid of an act of Congress to enable them to monopolize the publication here as well as in England, of all English works for the supply of the American market!
Most emphatically, it took exception to those who would confuse copyrights with patents. Chairman Ruggles had distinguished himself in the reorganization of the Patent Office and was not about to ignore this dimension of the issue.

American ingenuity in the arts and practical sciences, would derive at least as much benefit from international patent laws, as that of foreigners. Not so with authorship and book-making. The difference is too obvious to admit of controversy.

The negative report of a Senate Committee was bound to colour people's attitudes for years to come and due to the economic hardships of the time it overshadowed the positive one of Clay's Select Committee.

During the next few years Henry Clay introduced his Copyright Bill three more times: on 17 December 1838; 6 January 1840; and 6 January 1842. On all three occasions it was referred to the Senate's Committee on the Judiciary. In December 1838 the composition of the Judiciary gave no clear indication as to its likely reaction. Although Robert Strange had now become a member of this Committee and was presumably favourably inclined, the other members probably were ill-disposed in view of the recent negative report of the Patent Committee. Garret D. Wall of New Jersey was Chairman, joined by Thomas Morris of Ohio, Thomas Clayton of Delaware, and Franklin Pierce of New Hampshire. With the exception of Strange, none of these Senators had previously been involved with the copyright issue. They apparently decided to do nothing until the end of the short session and then on 1 March 1839 requested the Senate's permission to cease consideration of the question. At the end of 1839 Clay had to admit that things were not going well.

I am afraid the prospect is bad for the passage of an international copyright law. The two last Committees to which it was referred were adverse to it; and the activity of some of the large publishers has been such as to make strong impressions against it on the minds of many Senators.

Nevertheless he persisted and reintroduced his Bill ten days later. It was again referred to the Judiciary Committee, which was composed of essentially the same members. This time their tactics seem to have been more forthright. On 8 January they reported it out of Committee carrying neither a recommendation for or against. This left it up to the Senate as a whole to decide.

Supporters outside of Congress urged Clay on. Some, like George
Adlard, the New York bookseller, were prepared to make concessions in the interest of securing further support. Clay resisted but was ultimately willing to compromise.

I received your letter transmitting a sketch of alterations which the opponents of the Copyright bill are desirous of effecting. I do not think that which would limit the holding of copyright to American citizens is just or liberal. Without the restriction, that would however probably be the practical operation of the measure. And, rather than do nothing, I would accede to these alterations.

When the Bill came up for debate before the whole Senate on 15 April 1840, Clay asked that it be postponed for a week. Subsequently he never called for the debate, and the Bill was eventually tabled in July shortly before the end of the session.

Clay’s tactics are intelligible if one assumes, as he no doubt did, that the Bill could not pass. This is why the Judiciary Committee was willing to report it out of Committee. Apparently, Clay did not dare risk a formal rejection by the whole Senate, preferring instead to smother the measure by procrastination. If this is so it again calls into question the seriousness of Clay’s support of international copyright. Why did he continue to introduce a measure year after year if its chances were exceedingly slight? Repetition only strengthened the hand of the opposition by demonstrating its ability to secure defeat of the measure. One is once more led to conclude that Clay valued the gesture of championing the issue with its attendant publicity identifying him with the cause, but placed little faith in the practical outcome. 37

Clay’s last effort on behalf of copyright was almost farcical. When he next introduced the Bill on 7 January 1842, he had already made up his mind to resign from the Senate the following March. He set forth his reasons in a letter to the General Assembly of the State of Kentucky.

I have for several years desired to retire to private life, but have been hitherto prevented from executing my wish from considerations of public duty. I should have resigned my seat in the Senate at the commencement of the present session [December 1841], but for several reasons, one of which was, that the General Assembly did not meet until near a month after Congress, during which time the State [of Kentucky] would not have been fully represented. The time has now arrived, when I think that, without any just reproach, I may quit the public service, and bestow some attention on my private affairs, which have suffered much by the occupation of the largest portion of my life in the public councils.
Clay's private affairs were indeed in jeopardy. He had loaned one of his sons $20,000 to finance an experiment in hemp manufacture which went bankrupt in 1843. He also wished to retire from the Senate in order to prepare for his possible Presidential candidacy in 1844. His influence in the Senate had also waned. When Harriet Martineau met him in 1835–6 and entrusted him with the British authors' petition a year later he was still the acknowledged leader of the Whig Party. But having failed to become his party's nominee for President in 1840, he was especially bitter when the Whig candidate, William Henry Harrison, won the election. In the early days of the Harrison Administration Clay tried to exert his customary power but to no avail. He complained,

And it has come to this! . . . I am civilly but virtually requested not to visit the White House – not to see the President personally, but hereafter only to communicate with him in writing. The prediction I made to him at Ashland last fall has been verified. Here is my table loaded with letters from my friends in every part of the Union, applying to me to obtain offices for them, when I have not one to give, nor influence enough to procure the appointment of a friend to the most humble position.

President Harrison died suddenly in the spring of 1841, and Clay anticipated better relations and more influence under President Tyler. However, they soon fell out over the issue of a national bank and Clay again found himself in a position of comparative weakness.  

The final irony came in the early months of 1842 when Dickens, on tour in America, decided to make an issue of copyright. He naturally looked to Clay to provide the motive power in the Senate, but Clay had already resolved to retire. Not that Clay was naïve about the difficulties of passing a copyright bill:

The difficulties which have been encountered, and will continue to be encountered, in the passage of a liberal Copyright law proceed from the trade, especially the large book printers in the large Cities. It is very active and brings forward highly exaggerated statements both of the extent of Capital employed and the ruin that would be inflicted by the proposed provision for Foreign authors. These statements exercise great influence on members of Congress, many of whom will not enquire into the truth of them. These are the difficulties to be overcome; and they can only be subdued by enlightening public opinion, or causing it to flow in a correct channel. To this end, petitions numerously signed, the agency of the press and all other practicable demonstrations would be highly
useful. And if a Committee of authors, well informed, sensible and judicious men could be got to attend Congress to answer and remove objections, before Committees of that body, I think it would be attended with the best effect.

Clay's implied criticism was just. There had been little or no co-ordination of effort outside Congress. Occasionally someone, like George Adlard, would collect signatures for a petition, as was the case in early 1839. Or, some editor would pen another plea for international copyright. Yet time and time again the efforts of copyright advocates were allowed to work at cross purposes and cancel out one another. George Palmer Putnam, the young publisher, was supposed to be the Secretary of a committee of interested parties in 1837, but his activities were so obscure as to have left no trace, except in the vague recollection of his son. A leading author like Washington Irving might sign one petition but then, as in 1838-40, decline to sign another because he did not like its phraseology. It was not enough for him to protest his support of the cause in general. Clay was right. Authors must go to Washington, as Noah Webster had done in 1831, and attach themselves to members of Congress. It was no good writing in literary periodicals about one's advocacy. That was merely preaching to the converted.

Symptomatic of the problem was Francis Lieber's efforts in 1839-40 to stir up interest in a copyright bill. He met discouragement from Clay and Preston, two of the staunchest supporters in the Senate. Eventually the most Lieber could do was write a pamphlet on the subject as a vehicle to analyse the theoretical dimensions of the problem. From a practical point of view this was exceedingly feeble when compared with the influence which opposing members of the book trade brought to bear on Congress. Clay knew how things worked and pointed the way. Much more effort and co-operation were needed by the friends of copyright outside Congress. He might also have added that a far greater effort was called for on the part of Congressmen like himself if the measure was ever to override the natural hostility or indifference of most legislators.