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Anne Frank's 'Diary' faces off against 'Mein Kampf': A copyright dilemma

In 1954, François Truffaut developed what has become known as the auteur view of filmmaking, in which directors are seen as the "authors" of their films.

This view of the creative role of directors has become so strong that Article 2 of the European Union Directive on Copyright Term explicitly grants authorship status to directors.

Similar to U.S. copyright law, under international law authors are the initial holders of copyright. Despite this critical role, authorship is not defined in international copyright treaties, such as the Berne Convention for the Protection of Literary and Artistic Works.

Yet the question of authorship remains at the heart of whether works created by authors who died during World War II will finally enter the public domain in 2016. From Anne Frank's "The Diary of a Young Girl" to Adolph Hitler's "Mein Kampf," the termination of copyright control remains surprisingly problematic.

Internationally, copyright provides authors with powerful rights over the distribution and creation of derivative versions of their works. However, these rights are finite in duration.

Under international standards, copyright lasts for a minimum term of the author's life plus 50 years. In the United States and the European Union, the copyright term is 70 years after the author's death. Thus, works created by authors who died during World War II, such as Anne Frank and Adolph Hitler, should have entered the public domain on Jan. 1, last Friday.

Theoretically, the termination of copyright allows others to create new editions without the need for permission or compensation. Yet the vagaries of copyright law, including the critical question of authorship, may prevent such expanded access.

Anne Frank died in Bergen-Belsen concentration camp in 1945. Her father, Otto, was the

only family member to survive the war. He oversaw the publication of his daughter's diary in 1947 under its original title "Het Achterhuis: Dagbrieven van 14 juni 1942 tot 1 augustus 1944 (The Annex: Diary Notes 14 June 1942-1 August 1944)." An English language version, titled "The Diary of a Young Girl," was published in 1952.

It is undisputed that Otto Frank edited his daughter's diary before publication. In fact, there were two diaries written by Anne. The second was a rewritten diary, intended for publication by Anne in the future. It contained stories, as well as changed names for the individuals hiding in the annex.

Otto Frank combined the two versions and removed duplicate sections, certain unkind remarks that Anne made about her mother and references to Anne's growing sexual awakening.

In the face of such relatively minor edits, Otto Frank has always insisted that the diary was his daughter's work. It is disconcerting to discover, 35 years after his death, that Anne Frank Fonds, the foundation that owns the copyright to the diary, is now claiming that Otto Frank has a copyrightable interest sufficient to extend copyright in the work for

another 35 years.

The claim is based presumably on Frank's creation of an original derivative version of his daughter's diary. If correct, it would indicate that the changes Otto Frank made were more than the minor changes previously claimed.

Such a claim of authorship undermines the unique value of the diary as an honest and moving expression of a young girl's ex-



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periences during the Holocaust. It gives power to Holocaust deniers who have, to date, unsuccessfully challenged the diary's authenticity.

It also directly challenges the ability of the Anne Frank Museum, an entity separate from Anne Frank Fonds, to distribute its new digital annotated version of the diary. This version reportedly contains historical references and other supporting material that would undeniably increase the accessibility of the diary to a new

would have entered the public domain in most European countries. (Given the altered rules of U.S. copyright law, the diary will not enter the public domain here until 2047, 95 years after its publication.)

By contrast, Hitler's "Mein Kampf," which was also scheduled to enter the public domain in Europe on Friday, has no such impediment. But the absence of copyright protection does not necessarily ensure that new editions of "Mein Kampf" will be readily available in those countries. To the contrary, many European countries have strong prohibitions against the dissemination of works that promote the Nazi movement or qualify as hate speech.

In *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, French courts found that the offer for sale online of "Mein Kampf" through Yahoo violated French law and ordered its removal from sale. Although efforts to enforce the order against the U.S. parent in the United States were unsuccessful, the sale of the book in France by Yahoo's French subsidiary was successfully banned. These same laws should limit distribution of new editions of "Mein Kampf" this year, despite its public domain character.

The history of copyright is replete with stories of heirs imposing burdens on the use of their ancestors' works well beyond what the author imposed during his or her lifetime. Originally designed to provide economic support for an author's heirs, post-mortem copyright terms have been a feature of international law since 1908.

Yet it is truly tragic if the result of heirs' overreaching will result in the free publication of Adolph Hitler's anti-Semitic rants while stifling the beautiful voice of Anne Frank.

Maybe it is time to consider imposing limits on what heirs can do with copyrighted works, including post-mortem claims of competing authorship.

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generation of readers.

The museum has already filed suit in the Netherlands to challenge the Fonds' new copyright claims. The Netherlands court has already approved the use by the museum of copies of the diary for "research purposes."

Unfortunately, the broader right to distribute new versions of the diary were not resolved before Jan. 1, last Friday, the date it