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Hitler's U.S. book sales: Even villains can own copyrights

INSIDE IP LAW

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On Jan. 30, 1939, Adolf Hitler gave a speech to the Nazi Reichstag. He told his followers, "In the course of my life I have very often been a prophet, and usually been ridiculed for it ... Today I will once more be a prophet: If the international Jewish financiers in and outside of Europe should succeed in plunging the nations once more into a world war, then the result will not be the Bolshevizing of the earth, and thus the victory of Jewry, but the annihilation of the Jewish race in Europe!"

A horrifying statement to be sure, yet not a surprise to anyone at that time; Hitler's anti-Semitic views had been made known to the world more than 15 years earlier with the publication of his book, "Mein Kampf."

By 1939, Hitler's book had become a matter of interest around the world. While Hitler was preparing his Reichstag speech, the New York publishing company Houghton Mifflin was filing a copyright-infringement lawsuit in federal court to assert its exclusive right to publish "Mein Kampf" in the U.S. under a license from Nachfolger G.m.b.H., Hitler's German publisher.

Houghton Mifflin filed the suit because another U.S. publisher, Stackpole Sons Inc., had announced its intention to publish its own unauthorized translation of the book, claiming there was no copyright for Hitler's infamous screed.

It was in that lawsuit, *Houghton Mifflin Co. v. Stackpole Sons Inc.* (1939), that we realized that even a murderer like Adolf Hitler can own a copyright.

Hitler wrote the two-volume diatribe in a Bavarian prison in 1923 and 1924 after his failed Beer Hall Putsch. Sales of "Mein Kampf" were sluggish initially, but steadily rose along with Hitler's political fortunes. After he became chancellor in 1933, he earned huge royalties from the sale of millions of copies to the German government.

Houghton Mifflin had acquired the rights several years earlier. On July 29, 1933 (one month after the SS Leader Heinrich Himmler opened the Dachau concentration camp), Houghton Mifflin entered the license agreement with Nachfolger to acquire exclusive rights to publish an English language version of the work in the U.S.

Houghton Mifflin's publication of the book was roundly criticized. It responded by commissioning a committee of academics to prepare a heavily annotated critical edition of "Mein Kampf," published in 1938. By this time, Stackpole had created its own translation, without claim of any copyright authority. It argued that "Mein Kampf" was not protected by U.S. copyright and it would pay no royalties to Hitler. To prevent Stackpole from entering the market, Houghton Mifflin sought a preliminary injunction.

Stackpole's position was based on two highly technical arguments. The first was that Hitler could not own a copyright because he was a stateless person in 1925 when Nachfolger obtained a U.S. copyright registration for "Mein Kampf." Secondly, Stackpole claimed that the contract assigning the U.S. rights to Houghton Mifflin was void because there was insufficient evidence that Hitler had granted any rights to Nachfolger.

The court did not want the U.S., through this ruling, to put 'another obstacle in the way of survival of homeless refugees, of whom many have been students and scholars and writers.' It was a noble ruling, of which Hitler was just a collateral beneficiary.

The U.S. District Court refused to stop Stackpole from selling the work. The appeal proceeded quickly, and on June 9, 1939, about three months before the German army invaded Poland, the 2nd U.S. Circuit Court of Appeals, by a panel comprised of three highly esteemed judges (Charles Clark, Learned Hand and Augustus Hand), issued its ruling. It overturned the denial of the injunction and upheld Adolf Hitler's copyright.

How could such highly respected judges validate the rights of this murderous dictator? Despite the incendiary subject matter of the book, the court's written opinion is a dispassionate treatment of dry legal issues. With one subtle exception, discussed below, there is no hint in the court's written opinion of Hitler's evil character, Germany's aggressive political activity or the disturbing contents of "Mein Kampf." The court focused only on the principal task at hand — deciding whether a stateless person could claim the protection of U.S. copyright law.

Nachfolger's copyright registration identified Hitler's citizenship status as "Staatenloser Deutscher," since Hitler at that time had renounced his Austrian citizenship, but had not yet become a German citizen. This raised an issue not directly addressed by the Copyright Act as to who can own a U.S. copyright.

Houghton Mifflin pointed to a broad statement in the Copyright Act that the "author or proprietor" of a work owns the copyright. Stackpole, in contrast, relied on a provision in the act that addressed ownership of copyrights by "aliens."

This provided that copyright could be owned by an author who "is a citizen or subject of a foreign state or nation," but only if that author is domiciled in the U.S., or if the author's nation recognizes reciprocal rights of U.S. authors. Hitler, as a stateless person, did not technically meet those conditions, so the court was faced with the task of determining which of these mutually exclusive provisions would control. Hitler's rights, and thus those of Nachfolger and Houghton Mifflin, depended on U.S. principles of statutory construction.

Ultimately the court's decision allowing copyrights to be owned by stateless persons was a humanitarian one, made not by considering the consequences to Hitler, but rather by looking at the impact the ruling would have on the victims of Hitler's policies.

It was not Hitler that the court sought to protect by its ruling, but those who had become refugees as a result of his ethnic cleansing and thirst for Lebensraum.

Clark wrote that a contrary ruling "would mean that stateless aliens cannot be secure ever in their literary property. True, the problem of stateless-

ness has only become acute of late years, but it promises to become increasingly more difficult as time goes on."

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With the first issue being decided on those grounds, Stackpole had little chance of prevailing on its other more formalistic defenses. To Stackpole's argument that Hitler had not actually authorized Nachfolger to publish the work, the court relied on a legal doctrine that was well-established at the time (though it is no longer the law) that Nachfolger's possession of the manuscript was evidence of ownership of the right to publish it. But the court went on to make an additional observation that is the only indication in the opinion that Hitler was not your ordinary copyright litigant.

In the epitome of understatement, the court commented, "If necessary ... we might well take judicial notice that this book, in view of the powerful position of the author as reichsfuhrer and chancellor of the German Reich, could not be so widely distributed in Germany as it is now if the publishers had not the right to do so."

The remaining court proceedings were routine. A petition for certiorari was denied in October 1939 (just as Germany instituted its program of euthanizing disabled children and adults). Upon remand, the district court entered summary judgment in favor of Houghton Mifflin, which was affirmed on July 17, 1940 (one week after Germany's bombing campaign in Britain began).

Although Adolf Hitler has played a small role in the history of U.S. copyright law, it is comforting to note that despite his victory in court, he never received any royalties from the U.S. publication of "Mein Kampf." By the time Houghton Mifflin had recouped its expenses of publication, the U.S. had declared war on Germany.

Under the authority of the Trading with the Enemy Act, the U.S. government seized all royalties due to the German publisher and put them into a fund for the aid of war refugees and American prisoners of war.

Four decades later, in 1979, Houghton Mifflin bought all the rights to "Mein Kampf" from the U.S. government. Since then, the publishing house has donated all of its profits from "Mein Kampf" to charity. It is a fitting use for the proceeds of Hitler's copyright.