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'Mein Kampf,' on bookshelves soon?

In 2016, 70 years after Hitler's death, the Bavarian government is due to permit the publication of his bestseller- But the book's legal status after copyright expiration is still unclear.

By Dina Porat and Talia Naamat | Mar. 15, 2014 | 10:05 AM | 4

To the debate surrounding the future publishing rights to Adolf Hitler's "Mein Kampf," the following proposal may be added: That publication of the original version be defined as the use of a prohibited Nazi symbol, in accordance with Section 86a of the German criminal code. Would this resolve the thorny questions surrounding this issue?

In January 2016, 70 years after Hitler's death, the Bavarian government is due to permit the publication of the work, in which Hitler put forth his doctrine of world domination and anti-Semitism. He included citations from the "Protocols of the Elders of Zion" meant to corroborate his ideas.

It was a Nazi-era best-seller in Germany, selling 12 million copies. It was often given as a gift, sometimes as a wedding present. As part of the de-Nazification process after World War II, copyrights to it and other Nazi publications were assigned to the government of Bavaria, which has sued violators in Germany and abroad.

Copyright in Germany expires automatically 70 years after an author's death, after which the works go into the public domain. For "Mein Kampf," the expiry date is December 31, 2015. On that date, Munich's Institute for Contemporary History plans to issue a scientific edition of the book, with extensive clarifications, critical commentary and historical analysis. It will presumably be more comprehensive than previous such editions, most of which have serious failings. The Bavarian government has allocated significant funds to the project, in the hope of detracting from the appeal of non-annotated editions that might be published when the copyright expires.

But the book's legal status after copyright expiration is still unclear. A distinction must be made between issues of copyright and of criminal prohibitions. While copyright may be enforced nationally and abroad, in most cases criminal law cannot be enforced beyond national jurisdiction. The criminal codes of most European states outlaw distribution of "Mein Kampf" under prohibitions against "promoting or praising the Nazi Party," "spreading Nazi propaganda," "using Nazi symbols," "inciting hatred and racism" and "insulting the memory of victims of the Nazi regime." Until now the copyright issue has largely eliminated the need for European courts to address the implications of these statutes for the distribution of the book, including the very important issue of constitutional rights to freedom of expression.

In 2005, the Czech Supreme Court acquitted the publisher of the book's first translation into Czech after it was persuaded that he did not intend to use it to recruit for the neo-Nazi party. But in 2012, an Austrian man was sentenced to 18 months in prison for calling "Mein Kampf" his favorite book on his Facebook page and for posting links to Nazi sites. The book's sale is permitted in Britain, Bulgaria, Denmark and the United States, and it's a best-seller in Turkey. "Mein Kampf" was recently banned from distribution in Bolivia, which triggered a sharp increase in sales.

The version of the book is also considered when a possible ban is discussed, that is, whether it is a facsimile edition of the original, including the swastika on the cover – a banned symbol in most European countries – or an annotated, scientific edition? While sections 86 and 86a of the German criminal code ban the use of propaganda for the purpose of promoting the Nazi Party, stipulating a maximum prison sentence of three years, and the use of Nazi symbols, there are exceptions for materials distributed for the purpose of education, research, science and historical reporting.

In other words, even a facsimile edition with a swastika on the cover could be permitted for publication if it meets these conditions. Will it be necessary to prove intent to incite racism on the part of the distributor, or would such an intent need to be disproved?

It would be best for this vague situation to be clarified before the copyright's expiration. A French proposal would require all scientific editions of "Mein Kampf" to clearly state, the legal definition by which its publication is permitted.

The book is available for purchase online, so it could be that the discussion of the legal implications of distribution, as well as the potential implications for anti-Semitism, will take place in a situation where anyone, anywhere can obtain an electronic copy of the book at any time. Still, it is worth remembering that "Mein Kampf" is quite a long and exhausting book, and few people actually read the whole thing. Even in places where it has become a best-seller, many, if not most, buyers probably haven't actually read it, but wanted to have a copy because of the appeal of the forbidden.

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