The Vampire that Refused to Die: Dracula and Nosferatu

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In April of 1922, Florence Stoker mailed an application to join the British Society of Authors. Her interest in joining the society was predicated on their ability to help her pursue an infringement on the literary estate of her late husband, Bram Stoker. Florence had received documents from Berlin announcing the premiere of *Nosferatu, Eine Symphonie des Grauens*, known in English as *Nosferatu, A Symphony of Horror* (Skal, 1990, pp. 43-44).

Though Bram Stoker died in 1912, his novel *Dracula* has captivated generations of readers and inspired multiple genres of vampire fiction, both literary and dramatic. Despite its critical success (Murray, 2004, pp. 363-364), the novel was not an exceptional economic success for Stoker. In part, this was a result of differences in the operation of copyright regimes between the U.K. & North America, where the book would later be serialized. These differences would also complicate issues after Stoker’s death when a derivative film version would dramatically change the impact of the work (Bignell, 2012, para 8).

A film adaptation of Stoker’s novel, *Nosferatu*, was released in Germany in 1922. While not the first vampire film—that honour goes to *Drakula Halala* (or *Drakula’s Death*) an Austrian Hungarian co-production of 1921 (*Drakula’s Death*, n.d.)—*Nosferatu* is the first film to be based on the Stoker narrative (Rutigliano, 2017, para 2). *Nosferatu’s* producers made changes to Stoker’s work in an attempt to avoid the necessity of licensing it, though not enough as it would turn out. The resulting copyright infringement would have a critical impact on the subsequent reception and nature of Stoker’s creation (Workman, 2016, p.234). The story of *Nosferatu* is not simply that of a single documentary artifact, a film, but rather an intriguing example of the interactions between the documents themselves, their social environments, and the lasting impacts that result from those interactions.

This document considers disparate notions of post-war economic and social chaos, divergent international legal regimes, and derivative creative and recreative practices all located around a singular monstrous work, *Dracula* and a subsequent iteration *Nosferatu*. Focusing on *Dracula* as it passes and transforms through overlapping and related frames allows the consideration of both the private and public life of the document. It also highlights the limitations of policy frames and their underlying theory and the continuing relevance of these historical processes in discussions of the document.

Policy Documents

Stoker’s *Dracula* was published in 1899, a little more than a decade after the first international agreement on copyright, The Berne Convention for the Protection of
Literary and Artistic Works (World Intellectual Property Organization, 1982), was signed in 1886. Berne insured that all signatories would treat copyright owners of foreign signatory nations at the same standard as their own nationals. This agreement allowed copyright owners to pursue litigation in foreign member nations. With respect to the ensuing disputes regarding Dracula and Nosferatu, four different policy documents would ultimately be involved, copyright legislation of the United Kingdom, Germany, the United States, and the international agreement of Berne.

Though all these policy instruments concerned themselves with copyright, they had two different philosophical underpinnings. European copyright generally, and German copyright particularly, was significantly affected by the concept of ‘personhood’ as derived from the philosophy of Hegel and Kant. Personhood theory posits that “authors have such deep connections with their creations that respect for their sense of self requires giving them a degree of ongoing control over those works. In essence, works are treated as extensions of the author’s person” (Yoo, 2012, p.2). As such, these physical manifestations of the self were inalienable from their creator. The Berne Convention was similar in its philosophical approach, particularly evidenced in the inclusion of ‘moral rights’ in the convention. Moral rights include the right to claim authorship or remain anonymous, and the right to maintain the integrity of the work. The common-law traditions of both the United Kingdom and the United States however focused on a more utilitarian/economic underpinning.

Within the common-law model, intellectual property is seen as a necessary response given that the nature of intellectual works makes control difficult. Rather than viewing the issue from a moral or philosophic viewpoint, the common-law approach takes a more utilitarian view. If creators are to invest time in the creation of works to be made available to the public, there must be an economic incentive. Without such regimes, downstream users could make use of works freely, without any of the costs normally associated with creation and development, and thus bring goods to the market at a significantly reduced cost than could the originator. Ultimately, this free riding would result in market failure as creators would have no incentive to invest in creation given that the costs of research and development would be far less likely to be recovered. Within this framework, copyright operates as a tool of public policy, utilizing a statutorily created limited monopoly to ensure sufficient return to incent creation. This is perceived as a balance between the creator and the user, in which the interests of the user (access to works) are balanced against those of the creator (incentive to create). As was noted by Justice Binnie in the Supreme Court of Canada ruling in CCH Canadian Ltd. V. Law Society of Upper Canada, “copyright is usually presented as a
balance between promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator” (CCH Canadian Ltd. V. Law Society of Upper Canada at 10). Thus, the copyright monopoly, while limiting access, is justified by virtue of the fact that works are created and disseminated and should eventually become available within the public domain.

Both the personhood and the economic efficiency frames have strengths and weaknesses, and both have influenced the various copyright regimes in which they operate. All these policy documents have influenced the creation, life, death and existential uncertainties of Dracula and its subsequent iterations. Without being assured of downstream revenues that might come as a result of copyright, it is unlikely Stoker would have released Dracula at all. He was first and foremost a man of business. It was also both the international regime (Berne) and the national regime of Germany that allowed the Stoker estate the ability to litigate for infringement. The German regime would also pass a death sentence on Nosferatu when its destruction was ordered. It was the regimes of both America and the United Kingdom that would ensure stage adaptations could be created and controlled. In the perceived absence of an American copyright for Dracula, it was the combination of the American regimes requirements for copyright and America’s decision not to sign on to the Berne Convention until 1989 that would lead to confusion over the status of the prints of Nosferatu that would eventually come to light. These seminal legal policy documents would create processes by which the life death and interactions of these documents would take place.

The Shifting Social Structure

Nosferatu is also an example of rapid and unexpected change, technological and social. Film as a vehicle of artistic expression was still very much in its infancy at the time of Nosferatu’s creation. It was likely inconceivable to Stoker at the time of Dracula’s publication, or even up to the time of his death, that his literary work might become a vehicle for film. Being both a theatrical manager and trained barrister (Hale, 2019, p.10), Stoker was certainly cognizant of the value of stage adaptations in the process of literary negotiation and had attempted his own adaptation of Dracula while still managing the Lyceum Theatre. The work was given a reading by members of the troupe, though it was not favourably received by the troupe’s owner and star, Sir Henry Irving (Kilgarriff, no date, para 32). Film was not yet a recognized medium for such treatment and, coupled with Irving’s rejection of the stage adaptation, it would seem unlikely that Stoker would consider the work to have any life beyond the novel. It was not until 1924 that Stoker’s widow, Florence, would eventually assign the rights for a stage adaptation of
Dracula to Hamilton Deane (McNally, Raymond T., Florescu, Radu, (1994). p. 157).

The world would change dramatically in the decade between Stoker’s death and the premiere of Nosferatu. The British Empire that Stoker had known was in decline. The first world war had left a trail of physical, emotional, and financial devastation. It had also seen the rise of the United States as a world power. Unlike the other combatants, the United States had emerged relatively unscathed from the war. France was decimated both physically (Wyatt, 2018) and financially. In the aftermath of the war, Germany would be forced to accept massive reparations as part of the Treaty of Versailles (Treaty of Versailles, n.d.). This shift in the balance of powers was also seen in the cultural world.

WW1 was the first war to be filmed. In much the same way that the Vietnam war would come home to America through the tv screens each night on the news, WW1 would, for the first time, give civilians outside the war zones an insight into the true nature of war. Film footage taken at the battle of the Somme in 1916 by British soldiers assigned to film the assault would be shown throughout Britain to great effect as “The Battle of the Somme” (Imperial War Museum, n.d.). This documentary footage also brought home the true horror of war to civilians. France was also documenting the war through film. French director Marcel L’Herbier would later comment “Everything that was filmed at the front passed through our hands. We cut, we spliced, we chose what could be shown. I watched scenes of Horror; I saw soldiers who had been eviscerated, cut in two, decapitated” (Klawans, 2000, para 2). Prior to WW1, France had been at the centre of cinema with the Pathe and Gaumont studios enjoying “commanding positions throughout the world” (Klawans, 2000, para 6). The war, however, was disastrous for the French film industry and Pathe & Gaumont would virtually end production after 1918.

Unlike France, Germany fared quite well with respect to their film industry. The German supreme command had consolidated the film industry in 1917 to support the war effort, creating the Universum Film Aktiengesellschaft (UFA). Privatized following the war, it would be the largest studio in Europe and would be associated with most of the films of the ‘golden age’ of the Weimar republic (Britannica, n.d.). Klawans has stated that following WW1, UFA was in fact the “biggest and most technically advanced studio in the world” (Klawans, 2000, para 10).

While Germany bore the losses and reparations of WW1 as well as the economic and social impacts of hyper-inflation, it also birthed an extraordinarily creative period in art and culture. Germany banned the showing of foreign films in 1916, and the national industry acted quickly to fill the void. While the earliest efforts in
expressionist film preceded the war (*The Student of Prague*, released in 1913), the period immediately following the war would see the release of the bulwark of the major works. *Nosferatu* is striking in its differences from many of its contemporaries as it relied on realistic sets and location shooting, unlike, for example, the stylized and oversized design of sets apparent in *The Cabinet of Dr. Caligari*. Similar to its expressionist contemporaries, it did make great use of light and shadow.

The United States as a whole, and its nascent film industry in particular, would be the biggest beneficiaries in the aftermath of the war. Film stock required nitrate, the same compound needed for explosives, as such wartime film production in Europe virtually ceased with the exception of the propaganda units attached to the combatant forces. America, however, was far removed from the actual battle and would not enter until 1917. Its own film industry was booming, and by the end of the war America would dominate world cinema. By the time the Treaty of Versailles was signed in 1919, “90 percent of all films screened in Europe, Africa and Asia were American” (Britannica, n.d.).

*Nosferatu*

Albin Grau was an occultist, art designer and co-founder of Germany’s Prana Films in 1921. Prana’s only film to see release was *Nosferatu* in 1922 (Elsaesser, 2001, para 3). Grau would be deeply involved in the creation of *Nosferatu* along with director Friedrich Wilhelm Murnau. Grau’s inspiration for the film had come from his own war-time experiences as a soldier in Serbia, where he had come across the myth of the vampire (Elsaesser, 2001, para 5). Regardless of his inspiration, Stoker’s novel became the template, though they did make efforts to make changes to the original work in hopes of avoiding litigation. In addition to changing the character’s names, there were a number of structural ones as well. One such change that has become iconic with vampire culture since *Nosferatu* is the destruction of the vampire in sunlight. Stoker’s *Dracula* was weakened by sunlight but wasn’t destroyed by it.

It is not known why Prana made no effort to license the film from the Stoker estate. Given the fact that they declared bankruptcy shortly after the release of *Nosferatu*, it is possible that they simply could not afford to license it. They may also have felt that they had made enough changes to avoid litigation. Perhaps Florence Stoker would not have granted the license in any case. Rat-like in features, with hands resembling claws and rodent like teeth, *Nosferatu*’s Count Orlock was in many respects the antithesis of the polished and debonair Count created, and approved by Florence Stoker (*Skal, 1990, 69*), in the Hamilton Deane stage adaptation. Of
course, the Deane adaptation was created after Nosferatu had been released. Skal has suggested that the stage version’s sanitized approach to the Count might be a reaction not only to the novel’s characterization, but possibly Nosferatu’s as well: “Dracula’s good manners are in rather short supply in the novel, and his hygiene and grooming are certainly problematic…But to what extent was the soup-and-fish characterization a reaction to the obscene, pestilential images of Nosferatu..” (Skal, 1990, 69-70).

Another reason Stoker’s widow might not have wished to license the use of the work was an interest in pursuing a film deal in the USA. Tim Kane noted that it was Florence Stoker’s “prolonged struggle for complete ownership” that would result in Universal eventually acquiring exclusive rights to Dracula (Kane, 2015, p.43). This desire for an American deal is in part a reflection of the post war reality of European cinema and the world dominance of American film noted earlier. In any event, upon becoming aware of the existence of Nosferatu, Stoker began action for infringement.

Through agents of the British Society of Authors, Stoker made her claim known in the German courts. In July 1924, the German court ruled against Prana. Stoker requested payment of 5,000 pounds sterling to give title to the work to the receivers, the Deutsch-Amerikanisch Film Union. The receivers rejected Stoker’s offer and appealed the court’s decision. Perhaps the most monstrous aspect to the story surrounding Nosferatu is that Stoker, realizing it was unlikely she would get any money, asked the court to have all existing copies of the film destroyed, despite the fact she had never seen it. In July 1925, Prana’s liquidators withdrew their appeal and the prints and negatives of Nosferatu were ordered destroyed. Florence Stoker had buried a stake in the heart of Nosferatu and it was over, or so she thought. (Skal, 1990, pp. 59-60)

The German court had provided no tangible proof of the film’s destruction, although the original negative never resurfaced. But as any reader of Dracula knows, a vampire has numerous hiding places, and unless the sanctifying rites are performed, he can live on indefinitely, watching and waiting, attacking at will (Skal, 1990, p. 60).

Dracula Rises

Stoker’s decision to license Deane’s adaptation of Dracula for the stage turned out to be quite prescient. The play was very successful in its initial tours of the provinces and would open in London in February of 1927. The Deane adaptation would set much of the tone for the iconic Dracula that has become enshrined in
popular culture. Appearing in evening dress and an opera cape, the ‘monster’ that was Dracula might just as easily reside in the upper-class clubs and salons of Stoker’s social circles. This Dracula was an atypical monster as Skal has noted, “Most monsters take and trample. Dracula alone seduces, courting before he kills. Unlike other monsters, he is not always recognizable as such. Dracula looks too much like one of us” (Skal, 1990, p.4). Skal suggests that given that Florence Stoker approved the Deane adaptation, “one can assume she was comfortable with, or even had a hand in creating, the ‘new’ image of the master vampire in evening dress and opera cloak, one polite enough to be invited into a proper Knightsbridge living room” (Skal, 1990, p. 69). This is of course a very different image of the count that one finds in the novel.

Though it was critically panned, the Deane adaptation was a hit with the audiences and played several theatres in London. Producer Horace Liverlight would see it in London and negotiate to create a new version for America. The Liverlight production would be re-written by John L. Balderston, though attributed to both Balderston and Dean as co-writers (Skal, 1990, p. 81). The American production opened in New York in 1927 and was extremely successful. The character of the Count was played by Hungarian emigre Bela Lugosi, who would become synonymous with the role on stage and film. The Liverlight production would make several tours across America, and between 1927 and 1929, Liverlight’s production is said to have amassed gross earnings in excess of two million dollars (Skal, 1990, p. 200). The Count was alive again, but not just on the stage.

In 1928, Nosferatu would resurface in England, at a Film Society presentation. The society claimed that they had been given permission by Universal who had purchased the rights for the film and allowed the screening. Since Stoker had not negotiated the rights for a film adaptation of Dracula, this statement involving Universal was quite a surprise. At a February 1929 meeting between solicitors for the Film Society & Stoker (as well as Florence Stoker and Ivor Montagu the director of the Film Society), a telegram was produced. It had come from James Bryson, Universal’s representative in England and allowed the society to show the film. Once it was established that Stoker had not granted Universal such rights, the film was turned over to her solicitors for destruction. At the meeting, Stoker also became aware that other prints of Nosferatu still existed and at least one had made its way to America (Skal, 1990, p.94). It would appear that copies of Nosferatu had also made their way to France, Hungary, and Czechoslovakia as well. Another version with musical accompaniment added via disc had surfaced in Germany though retitled as The Twelfth Hour (Nerdly Pleasures, 2016). While all of these prints were a concern, the appearance in America was the dominant one. America was not a
signatory to the Berne Convention, and it wasn’t clear what might happen once Nosferatu had a public screening there.

Though Nosferatu had been found to be an infringing copy by the German court and ordered destroyed, copies still existed. But who owned those copies? While Stoker could almost certainly have made a case for ownership rights given the earlier court ruling, that would have meant yet more legal wrangling. The American presentations (in Detroit and New York) had not been particularly successful (Skal, 1990, p.101), so again there would likely be no financial gain in litigation. This may also be why Stoker appears not to have litigated anywhere other than Germany. While she did threaten litigation in England, having already won the infringement case in a Berne compliant country, it seems likely she would have won a similar action in the British courts. Ultimately, Universal (via Stoker’s agents) would purchase the copy from the American theatre, which had possession (Skal, 1990, p.104). Universal had their own motives however; Murnau was considered to be an extraordinarily gifted director and they wanted to see how he had dealt with the subject.

The Vampire’s Surprise

When Stoker became aware of a print surfacing in America, she considered alerting the newspapers regarding Nosferatu’s legal status, but G. Herbert Thring (secretary of the Society of Authors) would counsel against this noting “…you might not only prejudice your position but might lay yourself open to an action for libel if it subsequently proved the film is not an infringement of your copyright. We have at present no real evidence upon which to base a claim” (Skal, 1990, p.103). This is a curious statement to make to the copyright owner, unless the Stoker estate had reason to believe they might not have a claim to Dracula in the United States.

Statements regarding Dracula’s lack of copyright status in the United States have been made numerous times over the decades. In a 2012 interview with The Independent newspaper in the United Kingdom, Dacre Stoker, Bram’s great grand nephew, stated “It’s one of those mysteries: why did Bram lose the copyright to the book? The party line is he apparently didn't fulfil all the requirements, but he certainly didn't have all the rights he should have had” (Bignell, 2012, para 9). In a California Supreme Court case between Bela Lugosi’s family and Universal Pictures, the court stated, “Bram Stoker's 1897 novel Dracula has always been in the public domain in the United States” (Lugosi vs. Universal Pictures, 1979). The footnote accompanying that statement noted “Stoker failed to comply with the United States deposit requirements in effect in 1897” (Lugosi vs. Universal Pictures, 1979, footnote 4).
Given Stoker’s legal background, this has always been a curious circumstance. Terry Hale has written about Stoker’s work as a lawyer and its impact on Dracula itself, going so far as to state that the novel is “not only a novel written by a barrister but a novel that only a barrister could have written” (Hale, 2019, p.11). More importantly for the purpose of this discussion, Hale notes that Stoker’s legal experience was not short or passing, but in fact most of his adult life had been spent practicing aspects of the law either formally or in his business pursuits.

Beyond his early years as a civil servant in Ireland, and his years studying law in England, Stoker was the manager for the Lyceum theatre under Sir Henry Irving. As such, he was responsible for the daily operations including contracting of staff, guest artists, composers, musicians, and so on. He was also responsible for all aspects associated with the company’s tours. Over a period twenty years and seven tours, the company would travel more than 50,000 miles, all of it under Stoker’s careful watch (Hale, 2019, p.11). Clearly, stoker was a man who paid attention to detail or he would not have lasted long in such a position. All of which begs the question, how would such a man, with the background he had, fail to successfully establish his copyright in America? In the course of research into Nosferatu and its circuitous path to cult status, a piece of fundamentally contradicting evidence to this accepted position would appear.

Margaret Wood, a law librarian at the Library of Congress wrote a piece about Dracula for the law librarians blog, In Custodia Legis. The blog was from 2013, shortly after the 100th anniversary of Stoker’s death. In the blog, Wood comments that she had been shocked to find out upon rereading the novel that Stoker had failed to secure the copyright in America, particularly since he was also a lawyer. She decided to research it given that the Library of Congress is also the depository for copyright registrations in the United States.

Within the copyright division of the Library of Congress, Wood found three entries for Bram Stoker. “The first card was for the book Dracula with the copyright assigned to Bram Stoker of Dublin, Ireland with the date March 10, 1899. The second card was also for an entry for “Stoker”, Bram i.e. Abraham” for the book Dracula as published by Doubleday & McClure of New York. There was also a handwritten note on the back of this card: it noted that two copies of this book had been received” (Wood, 2013). “The third card, the requisition card, referred to Copy A. A typed note on the back of this card states that “under the Librarian’s General Order No. 20 the Register of Copyrights is authorized to deliver the first copies or “A” copies of a copyright deposit for transfer to the general collections of the Library of Congress or any division thereof” (Wood, 2013). Wood then checked
the online OPAC and confirmed that the Library of Congress did indeed have a copy of the 1899 edition published by Doubleday and McClure and deposited as part of the copyright process in 1899. Given Woods findings, it is apparent that contrary to the ongoing myth, Stoker followed the process necessary to establish his copyright.

Beyond Policy

There is no question that *Nosferatu* constituted an infringement on the copyright held by the Stoker estate. It was an adaptation done without license. And yet, there is also no question that the infringing work has had a significant impact on society long after its appearance and subsequent death sentence. Like the fan fiction of our contemporary period, Nosferatu is a creative work unto itself derived from the frame of *Dracula*. It is also possibly the earliest example of a cult film. It is inconceivable now to imagine vampire lore without sunlight killing the vampire. That notion, born in *Nosferatu*, has become so iconic that to challenge it, to create a vampire that can walk in the sun, a ‘daywalker’, has itself become the basis of several vampire stories; the *Blade* series, for example.

*Nosferatu* was remade in 1979 by Werner Herzog, and also formed the basis for *The Shadow of the Vampire*, a fictional film about the making of *Nosferatu* released in 2000. Count Orlock would even make a cameo appearance in a *Spongebob Squarepants* episode, *Graveyard Shift* (Fandom). It has also served as the subject of numerous homages noted on its Wikipedia entry. Beyond its cult status, and unlike any of the mainstream vampire creations, *Nosferatu* seems to have achieved the status of art. In Roger Ebert’s four-star review of the film in 1997 when it was included in his ‘Great Movie’ collection, he stated “Here is the story of Dracula before it was buried alive in clichés, jokes, TV skits, cartoons and more than 30 other films. The film is in awe of its material” (Ebert, 1997).

In his in-depth treatment of *Dracula*’s transition from book to screen to stage and back to screen, Skal suggests that Florence Stoker had an almost visceral hatred for *Nosferatu* and was deeply concerned that it would reflect poorly on her husband’s work. However, as Skal would recognize,

*Nosferatu*, of course, would go on to be recognized as a landmark of world cinema, elevating the estimation of *Dracula* in a way no other dramatic adaptation ever would, or ever could. With Hamilton Deane’s constricted adaptation, the piece had begun its descent into kitsch; *Nosferatu*, however, had mined Dracula’s metaphors and focused its meanings into visual poetry.
It had achieved for the material what Florence Stoker herself would never achieve: artistic legitimacy (Skal, 1990, pp. 96-97)

Ultimately, *Dracula* and *Nosferatu*’s painful journey is a story of copyright. A public policy response intended to incent creation or to protect copyright owners, depending on the viewpoint. In either case, the outcomes are the same: the policies attempt to control the creation, distribution, and use of artistic works. Both viewpoints are predicated on a fundamental notion that art is commerce. That is, a means of income for the copyright owner (not necessarily the creator or their heirs), and a means of income for those who have a limited share in the copyright (publishers, adapters, broadcasters, etcetera). However, as is often the case, we forget that human beings create and recreate and participate in art simply for the joy of it. The endurance of *Nosferatu* is an example of that. While *Nosferatu* may have achieved the status of art, it has never been a lucrative vehicle. Nonetheless numerous people over the decades have kept it alive, and have made efforts to restore and preserve it. The existence of *Nosferatu* is a testament not only to resilience of art, but also the limitations of policy.

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