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The Copyright of the German Democratic Republic (GDR)

I here intend to cast a backward glance at the intellectual-property rights of the GDR - a modern but socialist country during the second half of the 20th century. I would like to focus this short lecture on the copyright laws and regulations of the GDR. What kind of copyright system did the GDR have? When and how did they modernize these laws. And in what ways did the GDR government use such intellectual-property rights for its own various political purposes?

There is no way to characterize a political system or state at any given time and space without examining closely the concept of property. It is important to study the relationship between the two elements that are in constant tension, the rights of the individual or the single owner, versus the rights of society as a whole.

The rights of the authors were already mentioned and guaranteed in the first constitution of the GDR 1949 and also in the following versions 1968 and 1974: “The mental work, the right of the authors, the inventor and the artist enjoys the protection, the promotion and the welfare service of the republic.” (Constitution of the German Democratic Republic (1949), Article 22, 3) and similar but shorter: “The right of authors and inventors enjoys the protection of the socialist state.” (Constitution of the German Democratic Republic (1968 and 1974), Article 11, 2)

In general the intellectual property rights of the individual in state-socialist societies of the 20th Century were constantly being questioned. By contrast the rights of society, of the nation and of the collective continued to accrue greater attention and power, consistent with Marxist-Leninist theory. The argument was that the people are the collective creator of knowledge and should therefore have easy access to knowledge and culture. Intellectual creation in a socialist society was seen as a social process, rather than as a creation that could be attributed to an individual. Creativity was perceived as being designed for the good of all society and resulted ultimately from total society’s grand plan for cultural growth.

Let’s take us a look to the copyright law of the GDR. Following the Second World War and after, the founding of the two new German states, it became necessary in

both of states to take up again the attempts that had occurred during the 1930s at reforming German copyright law. In both East and West Germany, the old copyright laws, in effect from the beginning of the 20th century (1901/1907) continued to be operative until 1965. But the technological innovations that occurred in the middle of the 20th century, that is, the new possibilities for the reproduction and replication of different kinds of works of art, produced a critical need for the codification of intellectual-property law.

A new Copyright Act was passed in 1965 in both German states. For the government of the GDR, another driving force, in addition to the technological innovations that had occurred, was their aim to gradually transform all the old “bourgeois” laws into new laws, based on the socialist ideology and the new allocation of power and socialistic property approach of the so called: “Arbeiter und Bauernstaat” (Workers' and Farmers' State). Most of the countries in the Eastern Bloc passed such new Copyright acts already during the 1950's.

The GDR legal experts had rejected the so called „bourgeois“ term „Intellectual Property“. The results of these legal-political and ideological motivated criticisms created a radical break with the past, and with the German and West-European copyright traditions. If we look specifically at the copyright act of 1965 and the discussions around that subject, there was a clear attempt at the further development of bourgeois theory under the “coat of socialism” (A. Wandtke).

The amendments to the copyright legislation in the GDR created a major conflict for the experts involved in the case. They wanted to improve the legal status of the creator – as a result of experiences during the Interwar period, during the Weimar Republic. Some of the East German copyright experts already working in this area at the time criticized especially the weak position of the author, and the possibilities for commercial exploitation of their works by Capitalist companies. But they simultaneously wanted to increase the rights of use for the People, the users, in accordance with the model of socialist society. Considering this model of the new copyright law, based on an intrinsic harmony between the creator and the needs of society, i.e. the user. The law attempted to balance the interests of the individual person – the creator, with the needs and interest of the community at large.

Rights of exploitation and personal non-property rights (Droit moral) were included in the understanding of the GDR legal expert's concept of uniform copyright. There was no division between these two rights. Heinz Püschel, one of the central figures of the GDR copyright legislation, qualified them as entirely of personal rights. The Copyright Act of 1965 entitled the subjective copyright as „Socialistic Personal Right“ (§13 URG). This intended to describe the new entity of socialistic copyright and the new position of the author within socialist society.

The GDR wanted to protect their creators, because they did need them to produce of cultural goods. New socialistic artistic works should help to create a new East German Nation, a socialistic Nation - different to the bourgeois West German Republic. The Writers and Artists should be stimulated by the copyright system to be creative for the Socialism and for the People. But the Constitution said also: “The use property as well as of author and inventor rights may not contrary-run the interests of the society.” (Constitution of the German Democratic Republic (1968 and 1974), Article 11, 3

East German Copyright law, however, was not modeled on the pattern of Soviet law, especially concerning the question of incorporation into the international copyright system. The Soviet Union refused participation in the Berne Convention for the Protection of Literary and Artistic Works. They argued that the Convention existed above all for the interests of the large publishing houses and Capitalist companies.

Still during the 1950s, some GDR politicians, such as Walter Ulbricht, wanted to pursue this argument even further. Legal experts and cultural politicians, however, warned the GDR leadership that they should continue to follow the rules of the Berne Convention and not cancel their membership.

Contrary to the Soviet Union, in May of 1955, the GDR Government made a simple declaration that it considered the Berne Convention (Rome Act) to be back in force in their territory, recommencing the membership of the former German Empire. Most of the members of the Berne Convention declined to 'note' the GDR declaration, on the basis of international non-recognition of the GDR. These were the political conditions at that time. The GDR did not receive any recognition other than from members of the Soviet bloc and its existence as a state in the eyes of

international Law was therefore extremely doubtful. This remained the case until the “Ostpolitik” of Chancellor Brandt led to a normalization of relations between the two Germanys. From the beginning of the 1970s, the GDR was being accepted by an increasing number of Union members.

Finally the continuous expansion of individual property rights during the 20th Century was not interrupted by the GDR.