THE CAMBRIDGE HANDBOOK OF INTELLECTUAL PROPERTY IN CENTRAL AND EASTERN EUROPE

Intellectual property law faces serious challenges worldwide, with many in the international community arguing that the law fails to provide much-needed support for either individual rights or the public interest in the technological environment. *The Cambridge Handbook of Intellectual Property in Central and Eastern Europe* offers a novel look at intellectual property issues through the lens of the post-socialist and transitional experience in Central and Eastern European countries. Contributors include both recognized and emerging leaders in their jurisdictions of interest, and experts on US, European Union, and international law. Taken together, they offer a thought-provoking critique of current approaches and build a compelling case for cogent policymaking. This important work reflects the formative experiences of a difficult history, demonstrating the courageous optimism of scholars in a region that has repeatedly overcome the challenges of the past, while consistently looking to its authors and innovators for leadership and inspiration.

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The Cambridge Handbook of Intellectual Property in Central and Eastern Europe

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For Professor Hector MacQueen

who embodies everything that this collection aspires to

"All changed, changed utterly:
A terrible beauty is born."

W. B. Yeats, "Easter 1916"

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Foreword

Mihály Ficsor*

The studies published in this volume, in different ways, are related to the past, the transition (from centrally planned economy to market economy), and the current issues of the intellectual property system of Central and Eastern Europe (CEE). It is an honor and also a challenge to write a foreword to such a book. It is a challenge because so many historical, ideological, political, social, cultural, and legal aspects are involved in these topics that it is difficult to offer a brief introduction to all this. This is so much the case that I am afraid this will be quite a specific foreword; an introduction but not necessarily brief.

The common past of the Central and Eastern European countries (hereinafter: the CEE countries) is clearer than the answer to the question of exactly where they may be found on the map.[1] This group of countries includes the former member states of the ComEcon[2] (and the Warsaw Pact[3]) or their successor independent states (except what used to be the German Democratic Republic, which became part of Germany and adopted its legal, social, and economic systems) and the countries of the "West Balkans" region. Before their "transition" period, they identified themselves as "socialist" countries, while, in the Western industrialized world, they were known as "communist regimes." They are the following twenty-eight countries in alphabetical order: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kirgizstan, Latvia, Lithuania, Montenegro, Poland, Republic of Moldova, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Tajikistan, (at the time of writing this preface still) the Former Yugoslav Republic of Macedonia (FYROM), Turkmenistan, Ukraine, and Uzbekistan.

With respect to the "transition" process of these countries, usually the economic, market, and trade aspects are emphasized – as in Article 65 of the TRIPs Agreement:

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[1] For example, Austria geographically is a Central European country – along with the Czech Republic, Slovakia, and Hungary – but politically is not part of the category of CEE countries covered by this chapter.

[2] The ComEcon – according to its full name: Council of Mutual Economic Assistance – was between 1949 and 1991 the organization of economic cooperation of the Central and Eastern European "socialist countries" under the leadership of the Soviet Union. Three countries not covered by the papers published in this book – Mongolia, Cuba, and Vietnam – also became members of the organization, while Yugoslavia only had observer status.

[3] The Warsaw Pact – according to its full name: Treaty of Friendship, Co-operation and Mutual Assistance – was between 1955 and 1991 a collective defense alliance of the Central and Eastern European countries.

Countries in the course of transformation of their centrally planned economy into a market and free-enterprise economy. There were, however, also other aspects that influenced the intellectual property laws of the CEE countries in quite a significant manner; in particular the political system of so-called democratic centralism. In this expression, the adjective "democratic" was a typical example of distorting the meaning of words in the form of "newspeak,"[4] since only centralism existed without any democracy; it meant that the central organs of the party state/state party determined, regulated, and then strictly controlled everything. It is equally important to refer to the deeply dogmatic roots of the political and social system of the regime.

By virtue of the previously mentioned Article 65.3 of the TRIPS Agreement, "transition country" members of the World Trade Organization (WTO) – similarly to developing country members – were allowed to benefit from a five-year grace period to fulfil their obligations under the agreement. This seems to suggest that these countries were supposed to complete their transition by 2000.

However, the transition was not as quick as the five-year grace period suggested and has not been completed fully everywhere. Still there are significant differences among the countries that were referred to together as "transition countries." Eleven countries to which the concept of "country in transition" was applied in the middle of the 1990s have become member states of the European Union since then.[5] They have had to transpose the EU norms on industrial property rights, copyright, related rights, enforcement of rights, electronic commerce, data protection, competition, etc. into their national legislation. These countries had also benefited from significant pre-accession support through a number of EU programs. Now their representatives are present in the various governing bodies of the Union and they are faced with the same kind of new challenges to IP rights as the most advanced industrialized countries. Thus, it may be said that, for these countries, the "transition" is practically over. It is another matter that, in certain aspects not directly regulated by the international treaties and the "*acquis communautaire*," their IP system may still include certain elements inherited from their socialist past.

There are also other countries – those that are members of the WTO or in negotiation to accede to the WTO and/or to the European Union – that have made significant progress in the "transition" process. Several among them may not regard themselves anymore as truly belonging to the category of "countries in transition." In spite of this, it still seems that, in some of the CEE countries of this vast region, the process of transition, at least in certain aspects of intellectual property, has not been fully completed yet.

Much depends also on the length of time that the planned economy and "democratic centralist" regimes had existed already at the beginning of the "transition" process (for more than seventy years, as for the majority of the newly independent countries transformed from the member republics of the Soviet Union, or for "only" around forty years, as for the countries of Central Europe and the West Balkans). This also explains the different legal and social traditions and levels of development of the various countries of the region (for example, the situation in the five "stans" of Central Asia was more or less the same as in developing countries).

[4] Of course, this expression has been borrowed from George Orwell, who had invented and used this word in his novel *1984* describing totalitarian regimes.

[5] The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia joined the EU in 2004; Bulgaria and Romania joined it in 2007; and Croatia joined it in 2013.

As regards the possible specific features of the IP laws of the CEE countries, it should also be taken into account that they are members of the WIPO and they have ratified or acceded to the Berne Convention and the Paris Convention. Furthermore, with the exception of Turkmenistan and Uzbekistan, all these countries have also ratified or acceded to the Rome Convention and, more importantly, the two "Internet Treaties": the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). As regards industrial property, the CEE countries are party both to the Patent Cooperation Treaty (PCT) and the Madrid Protocol on the International Registration of Marks, the two registration systems of the WIPO that are indispensable to participate in international economic cooperation and trade relations. The majority of them have also ratified or acceded to the Patent Law Treaty, harmonizing formal procedures of patent applications (making them more user-friendly and determining maximum sets of requirements), to the Trademark Law Treaty (TLT), standardizing and streamlining national and regional trademark registration procedures, and – although somewhat fewer – to the Singapore Treaty on the Law of Trademark, further harmonizing trademark registration procedures.

The overwhelming majority of the countries of the CEE region are members of the WTO and, thus, bound by the TRIPs Agreement[6] too. Therefore, the question emerges quite logically: If these countries are bound, with some rare exceptions, by all the relevant international treaties and many of them have also aligned their legislation to EU law, what kinds of differences exist in their IP systems in comparison with the systems of those countries that were already highly developed industrial countries with a well-established market economy and pluralist democracy at the beginning of the "transition" of the CEE countries? And the answer seems to be this: The differences appeared mainly, first, in those aspects where the international treaties allow flexibilities or do not regulate certain issues at all (such as the questions of original ownership and transferability of rights, the contractual system, collective management of rights, or governmental structure and role in the administration of IP rights); and, second, of course, in respect of the question of how seriously the provisions on the protection and enforcement of rights are truly applied in practice.

It goes without saying that, if one tries to find out which of the specific features might still be detected in the IP system of the CEE countries, first it is advisable to make a short trip back to the past in order to identify the roots of those features in socialist and communist ideology and in the nature of the previous political regimes.

What is most conspicuous in the past of these countries is that, as with practically all other significant aspects of social life, intellectual property was also influenced by Marxist–Leninist ideology. Since this branch of law is supposed to protect the results of *intellectual* creative and innovative activity through – by definition – granting *property* rights, the ideological influence was particularly strong.

It was typical that legal principles and provisions were directly deducted from dogmas rooted in the objectives of building a socialist – and, as a long-term objective, a fully fledged communist – society promised in a slogan-style boasting manner to become superior to capitalist regimes. The condemnation and elimination of private property followed from these dogmas – so much so that even the use of "intellectual property

[6] For the time being, the following countries only have observer status: Azerbaijan, Bosnia and Herzegovina, Serbia, and Uzbekistan. Turkmenistan does not even have such status yet.

rights" was avoided (replaced partly with certain neutral terms such as "protection of intellectual creations," or with direct reference to the branch of laws, such as authors' rights). However, in certain cases, some legal constructions were just declared as a typical feature of socialist law and then became dogmas themselves in that they were supposed to be followed automatically and blindly. Those who did not do so – and dared to express the view that the same objectives might be obtained more efficiently or simply – were faced not just with a theoretical or practical dispute on which alternative would be more appropriate but also risked being declared "revisionists," "capitalist agents," or even "enemies of socialism," with all the resulting negative consequences.

The ideological and dogmatic influence was particularly strong in the field of copyright (which is quite understandable since literary and artistic works tended to carry some ideological – or even hidden political – messages, certainly much more so than inventions or trademarks).

In order to characterize the Marxist–Leninist attitude to private property, this statement in the "Communist Manifesto" is quoted frequently: "The theory of Communism may be summed up in the single sentence: Abolition of private property."[7] The Marxist–Leninist version[8] of communism that was the dominant ideology in the Soviet bloc had been developed on the basis of the recognition that a world revolution and the creation of a Communist society could not be an immediate objective; a longer transition was needed from capitalism to communism. Nevertheless, the elimination of private property remained a central principle of Marxism–Leninism. In this context, "private property" meant any kind of ownership of goods and rights that allowed the owners to produce more income than was necessary to fulfill their own needs – including the need to obtain "personal" rather than "private" property, the justification was recognized (for housing, personal belongings, food, beverages, and the like).

It followed from the differentiation between private property and personal property that certain rights were granted to creators (inventors, authors) in recognition of their contributions to the common good, but only to the extent that this did not serve as a basis for obtaining too strong rights, which then could have been exploited to build up private property. This was in accordance with the fundamental principle of communism: "From each according to his ability, to each according to his needs" (which became known and popularized as Marx's slogan,[9] but, in fact, had already appeared in the writings of French utopian socialists).[10] As a consequence, moral rights were, in general, generously granted – in contrast with economic rights, particularly exclusive rights – and although inventors and authors also received certain income and other benefits, legal regulation took care of limiting this to such a level that it might not serve as a source of private property.

In accordance with this, the laws of the CEE countries stressed the special reasons for which inventors and authors enjoyed certain rights – namely, that they contributed to the

[7] K. Marx and F. Engels, *Manifesto of the Communist Party* (1848) section 2, para. 13.
[8] The term "Marxism–Leninism" was coined in the 1920s in the period when Stalin took over leadership of the Russian ("Bolshevik") Communist Party.
[9] The slogan appeared in Karl Marx's study *Critique of the Gotha Program*, published in 1875 (in original German: *Jeder nach seinen Fähigkeiten, jedem nach seinen Bedürfnissen*).
[10] It was used in this form first by Louis Blanc in his *Plus de Girondins*, published in 1851 (in original French: *De chacun selon ses facultés, à chacun selon ses besoins*).

common good as creators – rather than the property aspects of those rights. The reluctance to use the expression "intellectual property rights" directly followed from these principles of Marxism–Leninism, but it did not disappear automatically with the political changes and the transition process from centrally planned economy and "democratic centralism" to market economy and pluralist democracy. This might have been a symptom of a mere linguistic inertia, but it seems to be a more realistic explanation that the professors and researchers specializing in the field of IP rights had been accustomed to the old legal categories. In their previous textbooks and other publications, they explained why the expression "the law of intellectual creations" was more appropriate than the expression "intellectual property rights," and they did not want to recognize that their arguments presented at that time were wrong or just a matter of giving in to the dominant ideology.

Nevertheless, with the ever more general acceptance of the use of the expression "intellectual property rights" to cover both copyright (and related rights) and industrial property rights at the international and European levels, it became more difficult to reject the application of this term. The CEE countries that became member states of the EU – and also the countries of the West Balkans – have adopted it, but in the newly independent countries born from the former member republics of the Soviet Union this was not necessarily the case. In Part IV of the Civil Code of the Russian Federation – prepared mainly by civil law academics – a kind of compromise solution was adopted. The title of the section on what are recognized under international standards as intellectual property rights does not use this expression. It reads as follows: "Rights in the Results of Intellectual Activity and Means of Individualization." This term is repeated in the title of the first article – Article 1225 – of Part IV but, in the text of the article, the expression "intellectual property" appears as a kind of shorthand reference to these two categories of rights and is then used in certain provisions of the Code with that meaning.

Also, in Central Europe, there was a certain resistance to giving up the term "rights in intellectual creations" and to replacing it with the term "intellectual property rights." For example, the Hungarian Civil Code of 1959 contained some short provisions referring to what are recognized internationally as intellectual property rights under the term "rights related to intellectual creations." In 2013, a new Civil Code was adopted.[11] In the course of the quite long preparatory work, for a while the Drafting Commission was in favor of maintaining the terminology and concept imported from Soviet law: "rights in intellectual creations."[12] The resistance to adopting the international and EU terminology may be explained by the composition of the Drafting Commission; it was dominated by academics who had always spoken and written on the "law of intellectual creations." The long debate was finally ended with a "compromise solution"; a strictly "positivist" language is used in the new Civil Code; its only article on what are called in the international treaties and EU directives "intellectual property rights" is entitled "Copyright and Industrial Rights."[13]

[11] Law V of 2013; it entered into force on March 15, 2015.

[12] It does not mean that the academics also wanted to maintain a Soviet-style regime; they simply were of the view that the old name of this branch of law better corresponded to its basic underlining objective; namely, the protection and promotion of human creativity and innovation.

[13] See Article 2:55 of its Second Book, which under the title "Copyright and the Protection of Industrial Rights" consists of a single sentence: "This law shall be applied in regard to those questions covered by it

It is to be noted that rejection of private property did not take place in the same way concerning the various branches of intellectual property rights in the socialist period of the CEE countries. The differences in the application of Marxist–Leninist dogmas partly followed from the fact that after the first wave of hasty revolutionary measures when the regime was faced with reality, adaptations turned out to be necessary. Some elements of private property had to be accepted in the form of what was regarded as a "temporary" compromise in order to maintain the operation of the economy and to achieve certain development through forced industrialization. These kinds of "compromises" were mainly necessary regarding industrial rights that had a role of promoting innovation. (From this viewpoint, trademarks were less important.)

The conditions and requirements of copyright law were significantly different, not only because the constraints to accept "compromises" in the case of industrial property rights did not exist but also due to the fact that this branch of law was applicable in the field of creations – books, poems, dramatic works, films, etc. – that were directly relevant for, and were supposed to serve, Marxist–Leninist ideology. For these reasons, the specific features of the socialist intellectual property system more clearly prevailed regarding copyright than regarding industrial property rights.

This, however, hardly means that patents as typical private-property elements of the capitalist legal system were not found to be in contradiction with Marxist–Leninist ideology. By the "Decree on inventions," signed by Lenin on June 30, 1919, all existing legislation on industrial property was abolished and patents lost validity. Instead of patents, the Decree introduced "inventor's certificates" that remained the decisive element of the Soviet legal system. The certificates were issued practically under the same conditions as patents, but the inventors to whom such certificates were granted lost ownership of their inventions; they became state property. At the same time, the inventors were entitled to receive a modest remuneration more or less (rather less) in proportion with the economic results achieved.

The other countries of the Soviet bloc were under political pressure to adopt the legal institutions of the Soviet Union. Thus, they also had to introduce inventors' certificates and rationalization proposals. Some of the (at least formally) independent countries of Central Europe, however, were reluctant to replace their patent systems with inventors' certificates. For example, Czechoslovakia resisted the pressure for quite a long while. Then when the Prague Spring was crushed by a Soviet-led invasion and the puppet government and parliament did everything the Soviets told them to do, in 1972, inventors' (authors') certificates became the dominant institution for the protection of inventions in that country too. In Hungary, a contrary development took place. Hungary was an ally of Germany in World War II; thus, the Soviet Union, as an occupying power, from the very beginning exercised stronger and more direct pressure on the Hungarian government. Here, after the communist takeover in 1948 orchestrated by the Soviet Union, the application of the Soviet model was nearly immediate. In the same year, a

which are not regulated by the laws on copyright and the protection of industrial rights." As may be seen, the compromise did not go as far as in Part IV of the Russian Civil Code, in which a reference appears to "intellectual property" (at least in brackets). However, when, in the final stage, the administration and the legislature took over the preparatory work and the influence of the traditionalist academics faded away, reality won over dogmas: the ministerial exposé about the new Code presented in the parliamentary debate did stress that actually what are involved are "intellectual property rights."

government decree practically copied the Soviet legislation; the institution of the inventor's certificate became dominant and patents were only used in connection with export-import activities. In 1956, the uprising against the communist regime and Soviet occupation was crushed and a period of bloody suppression began. Perhaps due to the dominance of other more fundamental political issues and the absence of attention by the Soviets (and their faithful local followers), a draft decree – the preparation of which began in the reform wave before the uprising – was adopted in 1957 as Governmental Decree 38/1957 (VI. 23) to abolish inventors' certificates and base the protection of inventions on patents.

In the post-socialist legislation of the CEE countries, these Soviet legislative "inventions" have not survived. Their legislation basically corresponds to the international standards and to EU law. This is ever more the case not only for the EU member states but also for other countries of the region that, although not yet EU member states, are negotiating their accession, one of the conditions of which is to align their laws with the EU directives. This – that is, accordance with international standards and EU solutions – may also be said about the law of the Russian Federation, which, in turn, serves as a model for those countries that are members of the Eurasian Patent Organization.

The development of the copyright system of the CEE countries took place, in many aspects, in a different way. After the Bolshevik revolution, authors' rights partly shared the fate of industrial property rights because a nationalization wave of certain outstanding creations took place, but, in parallel with this, the features of the rather surprising "author-centric" Soviet copyright law also appeared quite soon. Following the slogan that the working masses should be able to get access to valuable works (published in cheap editions by nationalized publishing houses) of the greatest Russian authors, Lenin signed a decree[14] in 1917 to nationalize the works of famous deceased authors, and this was extended to certain living authors too. However, later the fate of authors and their works changed. Nationalization did not continue. On October 10, 1919 a new Decree (under which, otherwise, the term of protection of works was reduced to the life of authors – as a typical socialist measure) introduced the doctrine of inalienability of authors' rights that prevailed throughout the years of "socialism." The assignment of rights became forbidden; authors could only grant licenses to publishers for a given limited period of time and for the reproduction and distribution of a given number of copies for which they received remuneration according to a preestablished scale.

These characteristics of the Soviet copyright law were maintained under the various "editions" of the Fundamentals on Copyright (first adopted in 1925). The Soviet Union was not party to any international copyright treaty, even to the UNESCO Universal Copyright Convention (UCC) – which required a relatively low-level protection of copyright – it only acceded in 1973. Only Gorbachov's "perestroika" brought about more fundamental changes in the field of copyright, similar to what took place concerning industrial property rights. Then, after the Soviet Union ceased to exist in 1993, a modern copyright law was adopted in the Russian Federation in due accordance with the Berne Convention. It was applicable until the entry into force of Part IV of the Civil Code that replaced all separate intellectual property laws. The same may be said on the

[14] Decree of the Council of People's Commissars of December 19, 1917.

copyright provisions of the Code as about those on its industrial property provisions: They are in accordance with international treaties and standards.

In contrast, the copyright laws of the (at least formally) independent countries of the CEE region were in accordance with the minimum requirements of the Berne Convention, to which the countries were party even in the socialist period (although as regards related rights, only Czechoslovakia was party to the Rome Convention at that time). This may be said now about practically all CEE countries. Their legislation is in accordance with the minimum requirements of international copyright and related rights treaties. Where special features of the systems of these countries may be found – as partly mentioned earlier – is rather in the following field: original ownership and transferability of rights; the contractual system; collective management of rights; and the enforcement of rights.

In the socialist period of the CEE countries, it was typical that the various aspects of contracts were regulated in great detail and remuneration for intellectual property licensing was determined within strict limits. Egalitarianism prevailed. It followed from the centrally planned nature of the economy that copyright fees were also governed by the income policy of the regimes; no significant differences were allowed between personal incomes. In accordance with this principle, brutally regressive fee charts were prescribed in decrees and regulations on the various types of uses.

The overregulation of contracts would be incompatible with the conditions and requirements of a market economy. Thus, it was clear from the very beginning of the transition to a market economy that the provisions on intellectual property contracts had to be revised. This has taken place; the Soviet-style regulation of tariffs, in general, has been eliminated and broad contractual freedom is available.[15]

However, there is one element of the contractual system – namely, the principle of inalienability (non-assignability) of copyright (not only moral rights but also economic rights) – that continues to reflect certain traditions of the socialist period in some CEE countries. These traditions did not necessarily have negative effects from the viewpoint of the interest of authors. In a way, the origins of the principle of inalienability of rights may be found in the anti-capitalism of the socialist system. At the beginning of the Soviet revolution, authors' rights were taken back from publishers, who were considered – not necessarily rightly – just as capitalist investors and, after a brief transitional wave of nationalization, the rights were left with authors, who then could give licenses under the overly regulated contractual system.

This kind of specific author-centric nature of socialist copyright laws had certain advantages. Authors' rights were limited in various respects, and many conditions – several among them of an ideological, political nature – were set for their exercise; however, to a certain and not negligible extent, they still represented an island of privacy, "individualism," and personal (also to some extent private) property. The alternative – which might have consisted of granting the original ownership of copyright to the producers, publishers, and employers of the authors of works, and/or at least allowing the assignment of authors' rights to them – would have meant the indirect collectivization of authors' rights.

[15] This does not mean that creators everywhere are happy with this kind of liberalization. Some of them – in particular authors of some CEE countries – are of the opinion that legal provisions on tariffs, even if minimum tariffs, would offer certain protection in negotiations with users, such as publishers and producers, without which they might receive nothing.

Therefore, this aspect of socialist copyright laws had certain beneficial effects from the viewpoint of authors as intellectual creators.

However, in a market economy, it is essential that employers, producers, and publishers are able to exploit works and objects of related rights the creation and production of which they have invested in, in a reasonably flexible way and without the need to ask for repeated authorization from the creative contributors. Furthermore, there are certain complex works (such as films, computer programs, encyclopedias, databases, etc.) where it would be impossible or highly impracticable to require that economic rights be exercised on an individual basis by the great number of creative contributors; decision making, negotiation, licensing, and enforcement of rights for these works should be concentrated.

The system of collective management of rights was also determined by the principles of the centrally planned economy and "democratic centralism." In the majority of CEE countries, the functions of state copyright administration and collective management of authors' rights were combined. There were governmental agencies, semi-governmental organizations with more or less autonomy, or in a small number of countries, in principle, private societies, but with strong governmental influence and control.

In the transition period, the transformation into private societies did not take place immediately in all CEE countries. In certain countries, this happened with some hesitation involving some transitional organizational structures. In other countries, the organizational change was sudden, in some cases, too sudden, and it created a transitional vacuum because the governmental or semi-governmental structure did not work anymore and the private organizations were not established yet. It also happened that private societies were established, but, under the slogan of freedom of association, a number of parallel organizations were set up to manage the same category of rights of the same category of rightholders, which led to complete chaos as an obstacle to the normal exercise of the rights concerned.

Neverthless, there are countries where the transformation of the governmental or semi-governmental organizations into civil societies took place in a seamless way. This was the case, for example, in Hungary, where, although the authors' society lost its semi-governmental character, it continued its activity without any transitional problems. This was due to an appropriate grace period and transitional rules for fulfilling all the requirements of becoming a private association. The CMOs to manage other rights were established also as fully fledged private associations.

In a number of CEE countries, there has been quite a big difference between the protection granted under national laws (which in general seem to be in accordance with the international norms), on the one hand, and, on the other hand, the practical application and enforcement of intellectual property rights.

A high level of piracy and counterfeiting was particularly typical in the first period after the political and economic changes, basically for three reasons. First, in reaction to overregulation in the centrally planned economy period, even those rules were suddenly regarded as unnecessary that were socially and legally justified. Second, at the end of the egalitarian income policy and in the euphoria of new opportunities, many people wanted to become rich as soon as possible without too much regard to what was legal and what was not. Third, the legal machinery, organizational structure, and experience necessary for an effective fight against piracy were missing.

Many CEE countries regularly appeared in the Priority Watch or Watch Lists in the annual "Special 301" reports of the US Trade Representative. Although the situation has improved step by step, still there are some countries – now mainly those outside the European Union – which have not yet disappeared from the list, and it seems to be justified that they have not.

It is also to be noted, of course, that the transition of the legal systems of these countries had to take place in a period when the entire international IP system – but within it, in particular, copyright – became faced with multiple challenges raised by the digital online environment. This meant – and still means – not only widespread online piracy and not only the increasing influence of online intermediaries who try to reduce the level of protection and the efficiency of enforcement of rights (simply because in this way, there are more clicks through their systems and, as a result, they may obtain much more money from advertisers) but also the appearance of certain theories about the need to offer free access to everything in digital networks.

These free access theories are familiar to people in the CEE countries who have got useful information to share with the rest of the world, and in particular with those who have no experience whatsoever of a "free access" society, but who try to sell ideas that are very similar to those already applied in practice in this part of the world. They could answer the question of whether free access to the results of human work, including creative work, may really produce those wonderful results, in the long run, which are forecast and advertised by the ideologues and advocates of such systems.

For a while, the answer to this question was not yet obvious, but then it became clear for everybody. Very thorough impact studies were made available one after the other on how attractive such "free access" societies may be. Let me refer to some of those virtual impact studies:

1. "The Berlin Uprising: A First Outline" © 1953, Workers of the GDR.
2. "The Real October Revolution" © 1956, Hungarian nation.
3. "Prague Spring" © 1968, Czech and Slovak nations as co-authors.
4. "Poznan, Gdańsk and Solidarnosć" (a series) © 1956–89, Polish nation.
5. "The Fall of the Berlin Wall: Summary of Studies on "Free Access" Systems, © 1989, European nations (collective work), published by the German nation.

The advocates of "free access" are not communists (at most, only "common-ists"). They are, in general, those – such as academics and researchers – who do not care for copyright because they obtain their income from other sources. They would not be ready to accept or support the inhuman, undemocratic aspects of Soviet-type communist regimes. However, they, nevertheless, promote ideas that are very much similar to the fundamental economic and social principle of communism on which these regimes were based and due to the application of which they failed. Namely, the utopian, collectivist ideas reflected in the principle referred to earlier, expressed, in general, thus: "Everybody should work for the common good, without any special interest, according to his talents, knowledge, and experience, and everybody should have free access to the common good thus produced according to his needs."

Those "free access" regimes have collapsed because they offered free access to ever fewer products and services in ever worse quality.

Nobody should think that this was just due to the inappropriate application of the otherwise beautiful principle quoted here. It was due to the principle itself. This system

did not work since human beings are not abstract, perfect, altruistic angels. They do need incentives in the form of personal, private advantages – remuneration, income, property, and, *horribile dictu*, even profit – in order that they are ready to create and produce using their talents, knowledge, and experience as fully as possible. It is through the fulfillment of these direct, "selfish" interests that the common good may be served indirectly in the most effective way.

This is true in all sectors of human activities, and it is equally true in the field of creation, innovation, and dissemination of the results thereof.

The studies published in this volume – as a kind of mosaic – offer an insight into the past of the IP systems of the CEE countries, an outline of their failures and successes in their transition period, and a review of the current issues they are faced with – partly together with other European countries and even the entire international community. It is to be hoped that the book will offer useful sources – not only in the region covered by the studies, and not only to those who specifically deal with the history and/or comparative law aspects of intellectual property but for everyone who is interested in the development and functioning of intellectual property rights.

Acknowledgements

For a Canadian law professor of Indian origin to edit a book of essays on Central and Eastern European law is both a privilege and a challenge. Since the project is an unusual one, it may be worth a few words to explain how it came about.

My interest in this region actually arose many years ago – long before I knew anything about intellectual property law. Shortly after I started university in 1989, the Berlin Wall fell. This event, for me as for my generation, was a formative experience of my youth.

Later, as a doctoral student at Oxford, I wrote and defended a DPhil thesis on copyright reform in post-socialist jurisdictions, focusing on Russia and the relationship between the treatment of dissidents and the fluctuations of copyright law. I subsequently joined the University of British Columbia, in my native city of Vancouver, Canada, as an assistant professor of law, and was appointed to a Canada Research Chair in Intellectual Property Law in 2005.

In the academic year 2006–7, I was teaching an advanced seminar on "Current Controversies" involving intellectual property rights. As I recall, it was at the conclusion of the first day's session that I was approached by a student whom I hadn't met before. She explained that she was a Hungarian lawyer, now living with her husband in Canada, who would like to attend the class if she could. Her name was Dr. Agnes Kokai-Kun Szabó.

Over the months that followed, I discovered that she was a well-known and well-connected legal expert who had spent many years working on intellectual property in agricultural products in Hungary. When I subsequently visited Hungary myself, in the summer of 2007, Agnes had curated an extraordinary agenda of introductions and meetings for me. I met the renowned Mihály Ficsor, Péter Munkácsi, and many others who have since become valued colleagues and friends. Without exception, each and every one of the people whom I met on that trip was enthusiastic and supportive of my interest in intellectual property in the countries of Central and Eastern Europe. I remember, especially, the indescribable generosity of Dr. Ficsor, who willingly shared his time and expertise, and his unparalleled personal knowledge of the IP history of the region, on one afternoon; I now have the privilege of including his Foreword in this book. All of us agreed on the value of comparative perspectives on IP – and appeared to hold a shared conviction that the views of Central and Eastern European countries, and their unique experience of intellectual property issues, remained isolated from the IP world at large. The idea of a collaborative work that would address this problem ultimately culminated in the proposal for this book.

This Handbook does not claim to offer a comprehensive picture of intellectual property law and practice in the Central and Eastern European region. In view of the experience gained while assembling this collection of papers, it seems fair to say that it would be a daunting, if not impossible, task to produce such a comprehensive work in this particular field in the English language. Modern intellectual property law is characterized by rapid development, but the effort to present leading and truly representative scholarship from Central and Eastern European jurisdictions has involved special and time-consuming challenges. In particular, communication was a crucial issue – the use of English as a medium of expression for many experts whose first language is not English, and the publication of work with the capacity to reach audiences in different jurisdictions across the divides of legal culture and the conventions of scholarly writing. Nevertheless, these challenges had to be faced: one of the fundamental goals of the project was to find scholars who were true experts in their countries and fields of expertise, whether or not they had the practice of regular writing and publishing in English.

As is always the case when developing a book of this kind, various editorial choices have had to be made. These choices ultimately led to a focus on particular issues and areas of law that promised to be more accessible to authors and readers alike; and the decision to make a deeper commitment to a relatively smaller number of papers that would present research at a high level of excellence, which could be sustained by the book as a whole.

As editor, my own expertise in the area of copyright and related rights has inevitably played a role, facilitating the gathering of scholarship on copyright and new technologies – though industrial property, indigenous rights, legal history, and legal and political theory all receive thoughtful and insightful commentary from the contributors to the book. While all the countries of the region are not represented in this collection, more than a dozen countries are featured; and they include a relative diversity of jurisdictions from that part of the world.

If the twenty papers in this collection cannot offer a comprehensive picture of intellectual property in Central and Eastern Europe, they may nevertheless succeed in carrying out the fundamental mission of the book: to convey certain key characteristics and perspectives from the region, bringing an approach to intellectual property rights that is largely new to the international IP community. Ideally, any absence of comprehensiveness will be more than adequately compensated by the quality, integrity, and interest of these chapters; and it would be exciting to see them encourage further exploration and, of course, scholarship on intellectual property in this region.

Above all, the "mosaic" that is thereby composed, as Mihály Ficsor characterizes it, is one that should have the best possible chance at effective communication – reaching across linguistic and cultural barriers to portray legal and social realities, with clarity and precision, to English-speaking, and English-educated, readers. It is also worth pointing out that the detailed analysis of particular areas and issues in intellectual property offered by the contributors has the potential to lead to a deeper and more sustained understanding of the environment for intellectual property rights, as a whole, in the region – in a sense, allowing us to glimpse, in the words of William Blake, "a world in a grain of sand."

The successful realization of this project was made possible by the special efforts of the contributors, each and every one of whom must be thanked individually for their support

and encouragement, for the dedication and sincerity of their work, and for their patience while this experiment in comparative law developed and ultimately took flight.

A special and further word of appreciation is due to Professor Marketa Trimble, who made an exceptional contribution to the project through her critical insight and breadth of experience, and Dr. Péter Mezei, for his unflagging involvement at important stages of the work. Both also played an invaluable role in the search for excellent contributors to the book.

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Finally, my thanks are due to the editorial team at Cambridge University Press in New York. I have learned more from the privilege of working with Matt Gallaway, in particular, than I can express in a sentence or two. I only hope that the quality of the book reflects the involvement of this truly gifted editor from proposal stage to the point of publication.

Of course, I remain entirely responsible for all errors, omissions, and shortcomings of the book.

Mira T. Sundara Rajan
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