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**FORUM ON
CREATIVITY AND INVENTIONS – A BETTER FUTURE FOR
HUMANITY IN THE 21ST CENTURY**

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**THE ROLE OF INTELLECTUAL PROPERTY (COPYRIGHT) AND FUTURE
CHALLENGES TO CREATORS, INDUSTRY, LEGISLATORS AND SOCIETY AT
LARGE: THE CHALLENGE FOR POST-COMMUNIST COUNTRIES**

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Introduction

1. In order to justify my academic background, let me approach the topic of this section from a more academic perspective as opposed to the practical approach taken by my colleagues.
2. Innovation and creativity are characteristic of human nature. Creators as such have existed from the very first years of human history. The first stone axe and wall paintings drew on the knowledge and information exchange of that time. Although it is not quite right to compare the time dating back to thousands of years with today's Knowledge-Based Society and Information Society, the subject of creativity – a human being – has largely remained unchanged in his or her nature and motives of action. A human being is characterized by curiosity and passion to create something new, and, in addition to inner motivation, the current needs of an individual and a society constitute the driving force of creativity.
3. Attitudes to creative work as an activity changed when its results – inventions and creations – started to be protected by law. This did not happen until as recently as late as the 17th and 18th centuries. Creative work crossed the boundaries of the independent system of regulation of law when it turned into a direct social factor creating economic values, when industries based on creative work were born. It was only in the 17th and 18th centuries that interest groups related to creative work won the protection for their specific economic interests as independent rights guaranteed by the State. At the end of the 18th century, the protection of these so-called moral rights of authors was also ensured by law in the continental European legal area. The exclusive intellectual property rights based on the property law according to the Roman law system were a step forward in comparison to the system of privileges applied in the Middle Ages. But the law of the newer law which granted specific protection to innovations and literary and artistic works was initially of local importance, within the boundaries of one country, group of countries or region (in this presentation looking at the subject from the European angle). Intellectual property became global only at the end of the 19th century with the adoption of the Paris and Berne Conventions. The European regional intellectual property protection system thus developed into a global intellectual property system.
4. Contemporary legal and social theory speak of a global legal society (or a global legal system or world legal society). According to some scholars, such a global legal society may well already exist. Others argue that we neither do nor will in the future have a global legal society. The argument against the global society is that law (as a normatively structured communications system) at the level of a global society is no more than a set of legal systems that integrates all the different national systems within itself (Professor Werner Krawietz).
5. Let me raise two questions. Is it possible to speak about a global legal society in the field of intellectual property as part of the global legal society? The answer is probably yes.
6. What is a global legal society in the field of intellectual property? This is a situation where uniform basic social principles are globally recognized in the protection of intellectual property, and where the minimum standards have been agreed upon at least in the following areas: what is protected, which rights are granted and to whom they belong, how the rights are limited in the interest of society and by what means and in what manner the rights are ensured and protected.

7. I think that in the field of intellectual property we are moving towards a global legal society (differently from, for instance, financial law, property law, family law, the law of succession and other branches of law). The fact today is that, of all the countries in the world, by more than half have become part of a global intellectual property protection system (by joining the existing WIPO Conventions), and have national intellectual property systems created and implemented on the basis of unified international standards. There are probably also some countries that have no contemporary intellectual property protection system at all.

8. When we speak of a global legal society, the question arises of what is "global." Whether it represents 100%, 76% or 90% of the whole is a matter of opinion.

9. The speed of movement towards a global legal society in the field of intellectual property increased significantly in the 1990s as a result of adoption of international conventions. First and foremost I mean the activities of WIPO and the GATT Uruguay Round, which led to the establishment of the World Trade Organization with its TRIPS Agreement. We can also speak of a regional legal area and the regional harmonization of intellectual property in the European Union. Every regional legal society contributes to the global one.

10. My prognosis is that there will be a universal, global intellectual property system – in the form of a unified and standardized body of rules enacted in international conventions and national legislation. It concerns first and foremost the traditional fields of intellectual property, copyright and industrial property, but it may also include related rights and new *generis* forms of intellectual property protection. To date, intellectual property has been developed in the world for three centuries and international global harmonization for a little over one century, and the results are not bad given the dynamics of the process. How much time this will take I hesitate to say; maybe we need another 100 years.

11. For comparison, contract law, for example, evolved in Europe for over about 1500 years if we take the sixth century codification of the Emperor Justinian, today known as the *Corpus Iuris Civilis*, as the point of departure; the latter resulted from developments over the previous 12 centuries, but the global harmonization of contract law has yet not reached the same level as intellectual property harmonization.

12. Who are the global players (or social operators) forming such a worldwide intellectual property legal system? First of all, States and groups of States. But beyond the States and their communities it is industries, represented by lobby groups who direct the play. Industries are the global market players today. Today's technological advantages – the global information society – can connect all the players via the Internet within seconds.

13. I should like to pose some other questions, just for consideration and possible discussion, without giving any answers myself.

14. In whose name, for what purpose and in whose interests do the above-mentioned global players act?

15. Based on whose interests is the 21st century global intellectual property system constructed?

16. Does a human being, an individual, a person or a group of persons have an independent role to play in this global process?
17. Does the author, who in the continental European tradition has been the *beau* -all and end - all in building intellectual property legislation, retain his role?
18. Do the principles of the 18th century humanists regarding the sacredness and integrity of creative work, embodied in the great achievement of the 20th century – the human rights conventions – survive? Today there is no place for an author and the “romantic” concept of authorship any more. But also in the 21st century, we should fight for the human dimension in order to retain the human initiative on which all creative work is based.
19. Within the context of formation of a global intellectual property society, I should like to tackle briefly the situation in post -communist countries, mostly on the example of the former Soviet Union.
20. The influence of politics and ideology on law as the State’s normative system was remarkable in the socialist system. Literary and artistic works as well as technical works in the socialist society were State -oriented, centrally -planned and controlled. State involvement in the field of copyright was important: the ideology determined both the legal framework for the protection of works as well as the direction of the creative work of authors. Creative work progressed in one official ideological direction, deviations were not tolerated and opposition was punished. The Soviet Union did not join the international copyright protection system until as recently as 1973, when it became party to the Universal Copyright Convention of 1952.
21. As a result of the collapse of the Soviet Union and the establishment of independent States in 1991, all the former socialist republics had to carry out reforms that affected the whole of society and encompassed first and foremost the political, economic and legal reforms. This meant the transformation of the entire legal system, starting from the adoption of a new Constitution.
22. In the field of intellectual property there were a lot of crucial issues which demanded radical legal solutions. Let me mention just a few of them:
- A The place of intellectual property in the State’s political and ideological system
23. Several countries adopted a position that intellectual property rights are the fundamental rights of a person, provided for in the chapter of the Constitution concerning the fundamental rights and freedoms. As a rule, those chapters relied on the European Convention of Human Rights (1950) and corresponding United Nations conventions.
24. The Constitution of the Republic of Estonia (1992), Chapter II Fundamental Rights, Freedoms and Duties -§39. *An author has the inalienable right to his or her work. The State shall protect the rights of the author.*
- B The place of intellectual property in the State’s economic system
25. As a result of transition from the socialist planned economy to a market economy, intellectual property became an instrument of market economy. In Estonia, for example, a

so-called liberal market economy is being implemented, with the role of the State in regulating economic relations being seen as minimum.

C The place of intellectual property rules in the State's legal system

26. The Soviet legal system embodied the following intellectual property institutions: authors' rights (copyright), rights in inventions and rights in discoveries, forming separate parts of the Civil Code. Soviet doctrine did not recognize the theory of intellectual property consisting of economic rights.

27. Newly established legal systems regulate intellectual-property-related issues in separate laws, outside the framework of the Civil Code.

D Model of new intellectual property system

28. When one speaks of models of the intellectual property systems of European post-communist countries, the practical implications of the doctrine of a global intellectual property society become particularly clear. All the former Soviet republics that became independent and the post-communist countries of Central and Eastern Europe have relied on the WIPO treaties and the WTO TRIPS Agreement when drafting their own intellectual property legislation. Ten countries of Eastern and Central Europe, including the Baltic countries, are associate members of the European Union, their legislation being also modelled on the basis of EU directives, in addition to the conventions mentioned.

29. Let me briefly mention a few facts about Estonia, an associate member with which the European Union commenced negotiations in 1998. By the beginning of this year, all European Union copyright and related rights directives were harmonized, and Estonia had signed the two new WIPO Copyright and Related Rights Treaties of 1996. After Estonia's independence was reestablished in 1991, ten special Acts were adopted in different fields of intellectual property, and Estonia acceded or resumed its adherence to 14 international conventions in the field of intellectual property. New versions of several Acts have since been adopted.

30. The adoption of international conventions and the standards of EC legislation is an international obligation on these post-communist countries which are now associate members of the European Union. The key word characterizing the legislative drafting process of post-communist countries is harmonization. This also determines the direction and content of the new intellectual property legislation.

31. Finally, I should like to make one more comment on this subject. During the first years of reforms, it was relatively easy to adopt new legislation and incorporate it in the provisions of international conventions and the laws of foreign countries, as well as scientific ideas (academics have always written and are still writing laws in Estonia). Now, lobby groups of industries have also become an influential factor in post-communist countries, and at times have succeeded in blocking some provisions not favorable to them in the process of harmonization of national law with the provisions of conventions or EU directives.

E Implementation

32. The new legislation based on international models has given a powerful impetus to the development of institutions responsible for the implementation of intellectual property. State intellectual property agencies, State patent offices, copyright departments at the ministries of culture or justice, collective administration organizations, special police task forces to fight piracy and soon are some examples of the institutions specially set up or developed.

F Enforcement

33. The dichotomy between the law in law books and the law in real life is particularly well expressed in enforcement issues. A reply to the question whether the former communist countries are prepared to transpose the standards of advanced countries is to be found in the field of enforcement. It is easier to create a new law, especially in a country that has lacked a law in a given area. For example, some post-communist countries have enacted more extensive consumer legislation than in several member States of the European Union. The unwillingness of a society to adopt standards is visible in enforcement. Implementation is such a problem because in most cases, the law cannot be implemented, whereas in some there is now a wish to do so for one reason or another.

G Information of the public

34. Henry Olsson is absolutely right when he speaks of the need to improve information efforts relating to intellectual property and provide practical advice. This is relevant also particularly relevant to post-communist countries. Training is one of the key issues in the present knowledge-based society. Training of judges, civil servants, police and customs officers and of trainers, students and other target groups is one of the key issues in the enforcement of new intellectual property laws. The role of WIPO in providing information and training and in granting practical assistance is most significant.

35. To conclude, I should once again like to focus on human initiative. There is a generally known recommendation on how to cope with oneself which is to live one day at a time and, on waking up in the morning, to think about the coming day only and not about the possible future. However, somebody must assume the difficult task and responsibility of looking into the future and drawing up a scientific action plan for moving in that direction. The organizers of this Forum on creativity and inventions – a better future for humanity in the 21st century – have taken on that difficult task, and there is no doubt that such a collective exchange of ideas is a milestone on the road towards the global intellectual property society.

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