

**SOVIET PERIOD FILMS IN TODAY'S COPYRIGHT LAW:
GERMAN AND BALTIC EXPERIENCE**

**Ramūnas Birštonas¹, Thomas Hoffmann², Aleksei Kelli²,
and Vadim Mantrov³**

¹Mykolas Romeris University, ²University of Tartu and ³University of Latvia

Abstract. This article reviews the legal experience of Germany, Estonia, Latvia and Lithuania dealing with the films that were created in these countries during the Soviet period. These films do not only form a remarkable part of the cultural heritage of these nations, but also a possible source of revenues as well. Within this context, a particularly acute question concerns the legal fate of digitized versions of these films, inflicting a multitude of copyright law issues, as the majority of these films are still protected by copyright. In contrast to the almost identical legal regulation in the Soviet period, after the collapse of the Soviet Union all the four countries investigated in this paper chose separate ways to address copyright problems which soon arose, resulting in a surprisingly heterogeneous treatment of film copyrights, which spans from considerably user-friendly solutions to factual lockups of the film stock.

Keywords: audiovisual works, films, copyright, related rights, authors, performers, Soviet period

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1. Introduction

Within society, films¹ have several functions. They serve as mass media, still most essential today, apart from the internet. They are a form of artistic expression, and an economical factor. While its function as mass media has always been dominant since the creation of the first ‘motion pictures’ around 1900 – and therefore served as an ideal propaganda tool for various regimes – the importance of the artistic and the economic aspect changed over time.

¹ In this article the term ‘film’ has the same meaning as in the Directive 2006/115/EC i.e. a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

In the Soviet Union, the value of films and movies as means of information, education and propaganda was realized from its earliest days. Mosfilm, founded in 1920, as the oldest European film studio and long being the largest one (Mosfilm homepage), started production in the early twenties, and many of the movies created at that time – e.g. “Battleship Potemkin” by Sergey Eisenstein – are acknowledged not only as extremely popular in cinemas all over Europe (ideally fulfilling its mass media function), but also as a ‘cinematographic gem’, i.e. they were setting standards in the film’s function as a form of artistic expression as well. As the state holds the monopoly on the film production and as much of its ideology was transmitted via these media, the function of this branch as the central mass medium was maintained throughout the Soviet period.

Compared with the development of non-Soviet films, which were dominated by Hollywood in the U.S. and several national studios in Western Europe, the artistic level of Soviet films was generally high, although a certain gradual decline could not be ignored. However, the most important contrast to non-Soviet films was that films and movies were not an economic factor in society (the third function mentioned above), effecting a very rudimentary regulation of all intellectual property issues inflicted with films and movies: at the time when Western European countries were involved in the gradual development of copyright law standards, based primarily on the Berne and Rome conventions, the countries belonging to the Soviet bloc – the German Democratic Republic (the GDR) and the three Baltic states: Estonia, Latvia, Lithuania – were following an utterly different path. These differences were based on two different predispositions, both based on the different economic-institutional structure of socialist states, particularly by the suppression of private property and the dominance of public property (see also Ulmer 1970:33–34). First of all, although copyright protection was recognised, the regulation of substantial copyright law issues had many peculiarities, hardly understandable from today’s point of view. The countries in the Soviet Union did not join the Berne Convention or Rome Convention and the standard of copyright protection was lower – for example, related rights were not recognised at all, the term of protection was considerably shorter,² the restrictions of rights were much broader, remuneration for authors was regulated by administrative orders and so on. These differences were quite natural – as there was no free competition and market was controlled by the socialist state, there was no (and could never be) unfair competition in Soviet countries, which is, ultimately, the background for copyright legal regulation in every country which is based on the free market. On the other hand, the authors’ and performers’ pecuniary interests were secured via the social security schemes and labour law, as

² The Soviet Union adhered to the Universal Copyright Convention in 1973 and, as a consequence, the term of works’ protection was extended to 25 years, which still fell short compared with the 50-year term provided by the Berne Convention Paris Act.

normally all of them had a labour contract and constant income and the amount of the latter was quite equal to that of all other categories of workers.³

Secondly, the main copyright owner (and the main user of works) was the socialist state. As already indicated, normally all authors created works under a labour contract with organisations and all the organisations were state-owned, thus the state effectively collected the main part of copyrights. As far as films are concerned there was another layer of state interest. Cinematography being a very powerful beneficial ideological tool and a big threat at the same time, state interest to control it was very strong, so films were produced only in designated enterprises, which normally had a monopoly in separate socialist republics.

The basis of these differences collapsed together with the Soviet Union. As a consequence, the countries under discussion in this article have one by one adjusted their national copyright laws to the international and regional standard: the GDR was reunited with the Federal Republic of Germany and the Baltic states adhered to such international instruments as the Berne Convention, the Rome Convention, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), they also signed association agreements with the EU and, shortly after, became full members, thus adhering to the copyright *acquis* of the EU. Most of the state-owned organisations were privatised and free market institutions were introduced. The authors faced new opportunities along with the loss of the previously secure position and were put in the conditions analogous to those in the rest of European countries. Still, the question remains how to deal with the huge amount of works that were created in the Soviet period.⁴ Among the mass of other works, there is a film stock, which has big cultural, educational and, increasingly, economic value. Due to the essential changes which transformed copyright law, the precise legal status of these films poses many questions. Are they still protected? If yes – is the level of protection the same to that of the works created after 1990? And – maybe most importantly – who is the copyright holder? Even if it is the state – should authors and other right holders receive some compensation? What about related rights to these films?

All these copyright-related questions⁵ become relevant when one has to decide the possibility of use and reuse of the films created during the Soviet period. The most pressing need is with the digitisation of films. On the one hand, digitisation is a means of preservation, on the other it enables new possibilities for the users and

³ In fact, authors could benefit from additional sources, for example, extra payments based on the number of cinema viewers.

⁴ The chronological limits of the analysis are from 1940 to 1990. 1940 is the date when all three Baltic states were occupied and incorporated into the Union of Soviet Socialist Republics (USSR). Although the USSR was formally dissolved in 1991, the Baltic states declared their independence in 1990. Also in 1990 East Germany was reunited with West Germany.

⁵ In addition to identified problems there are also issues relating to personal data protection. Authors and performers can stop the use of a work based on the claim of violation of personal data protection (e.g. in documentaries). Since these issues require a separate analysis they are not discussed in this article.

the public. Depending on the answer to the questions the huge amount of audiovisual resources is either locked, or is open to use.

In the following, the (different) experience answering these questions in four former Soviet states – the GDR, Estonia, Latvia and Lithuania – is presented.

2. The GDR

2.1. Film production in the GDR after 1945

The film production started in the Soviet sector already in 1946, featuring the fate of German soldiers returning to the destroyed capital in movies such as “Die Mörder sind unter uns” (“The murderers are among us”). The Soviet military administration granted an exclusive licence for all cinematographic films to DEFA (*Deutsche Film Aktiengesellschaft*), a state-owned enterprise founded on 17 May 1946 in Potsdam-Babelsberg with the explicit purpose to supply Germany with movies and films “cleansing the nation from fascist thought and educating it in socialist spirit” (Hegemann 1996:2). Apart from the studios for movies in Potsdam-Babelsberg, a studio for documentaries in Berlin, a studio for animated films in Dresden, a studio for synchronisation in Berlin-Johannisthal and a ‘copy-centre’ in Köpenick belonged to DEFA. Altogether, approximately 950 movies, 820 animated films and 5.200 German synchronisations of movies in foreign language movies were produced in the GDR between 1946 and 1990 (DEFA Foundation 1999).

Apart from DEFA and the East-German Television – which was a different legal entity directly managed by the East-German ministry of culture – there were only few and very small privately run ‘film clubs’, which did not produce films of public significance (Hegemann 2–4). On the base of this centralized structure, control and – if desired – influence by the Socialist Unity Party (the German communist party) was successfully guaranteed and exercised until 1990 (Wandtke 1999:305–311).

2.2. Copyright in films in the GDR copyright law

The separation of Germany after 1945 did not at first have any legal impact on substantial copyright law: both in the Federal Republic of Germany as well as in the GDR the *Literarische Urheberrechtsgesetz* (Act on copyright in literary works, LUG) from 1901 and the *Kunsturheberrechtsgesetz* (Act on copyright in works of art, KUG) from 1907 remained in force, which – since the implementation of Art. 14 of the 1908 revised Berne Convention in 1910 – explicitly also referred to cinematographic works in § 15 a KUG (Heker 1990:61, Schrickler and Loewenheim 2011:116). It was not before 1965 that both German states thoroughly reformed their respective copyright law: while the West German *Gesetz über Urheberrecht und verwandte Schutzrechte* (UrhG) came into force on 9 September 1965, the Eastern German pendant, the *Gesetz über das Urheberrecht* (UrG), followed on 13 September.

The East German UrG ceased to be applicable on 2 October 1990, when it was substantially replaced by its West-German counterpart. Still, it is applicable for all films produced in the GDR before 1990 – which makes it practically relevant until today (Schack 2013:67).

The separation of cinematographic films and TV films (as seen in the duality of DEFA and Television of the GDR) could be found in the legal regime of copyright law as well: only “Filmwerke” (cinematographic movies) were explicitly defined and hence comprehensively protected in § 2 II 2e) UrG (except – at least according to East German jurisdiction – from film exposés). The definition – based on the traditional “Werkbegriff” – did not essentially differ from the respective definition in the West-German UrhG.

According to § 10 Abs. 1 UrG, the film was the result of a ‘joint effort’, which is based on ‘individual creative contributions’. The role of the director was controversial; although he is mentioned as the leading element in § 10 UrG, he in practice was often not recognized as a protection-worthy author by the GDR institutions (Wandtke 1999:306).

Just as in other fields of copyright law, all rights of use belonged generally to the author(s) of the film. The author generally had to transfer these rights explicitly or impliedly to any state institution or private enterprise who wished to show, broadcast or use the movie in any other way. This principle is positively stated in the UrG as well (§ 64 for movies, § 67 for TV films). But as there is a multitude of inflicted authors in a film, § 10 II UrG provides for a representation mechanism, stating that the film company (here DEFA) is exclusively entitled (and obliged!) to grant any right of use in the produced film in its own name. It has to be marked that it does so in the function of a ‘trustee’ on behalf of the authors, not as an original bearer of the rights. The legal consequence is that according to § 10 II DEFA was entitled to any disposition of these rights, making these dispositions permanently effective towards the third persons. On the other hand, a certain legal uncertainty arises as soon as this “authorisation to use the rights as a trustee” expires, which happened when the UrG ceased to be applicable in 1990. Generally, all rights of use would fall back again exclusively to the original authors, §§ 88, 89 UrhG (Hegemann 97) – if § 132 I UrhG did not state that §§ 88 f UrhG were not applicable for contracts of use concluded before 3 Oct 1990. §§ 88, 89 UrhG does therefore not confirm any fallback of rights of use to the authors.

But, in contrast to §§ 88, 89 UrhG, with a retrospective effect applicable is § 43 UrhG: this provision refers to §§ 31-44 UrhG, which postulates an obligation to assign the right of use in all works produced in performance of employment duties to the employer (just as § 10 II UrG). As all GDR employees signed the same DEFA standard business terms including a respective assignment (Schricker and Loewenheim 2011:§ 43, Ulmer 1980:401), generally all rights of use were effectively transferred to DEFA within the respective employment agreement according to § 43 UrhG.

The scope of transfer remains questionable, especially the transfer of rights of unknown use as video rights. As § 43 UrhG is not a *cessio legis*, but merely an obligation to a respective transfer, the authors could – explicitly or impliedly – only transfer these rights of use which were known in the GDR at the point of time when the eventual transfer occurred. Video cassettes were first traded in Western Germany around 1978–1979 (Fromm and Nordemann 2014:§ 31); this can be thought of as the point of time when the video technique became known in the GDR as well.

There is also a possibility to transfer rights in unknown use, but such a clause was not included in the DEFA standard business terms. When the GDR regime realized that – due to this fact – it eventually did not have the video rights in movies before 1978, the Ministry of Culture issued on 12 June 1984 together with the state television committee and the GDR council of ministers a “joint declaration on transfer of use in films and movies”, which declared that “the right of use includes all copies, whereas it is not relevant in which technical way the copy is made respectively in which technical way the presentation is achieved” (for details see Haupt 1991:285). As this declaration clearly contradicted § 18 URG, which explicitly required an agreement for any transfer, the declaration was never published. The declaration was seen as void after unification, as it was clarified in section II nr. 2, § 3 III Treaty on Unification, which states that all rights, which were usually not transferred, remained with its authors (Wandtke and Haupt 1992:25).

In conclusion, DEFA therefore acquired all rights of use (Haupt 1999:388), since 1978 including all video rights as well. Also according to the BGH – the German Supreme Court, directors are not entitled to compensation/cease and desist against the broadcasting of films produced by them for GDR institutions, as the exclusive transfer of all broadcasting rights towards the television department of the GDR on base of § 10 II URG was seen as effective (Butz 2003:361).

2.3. Legal development after Reunification

In 1992 DEFA was officially dissolved. It was at first managed by the *Treuhandanstalt* (the public-law Trust Agency managing the privatisation of all major state-owned enterprises) and then sold to *Compagnie Immobilière Phenix*, a subsidiary company of *Compagnie Générale des Eaux* (later *Vivendi Universal*), a French multi-branch conglomerate. In 2004, a private consortium acquired the studios.

Still, both sales only referred to the studios and did not include the rights in the films: when the GDR government realized that DEFA – whose Foreign Trade Agency (*DEFA Außenhandel*) was under harsh critique those days due to some non-transparent transactions (DEFA Foundation 2014) – would face a rather instable future, it passed on 25 September 1990 (just a few days before it ceased to exist), a law on the Establishment of a DEFA Foundation, to which all rights in DEFA films were transferred en bloc. But the DEFA Foundation did not survive long, as there were not only irreparable formal defects in the foundation

procedure, but also a conflict between rights transferred by the Foreign Trade Agency abroad (i.e. to all foreign countries including Western Germany) and those transferred by *PROGRESS Film-Verleih*, a former state-owned film supply agency, who had the monopoly to supply East-German cinemas with DEFA-movies. An effective management of the DEFA film stock was inhibited by a multitude of other unresolved questions as well, such as, among others (DEFA Foundation 2014):

- dealing with films transferred to DEFA from other Eastern European countries,
- the establishment of a documentation of all existing rights on the basis of contract documents,
- sorting all printed documents left by Progress and the DEFA Foreign Trade Agency for transfer to the Federal Archives,
- sorting all files and materials of the animation studios and documentary studios (which were stored already in the German federal archive files),
- the regulation of further handling of DEFA films which had remained after 3 October 1990 in embassies, cultural institutes and friendship societies abroad,
- handling unsettled litigation with the contractors of the former DEFA Foreign Trade Agency,
- applying for legal protection for DEFA films in the United States, and
- the possible regulation of further copyright problems.

It took almost nine years before the majority of these questions were settled and the status of a new foundation was agreed upon by the finance administration and various further state bodies, so that it was not before 28 January 1999 that today's DEFA foundation was established. The DEFA transferred all rights of use in the complete film stock to *PROGRESS Film Verleih*, which was transferred in 1997 to *Tellux Beteiligungsgesellschaft mbH*, a private limited company which shares were held by nine Southern-German bishoprics, which became exclusive owner of all shares in *Tellux Beteiligungsgesellschaft mbH* on 1 January 2001. Since this transfer, no further change to the attribution of rights in DEFA-films occurred, so that today *PROGRESS Film Verleih* has all rights in films produced in the GDR within the DEFA-conglomerate (PROGRESS Film-Verleih GmbH 2014). It does not lack a certain irony that all movie productions of the GDR, parts of them forming the core of socialist indoctrination, are today exclusively controlled by a company which shares are held by the Catholic church.

3. Estonia

3.1. Film production in Estonia 1940-1990

There were two main organizations creating films during the Soviet period in Estonia: Eesti Telefilm and Tallinnfilm. Roughly speaking, Eesti Telefilm specialized in production of films for television and Tallinnfilm for cinemas.

Eesti Telefilm was an organizational unit of Eesti Televisioon (Estonian Television). Eesti Rahvusringhääling (Estonian Public Broadcasting) is a legal successor of Eesti Televisioon and thereby Eesti Telefilm (Eesti Rahvusringhääling 2013). In total Eesti Telefilm has produced 877 films which can be categorized as follows: 438 documentaries, 153 documentary programmes, 45 feature films, 4 animation films, 223 musical films, 24 children's films.⁶

Tallinnfilm had Eesti Kulturfilm (Estonian Culture Film) as a legal precursor. Eesti Kulturfilm was nationalized by the Soviet regime in 1940. Its official name was changed several times until 1963 when it was renamed as Tallinnfilm. Today the owner of Tallinnfilm is the Estonian Film Institute (Estonian Movie Database 2013). In total Tallinnfilm has produced 2766 audiovisual works which can be categorized as follows: 146 feature films, 498 documentaries, 192 animation films, 1930 newsreels and chronicles.⁷

3.2. Copyright in films in Estonian copyright law

From the occupation of Estonia until 1 January 1965 the Russian Civil Code was applicable. The Civil Code of the Estonian Soviet Socialist Republic (the Civil Code of the ESSR) entered in force on 1 January 1965. According to Art. 490 (1) of the Civil Code of the ESSR copyright in a film belongs to the organization which organized its production. Only rights in amateur films belonged to their authors (Art. 490 (2) of the Civil Code of the ESSR). The commented edition of the Civil Code of the ESSR emphasizes that the organizations which organized filming have the copyright in films despite whether films are produced for television or cinemas. It also does not depend on genre or techniques of filming (Ananjeva et al. 1969:536).

The Civil Code of the ESSR did not recognize rights related to copyright such as rights of a performer, broadcasting service provider and producer of the first fixation of a film. Since the law did not provide rights for performers' organizations which made films, it did not include special provisions in their contracts regulating rights and obligations of performers.

The Estonian first Copyright Act (ECA) entered into force on 12 December 1992. It was a political decision to give the ECA retroactive effect. This created a completely new situation for exploitation of films made during the Soviet period. Art. 88 ECA titled as "Protection of works and results of work of performers, producers of phonograms or broadcasting service providers created before entry into force of this Act" provides the following regulation: "[t]his Act also extends to works and results of the work of performers, producers of phonograms or broadcasting service providers which are created before 12 December 1992". The retroactive effect of the ECA had several implications for the ownership and exploitation of audiovisual works created during the Soviet time.

⁶ E-mail communication with the head of the administrative and legal department of the Estonian Public Broadcasting Karin Victoria Kuuskemaa (25.10.2013).

⁷ E-mail communication with the film heritage project manager at the Estonian Film Foundation Anu Krabo (18.11.2013).

Firstly, it sets a framework for works created within employment which is also applicable for the Soviet period films. Art. 32 (1) ECA provides that “[t]he author of a work created under an employment contract [...] in the execution of his or her direct duties shall enjoy copyright in the work but the economic rights of the author to use the work for the purpose and to the extent prescribed by the duties shall be transferred⁸ to the employer”. There are special regulations concerning films. According to Art. 33 (2) ECA “[c]opyright in an audiovisual work shall belong to its author or joint or co-authors – the director, the script writer, the author of dialogue, the author of the musical work specifically created for use in the audio-visual work, the cameraman and the designer. The economic rights of the director, the scriptwriter, the author of dialogue, the cameraman and the designer shall transfer to the producer of the work unless otherwise prescribed by contract”.⁹

Secondly, the ECA creates special guarantees to the authors of films. Namely, in instances where the author's economic rights are transferred (or where such transfer is presumed) to a producer of films or the author has granted an authorisation (licence) to use (including rent) a film, the author shall retain the right to obtain equitable remuneration from the television broadcasting service provider, commercial lessor or another person who uses the film. An agreement to waive the right to obtain equitable remuneration is void (Art. 14 (6)). The regulation is partly based on the Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental and lending rights and on certain rights related to copyright in the field of intellectual property which obliges the member states to provide for unwaivable equitable remuneration in case of rental of audiovisual works. The ECA, however, goes further by extending the remuneration right to all uses. This clause, combined with the principle of retroactive effect of the ECA, leads to a situation where it is also necessary to pay remuneration to the authors of the Soviet period films.

Thirdly, the Civil Code of the ESSR did not recognize related rights such as rights of a performer (actors, singers). Therefore contracts between organizations producing films and performers did not regulate these aspects (for further discussion see Kuuskemaa 2013:17). The ECA enacted in 1992 introduced these rights. Art. 65 ECA provides that performers enjoy moral and economic rights in the performance (interpretation) of works. This means that in order to use (e.g. reproduce, make available, broadcast) the performance the consent of the performer is required (Art. 67, 68 ECA).

⁸ The Estonian copyright doctrine is based on the assumption that a legal entity cannot be the author (Art. 28 (2) ECA). Therefore the rights in works created within employment are first vested in the author and then according to law automatically transferred to the employer.

⁹ Legal regime of musical works is regulated differently: “[t]he economic rights of the author of the musical work used in the audiovisual work shall not transfer to the producer regardless of the fact whether or not the work was specifically created for use in the audiovisual work” (Art. 33 (2) ECA).

Fourthly, the Estonian Public Broadcasting and Estonian Film Institute as organizations holding copyright in the Soviet period films and the authors of these works (mainly represented by copyright societies) disagree about the extent of rights controlled by the organizations. The authors are of the opinion that only the economic rights covering known ways of exploitation at the time of transfer belong to film production organizations. According to the authors' assertion they have control over the digital exploitation of works (e.g. digitalization and production of DVDs and making films available in the Internet). This matter is not settled and there is no case law.

Fifthly, there are also problems with moral rights. The ECA has an extensive catalogue of moral rights which also includes the right of integrity of the work.¹⁰ This right is not limited to protecting an author's honour and reputation but it covers any changes.¹¹ Since moral rights are inseparable from the author's person and non-transferable (Art. 11 (2) ECA) then authors as owners of moral rights can object to any changes¹² made to a work. There are plans to limit the integrity right so that it would only protect the authors' honour and reputation (see Proposal on the new Copyright and Related Rights Act). This could reduce the arising tensions.

3.3. *The present situation*

Due to the above described regulatory issues, the use of the films created during the Soviet period requires more effort and recourses. The legal successors of the organizations which produced films have to pay again to people who were involved in creating the films. This requires resources but it can be done. The problem with performers (actors, singers) is even worse. It is often impossible or administratively very burdensome (e.g. in a film about a song festival) to identify them and get their authorization for use. At the moment the discussion is not about making available and distributing these works. The problems already start with the preservation which requires digitalization. Some part of this rich cultural heritage could even vanish if it is not digitalized without delay. To address these problems the following solutions are put forward:

- 1) in the preparatory material (Kelli et al. 2013:186–190) concerning the ongoing copyright reform in Estonia it is suggested by T. Seppel that the retroactive effect concerns only the protectability of works and objects of related rights (performances). It does not regulate the question who owns the rights in these objects. When we interpret the title and content of Art.

¹⁰ Art. 12 (1) clause 3 ECA reads: "The author of a work has the right to make or permit other persons to make any changes to the work, its title (name) or designation of the author's name and the right to contest any changes made without the author's consent (right of integrity of the work)".

¹¹ Performers have similar rights as well. According to Art. 66 clause 3 ECA "A performer shall enjoy the following rights right of inviolability of the performance".

¹² Even the changes that are not prejudicial to the author's honour and reputation such as technical alterations, digitalization and colorization of audiovisual works. It is, however, sometimes said that colorization of black and white films has a negative impact on its artistic quality.

88 (1) ECA, it becomes evident that this approach is problematic. The title of Art. 88 (“*Protection of works and results of work of performers, producers of phonograms or broadcasting service providers created before entry into force of this Act*”) might really give an impression that this section is limited only to protectability. However, Art. 88 (1) of the ECA is worded in a broader manner: “[t]his Act also extends to works and results of the work of performers, producers of phonograms or broadcasting service providers which are created before 12 December 1992.” The term ‘extends’ is not the same as ‘protects’ but implies that the works and objects of related rights are subject to the same legal regime as those objects created after 12 December 1992. There is no case-law clarifying the issue. Even if we say that the ECA only concerns the protectability of works and objects of related rights then we face another problem. Namely, differently from works, performances created within employment belong to performers.¹³ Since performances were not protected during the Soviet period the ownership issue was not regulated. If we now assume that performances are protected then we need to determine who owns them. Most likely the current law is applicable. Also this approach does not solve problems with integrity rights and the rights to unknown uses;

- 2) it is also suggested that the adoption of the extended collective licensing scheme could have a favourable impact on solving the problem with the Soviet period films (Kuuskemaa 77–78). At the moment it is very likely that the extended collective licensing scheme will be introduced in the new Estonian Copyright and Related Rights Act (for further discussion see Vasamäe 2012:529–534);
- 3) The Estonian Film Institute (2013) has submitted a reform proposal to address the issue of the films of the Soviet period. There are two key elements in this proposal. First, the current law is amended to provide that rights of authors and performers of the Soviet period films belong to the legal successors of the organizations which produced those works. Second, to balance the situation the authors and performers would have the remuneration rights.

To sum it should be emphasized that under these legal circumstances performers should receive compensation. When it comes to unknown uses (in the internet, DVDs), the situation is not very clear. Problems with the integrity rights will arguably be solved with the adoption of the new Copyright and Related Rights Act.

¹³ Art. 67 (5) ECA provides: “Upon performance of a work in the execution of direct duties, the economic rights of the performer are transferred to the employer only on the basis of a written agreement of the parties”.

4. Latvia

4.1. Film production in Latvia 1940-1990

During the time when Latvia was a part of the USSR the only studio in Latvia where films were produced (i.e. filmed) was the state undertaking *Rīgas Kino-studija* (Riga Motion Pictures Studio). This Studio was founded in 1948 when two local film studios were joined under the title ‘Riga Studio of motion pictures and chronicle – documental films’ whose title was changed in 1958 to Riga Motion Pictures Studio mentioned above.

It was decided in 1995 that the state undertaking ‘Riga Motion Pictures Studio’ shall remain within state property. However, later this decision was reconsidered. By modifying it into a state joint stock company (JSC) under privatisation, it was privatised in 1997. Yet, the whole process of privatisation, as it is indicated in the Latvian legal literature, took much longer, from 1996 to 2002 (Veikša 2010: 162–163).

As it emerges from the privatisation documents, though the state undertaking ‘Riga Motion Pictures Studio’ was admitted as a cultural object of the state importance it was privatised as consisting of a land plot and buildings. This fact points out that films produced at this Studio during the Soviet Union time were not subject to privatisation.

According to the information presented by the currently operating JSC ‘Riga Motion Pictures Studio’ itself, 183 films were made before the year 1990, i.e. within the Soviet Union period, and only one after that year (see Riga Motion Pictures Studio). However, the total number of films made at that studio is much bigger: the ongoing dispute between the above company and the Ministry of Culture which brought a claim to the court on behalf of the Republic of Latvia (referred to below) involves 973 films produced in the time period between 1964 and 4 May 1990 of different kind and genre at that Studio. The latter fact remains unchallenged in the ongoing dispute as it could be seen from the judgment of the first instance court adopted in this dispute (Judgment of Vidzeme district court of Riga city, 2013).

4.2. Copyright in films in Latvian copyright law

According to the jurisdiction *ratione temporis* recognised in civil law, a particular legal relationship shall be governed by law which was effective at the time when that relationship was established. Similar approach was exploited when the first Latvian law on copyright – the law ‘On copyright and neighbouring rights’ of 1993 – was adopted after 1990. The law which prescribed its entry into force stated that obligations which arose before 15 May 1993 shall be discussed in accordance with that laws which was in force until 14 May 1993 (see Art. 2 of Decision of the Supreme Council of the Republic of Latvia ‘On entry into force of the law of the Republic of Latvia “On copyright and neighbouring rights”’).

Due to these reasons, it is necessary to distinguish two situations concerning the films produced at the Riga Motion Pictures Studio during the Soviet Union.

Both have different legal regimes, one before 1990 and another after that year until now.

4.2.1. Situation before 1990

The Civil Code of the Latvian Soviet Socialist Republic (the Civil Code of LSSR) was adopted on 27 December 1963 and entered into force on 1 June 1964; it completely lost its power in 1992–1993 when the currently effective Latvian Civil Law was adopted.

The Civil Code of the LSSR regulated copyright issues, particularly its Part IV under the title “Copyright” which was in force from 1 June 1964 till 11 May 1993. However, it should be mentioned that the concept of intellectual property was unfamiliar to this law as well as the Soviet law in general (Rozenfelds 2010:115).

Art. 497 (3) subsection 6 of the Civil Code of the LSSR envisaged, among other objects, that films are covered by copyright, i.e. films shall be considered as one of the copyright objects. Furthermore, Art. 510 of that code dealt with the ownership issues of films. Art. 510 (1) provided that an author's rights in a film or a television film belongs to an institution which produced it. As it is noted in the legal commentary of that provision, ‘[u]ndertakings which deal with producing films and television films are cinema studios, radio and television centres’ (Latvijas PSR Civiltodeksa komentāri 1979:656). Further in Art. 510 (2) it is also provided that an author of the script, a composer, a director, and other authors whose works are part of a film or a television film, each owns authors' rights to their own work. It is provided that a different legal regime applies concerning legal status of rights of these authors depending on whether they created these works during a fulfilment of a service order or in other cases (Latvijas PSR Civiltodeksa komentāri 657).

It is remarkable that in accordance with Art. 519 (1), the copyright of legal persons was in force without any term, i.e. indefinitely. However, its paragraph 2 provides that if a legal person ceases due to reorganisation, its copyright transfers to its assignee, but after liquidation – to the state. This provision, however, may be hardly applied in the discussed situation because after the reorganisation of the state undertaking ‘Riga Motion Pictures Studio’ into the JSC ‘Riga Motion Pictures Studio’, films produced at that Studio during the Soviet Union time were not subject to privatisation as it was discussed above. Therefore, none of the situations referred to in that provision apply to the discussed situation.

As a result, copyright in films produced in the Soviet Union should belong to a studio that produced them, in this situation – the Riga Motion Pictures Studio, in addition the authors of works which were exploited in that film kept the rights to their separate works included in films.

4.2.2. Situation after 1990

After the collapse of the Soviet Union Latvia adopted its own national laws governing, inter alia, ownership and copyright issues. However, the status of films

produced in the Soviet Union was not subject to any specific legal regulation. Therefore, this unclear legal situation concerning these films creates different interpretation possibilities with regard to the ownership of these films.

On the one hand, ownership issues undoubtedly including also intellectual property objects were dealt with¹⁴ by the Decision dated 20 March 1991 of the Supreme Council of the Republic of Latvia 'On State's Property and Basic Principles of Its Conversion'. Its Art. 2 provided that '[a]ll property objects is in state's property irrespective of its current possession except property of physical persons, cooperation and public organisations as well as all other state's property. As the state undertaking 'Riga Motion Pictures Studio' was neither a physical person nor a cooperation and public organisation, films produced by that undertaking should fall within the state's property in accordance with the above provision.

Due to those reasons, it is disputable that the Latvian Television usurped rights to films created in the Soviet Union (Ruseniņš 2009), which is also doubted in the Latvian legal literature (Veikša 2010:56). The reasoning of this conclusion arose from the fact that if films produced at the Riga Motion Pictures Studio fall within the state property in accordance with the Decision 'On State's Property and Basic Principles of Its Conversion' mentioned above, the Latvian Television did not usurp any rights, instead a question may be asked if the Latvian Television had received a permission from the right holder, i.e. the Republic of Latvia, to exploit these films.

From the other, Art. 3 of the law 'On entry into force of the law "On copyright and neighbouring rights" provided that obligations which are contrary as to their contents with the law and continues after 15 May 1993, shall be amended or terminated within a six month term by the agreement of parties or in case of disputes – by filing a claim in a court within the indicated six month term. If that norm were applied, agreements between the Riga Motion Pictures Studio and respective physical persons whose works were included in films would be contrary to the requirements of the first copyright law adopted in Latvia after 1990 based on principles of the Berne Convention. It may lead to conclusion that neither a state nor Riga Motion Pictures Studio may even be the right holder of these films but particular physical persons.

It is not therefore a coincidence that the complicated legal situation gave rise to disputes in Latvian courts over ownership issues of films produced by the Riga Motion Pictures Studio during the Soviet period.

4.3. The present situation

The unresolved situation with films produced at the Riga Motion Pictures Studio in the Soviet Union triggered different kind of disputes over the ownership of these films. It is connected with the fact that these films still enjoy commercial success and recognition among the Latvian public.

¹⁴ This opinion was explicitly supported by the first instance court hearing - a dispute between the Ministry of Culture and JSC 'Riga Motion Pictures Studio'.

In such a way, the currently existing JSC 'Riga Motion Pictures Studio' is involved in several court disputes about ownership issues of films created in the Soviet Union.

On the one hand, the Cabinet of Ministers refused the privatisation proposal¹⁵ by an individual person on privatisation of ownership of these films assuming that they are owned by the state. The court proceedings in this case have been suspended.

On the other hand, several years ago a dispute arose between the Ministry of Culture on behalf of the Republic of Latvia and JSC 'Riga Motion Pictures Studio' as the former claimed in court ownership rights over 973 movies produced at the Riga Motion Pictures Studio in the Soviet Union (Leta 2013). In this civil case, the first instance court satisfied the claim of the Ministry of Culture (Judgment of Vidzeme district court of Riga city, 2013). The defendant – JSC 'Riga Motion Pictures Studio' – appealed the judgment of the first instance court at the appeal instance court, which continued to hear the claim in April 2014.

Since the collapse of the Soviet Union no specific legal regulations in Latvia concerning the legal status of films produced in the Soviet Union at the Riga Motion Pictures Studio have been adopted. Uncertainty of the legal status of these films has triggered several on-going disputes in Latvian courts over the ownership of the copyright in relation to these films. Although the first instance court in one on-going dispute recognized the state's ownership of material rights to these films, it remains to be seen whether this judgment will be sustained by higher instance courts.

5. Lithuania

5.1. Film production in Lithuania 1940–1990

Similar to the countries already discussed, the production of films was concentrated in two state-controlled organisations: the state enterprise Lithuanian film studios (founded in 1940), which made films for cinemas and the Committee of State Television and Radio (Vilnius Television Studio was founded in 1957 and merged with Radio) produced films for television. Also, there was a possibility to create amateur films. But the latter were designed for family use only and pose no problems today, simply being economically irrelevant.

The Lithuanian film studios (LFS) production in the Soviet era is as follows: 30 animation films, 981 documentaries, 108 feature films, 1710 newsreels (Draft Regulation of the Government of the Republic of Lithuania concerning transfer of nonmaterial and material property 2013). The Committee of State Television and Radio produced 490 documentaries and 76 feature films.¹⁶

¹⁵ A privatisation proposal may be submitted with a request to hand over for privatisation something falling within the state property, in this case – owned by the Republic of Latvia.

¹⁶ E-mail communication with the director of the Archive unit of Lithuanian National Radio and Television Miglė Greičiuvienė (29.01.2014).

When Lithuania declared independence, both organisations remained under the state control. The Committee of State Television and Radio has changed its name to Lithuanian National Radio and Television and is now the state-owned national broadcaster. LFS was privatised in 2002.

5.2. Copyright in films in Lithuanian copyright law

After Lithuania was occupied by the Soviet Union in 1940, national codes were instantly replaced by the laws of the Russian Soviet Federal Socialist Republic. Among them was the Basics of Copyright Law, in force from 1928. The Basics of Copyright remained in force and regulated copyright-related matters in the then Soviet Socialist Republic of Lithuania from 1940 to 1965. Films or, more precisely, film strips were explicitly mentioned in Art. 4 of the Basics among other protected works. In spite of that, legal doctrine maintained that precisely the intangible film was the object of copyright and the material film strip was the object of property rights (Serebrovskij 1956:60). The duration of protection was 10 years from the moment of publishing (Art. 11, 14). However, more specific norms, especially establishing the holder of copyright in films, were absent. Related rights were not protected. But it should also be indicated that this period is not practically important as the majority of films produced within that period (mostly documentaries, which played an important ideological role) have already entered public domain.

When in the 1960s a new codification process took place in the Soviet Union, in Lithuania the Basics were replaced by the Civil Code of the Lithuanian SSR, in force since 1965. Copyright issues were regulated in part 4, “Copyright”. The films were mentioned in Art. 515 among other protected works.

The ownership of the copyright in film was regulated in the same way as in Estonia and Latvia. Art. 526(1) established: “Copyright belongs to the organisation which has produced the film”. This provision was considered exceptional, establishing a special case when law prescribed copyright to the legal person.¹⁷ It should be emphasised that the producing organisation was the only copyright owner of the entire film and directors, authors of the script, composers had copyright to their respective contributions (Žeruolis 1977:377). In respect to legal persons there was also an exceptional term of copyright established – these were protected without term. As was already indicated, the majority of films were produced either by the Lithuanian film studios, or by the Committee of State Television and Radio. Therefore, according to the situation of that time, copyright belonged to these two state organisations. One exception, although of no big practical importance, was mentioned in Art. 526(2) which established that in the case of amateur films, copyright belonged to the author (co-authors).

After 1990, when Lithuania regained its independence, laws were not instantly changed. Only in 1994 were the changes in the Civil Code made but they had a

¹⁷ Art. 524 established that copyright belongs to the legal persons in the cases provided by the laws of the USSR and Lithuanian SSR.

very limited impact on copyright regulation. Particularly, Art. 526 remained almost unaffected. The main change worth mentioning was the introduction of related rights in respect to performers and video producers.

The main changes took place in 1999 when the Law on Copyright and Related Rights was passed. The law of 1999 was based not only on the main copyright and related rights treaties but also on the EU directives already enacted by the time.

5.3. The present situation

5.3.1. Economic rights

The issue of the Soviet period films (as well as other works) was never addressed in the later legislation or case-law. Therefore, arising questions were solved in practice by the institutions involved in the application of copyright legal rules, i.e. copyright management organizations and, especially, the Ministry of Culture, which is responsible for the copyright policy. Although the Ministry of Culture has no formal right to explain copyright laws, in practice its position is the one on which other persons and institutions tend to rely. Particularly, the above mentioned institutions stick to the position that copyright legislation since 1994 indeed has no retroactive effect and the ownership issues in respect to films should be determined applying the Civil Code of Lithuanian SSR (Statement of the Ministry of Culture of the Republic of Lithuania 2005). This means that the copyright in films belong to the entity which has produced them or its legal successors (i.e. the Lithuanian National Radio and Television and private enterprise Lithuanian film studios). But, at the same time, the Ministry of Culture hold that this outcome does not apply to the rights that were unknown at the time of the production of a film. Unknown rights could not be transferred and, thus remained with the authors. This is the case especially in respect of two newly recognised rights: cable retransmission rights and the rights to receive fair compensation on the basis of the exception for copying for private use. This position has never been attacked by other persons and the payments for the above mentioned uses are distributed among the authors of the Soviet period films as well. As both rights are rights to receive remuneration instead of exclusive rights and are administered by the copyright management association only, they do not have any negative impact upon the exploitation of the Soviet period films.

All other economic rights are quite unequivocally held as the property of the respective organisations. While there were no further legal issues with respect to the Lithuanian National Radio and Television, the situation with Lithuanian film studios proved to be different. When LFS was privatised in 2002, economic rights were not separated from the rest assets and, presumably, became the private property. Since 2010 the Ministry of Culture has tried to retake the film stock and despite the agreement reached between the interested parties today the formal and factual owner of rights is still LFS.

5.3.2. Moral rights

The authors' moral rights in the Soviet period films pose no real issues. The regulation of moral rights was not very different in the Soviet period. The authors had the same rights they have now (i.e. the right of authorship and integrity), these were protected without a term. Therefore, moral rights in respect to Soviet films are recognized and protected as well as all other works despite the date of their creation or publication. On the other hand, there was no litigation based on the violation of moral rights and the main reason is that these rights are duly respected.

The situation with performers' moral rights is more complicated. As performers' rights were recognised only in 1994 and no retroactive effect was established, one could argue that performers have no moral rights in Soviet period films – the statement which would be clearly against overall expectations. As there were no legal actions this issue remains unclear, though the problem is more theoretical as the moral rights of performers are normally respected and pose no real economic concerns.

Conclusions

The analysis above shows that all four countries had a very similar legal and institutional environment with respect to films during the Soviet period. At present, their copyright law is again rather similar to the extent that they are bound not only by the Berne and Rome conventions, but also by the EU copyright *acquis*. Still, there was a period of transition immediately after 1990 when all four countries chose their own separate and individual ways. These different ways resulted in different approaches to exploit Soviet films.

Germany and Lithuania found the clearest solution, as all economic rights to Soviet period films have remained with clearly identifiable organisations and could be effectively administrated and/or transferred *en bloc*. A considerably more problematic situation could be found in Latvia where certain indeterminacy with regard to the copyright holder of the film stock remains.

At the other end of the spectrum is Estonia. The Estonian Copyright Act of 1992 was enacted with retrospective effect. This gave rise to performers' economic and moral rights which did not exist at the time of creation of audiovisual works. In addition to that the extensive catalogue of moral rights (including the right of integrity) created with the Copyright Act was also extended to the authors of Soviet period audiovisual works. As a result the use of the Soviet Estonian film stock by third parties is today basically barred.

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Address:

Ramūnas Birštonas
Mykolas Romeris University
Ateities st. 20, Vilnius, Lithuania
E-mail: birstonas@mruni.eu
Tel.: +370 5271 4525
Fax.: +370 5271 4561

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