COLLECTIVISM AND INDIVIDUAL RIGHTS IN NORWEGIAN COPYRIGHT LAW

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I

NORWAY'S prewar copyright legislation was as conventional and traditional as is usual in Western European copyright law. The Copyright Act of 1930 concentrated on the individual intellectual creator, acknowledging his exclusive right to reap the profits of his literary or artistic production. Our new Copyright Act of May 12, 1961, does the same.[1] Both Acts appear as being firmly built on the basic idea of the Berne Convention and of the copyright legislation of all Western countries, viz. that individual intellectual ownership is the best stimulant for increased cultural output as well as the just way to remunerate authors.

In some respects the similarities of the 1961 Act and the 1930 Act are not only striking, but indeed very surprising. Both Acts presuppose that individual authors bargain with individual buyers over the exploitation of their works. This may have been a very sound assumption in 1930, but in 1961 it certainly was, in many situations, no longer true. Composers and song writers have long ago realized that while copyright acts in principle give them a right to compensation for the performance of their works, the same acts seldom provide them with effective means of really getting the money. Forced by necessity, they have formed *performing rights societies,* now world-embracing organizations, in which they have vested their rights. The Norwegian performing rights society, TONO, whose takings in 1930 totalled £1,650, now claims to represent ninety-odd per cent of the world's repertoire of music subject to copyright. In practice, therefore, hardly a single protected tune may be played in public in this country without the authorization of TONO. The Copyright Act, however, seems blissfully ignorant of this. It contains a number of

[1] In force from July 1, 1961. An authorized English translation of the Act was published in *Le Droit d'Auteur (Copyright)* 1962, pp. 106 ff. For a brief survey of the Act, see Birger Stuevold Lassen, "Norwegian Copyright Law Revision", *Bulletin of the Copyright Society of the U.S.A.*, vol. 9 (1962), pp. 307 ff.

provisions concerning the individual composer, but none of these even mentions the existence of the music monopoly; only once does the Act refer to organizations "representing a majority of Norwegian authors in the field concerned".[2]

But the 1961 Act is not our only postwar statute dealing with copyright and related matters. No fewer than three other acts have been promulgated, and these acts certainly bear no striking likeness either to the 1961 Act, or to its predecessor. The *Library Act* of 1947, the *Visual Arts Fund Act* of 1948 and the *Performers' Fund Act* of 1956 concern, respectively, payment for the lending and rental of books from libraries, compensation in connection with the resale of paintings, sculpture, and other works of art, and payment for use of the performances of performing artists. In other words, these Acts deal with what one could call the outworks of copyright. But while the Copyright Act proper grants individual rights to the individual author, the three Acts in question are founded on fundamentally different ideas. The Visual Arts Fund Act introduced no true *droit de suite* system, merely a sort of substitute for one, levying a purchase tax of 3 per cent on public sales of works of art, be they Norwegian or foreign, protected or in the public domain. The money does *not* go to the owners of the copyright, but is paid to a foundation for the benefit of young and talented and of older artists of proved merit. The Library Act introduces a similar system for lending and rental of books from public libraries, and the Performers' Fund Act one for performances and broadcasts by means of recordings, and for relays, by means of receiving sets, of broadcasts in which performing artists take part or in which recordings of their performances are used. Those who benefit from the latter fund are not only performing artists, but also record manufacturers.

The practical advantages of such systems are obvious: distribution of the money to individual copyright owners would necessitate extremely complicated and therefore expensive bookkeeping. The national advantages are just as evident: tax is paid for the use of foreign as well as Norwegian works and performances, but only Norwegians benefit from the funds. Some drawbacks are also evident, and will be discussed presently.

It is, admittedly, surprising that during the painstaking preparation of a Copyright Act built on exclusive rights for the author,

[2] Sec. 20, subsec. 2, quoted *infra*, p. 89 in note 8.

three subsidiary copyright statutes should come out which completely discard the principle of individual copyright, replacing it with strictly collectivist arrangements. Demands for the extension of authors' and artists' rights are met, not with the creation of new prerogatives for the individual but with the introduction of new taxes, and redistribution of the tax money according to principles of social policy. The welfare state has entered the field of copyright law, and has established what has become known as the "Norwegian system". Certainly, the practical and economic significance of these three Acts is not great, and they make no material inroads on individual copyright. If, nevertheless, they attract our interest, it is for reasons of principle. They stand for new ideas, and introduce a system which, when compared to the trusty traditionalism of the Copyright Act, seems to constitute nothing less than a minor revolution. To size up the extent and importance of this revolution is the main objective of this article.

II

The collectivist attitude which is manifest in our three tax Acts has met with suspicion, and even alarm, in other countries. The Acts seem to be regarded as manifestations of a planned march away from the traditional arrangement of copyright law, a deliberate and co-ordinated march led by the legislators. There has been talk of "socialized copyright" or of "socialized intellectual creation", and many sombre pictures have been painted of the sterile culture to which such a system must lead. Furthermore, it is evidently considered a very "unjust" system. But, what is actually the meaning of these labels? Are they not—at least to some extent—mere slogans? Are the gloomy aspects always corollaries peculiar to "socialized systems", and inconceivable under a traditional system?

A "socialization"—this word is here used in a fairly wide sense —of the products of creative art is conceivable in a number of variations, and a distinction must be drawn between several main systems of rather dissimilar structure. Furthermore, such systems may be introduced in certain fields only, and within each of these fields a differentiation may be made between primary use and

secondary use.[3] It might, therefore, be worth while to attempt a survey of the systems in question.

It is conceivable that the State might be established as the sole buyer of intellectual production, and the payment of the authors and artists organized along purely collectivist lines. This idea can, however, be realized by way of two rather different systems, both of which are definitely socialistic.

One alternative is that all works are declared to be in the public domain; any work may freely be performed or published by anyone who cares to do so. Authors and performers are cared for by the State's annually granting a large sum of money to a foundation for their benefit, a foundation which would distribute the money according to principles of social policy, or, maybe, attempt more actively to stimulate creative activity. An appalling prospect?

Some years ago copyright lawyers took a great interest in the idea of *"la propriété scientifique"*—a right for the scientist to reap the fruits of his discoveries.[4] The idea was more or less shelved before the Second World War, and after a half-hearted UNESCO attempt at revival, the discussion of scientists' rights seems to have come to an end.

In Norway today a large part of all research—in the humanities as well as in science—is conducted by scientists and scholars provided for by the State. These scientists and scholars live off the receipts of the State football pools, money allotted to them in annuities varying according to their ability and needs, as estimated by state agencies, the research councils. Their writings are published and distributed by the same research councils. But neither scholars nor scientists seem to have any feeling of being state-

[3] The terms *primary use* and *secondary use* are newcomers in copyright law terminology, and may not yet have acquired a clearly defined and generally accepted meaning. Primary use is employed here as a collective name for the first utilization, the act implying that the author or the performer "lets go of" his work or his performance. In the case of an author's work, this will normally be the first dissemination, i.e. the first act of making the work available to the public, and the first publication of copies. As regards performances, it will include the first recording, and the direct ("live") broadcasting or other kind of simultaneous transmission by mechanical means. In this dichotomy the direct performance before an audience is left out, being considered a third kind of "use" which is neither "primary" nor "secondary". Secondary use of a work is, e.g., the broadcasting of or quotation from a work which has already been published, the further distribution of copies published by the author, etc. Secondary use of a performance comprehends the utilization of recordings, as in broadcasting or other public performance by means of gramophone records, the making of new copies of an already recorded performance (re-recording), and relays of broadcasts by means of receiving sets.

[4] See *UNESCO Copyright Bulletin*, vol. VI, No. 2 (1953), pp. 3 ff.

controlled "research hands". On the contrary, they usually consider themselves as belonging to the first generation to which Norway has given a really fair chance to do free research.

This is *not* intended as a contention that the results of a similar system regarding arts and literature must necessarily prove equally favourable. But, it seems justifiable to suggest that the elements of danger may easily be overrated. One question presents itself in this connection: How were the authors and artists of ancient Greece kept alive and happy?

The second form of definitely socialistic copyright is obviously the real bogey. In this system there is no question of placing the works in the public domain. On the contrary, the State—or rather, the Government—is the one and only copyright owner, in total control of all works. This system evidently implies paving the way for absolute dictatorship in the cultural sphere, and involves a manifest risk of censorship. Nevertheless, some thirty years ago we in Norway did come very close to introducing this system with regard to works for which the term of copyright had expired. A project for *domaine d'état* was accepted by the Government and submitted to Parliament. True, the framers of the Bill had furnished it with solid precautions to diminish the risk of its being employed as a means of censorship. Yet the Bill was rejected, partly on account of this very risk. Since then, we have had occasion to watch at close range the mechanics of a nazi *Kulturministerium*—and we shall not bring forth any new bills for *domaine d'état*.

An apparently quite different development has been prophesied by Diego Fabbri. Here the thesis is that our concepts of copyright are out of date, as they are based on the idea that the remuneration of authors must be taken care of by way of the purchasing of tickets in the box offices of theatres and cinemas, by way of royalties on the sale of gramophone records and copies of books. Before long, however, technological advances will make entrance fees obsolete, and bring about a situation in which the society—the State—is virtually the principal purchaser of intellectual and artistic production. The State will be the creative artist's only business connection worth bargaining with.[5]

This system is *not* socialistic; Fabbri obviously presupposes the

[5] M. Fabbri expressed his views in a speech to a conference of the *Confédération Internationale des Sociétés d'Auteurs et Compositeurs* (CISAC) in 1959. He is quoted here as reported by a Norwegian observer at the conference, Arne Skouen, in *Verdens Gang*, November 10, 1959.

continued existence of individual rights. The only change implied is that the State—and the State alone—will be the purchaser.

It is generally held that this system is unacceptable. The danger of its being made use of as a means of censorship is evident; at least there is a marked risk that "only such intellectual production will come forth as appears convenient from the point of view of those in power"—an argument often used against socialistic systems.[6] At least in so far as the situation is viewed within the borders of a single country, Fabbri's system might easily imply that authors holding unpopular opinions are starved out of business; the State can hardly be expected to buy antisocial views and "degenerate art". The system is, consequently, hardly less dangerous than the "Norwegian system", and must be denounced as quite unacceptable.

Nevertheless, in certain fields it is already well on the way to being firmly established. This is surely true of a number of countries, although to a varying extent and degree. Here, however, it seems prudent to draw examples from Norway only.

How is the author of radio plays situated if the Norwegian Broadcasting Corporation—a State monopoly company—is unwilling to make use of his works? And in the case of the cinema, it seems to be virtually impossible to make a serious Norwegian film without a Government grant of £15,000. The State has long since become the principal buyer of works of pictorial art and of sculpture. All Norwegian theatres base their very existence on State subsidies. The élite of our orchestras are no less economically dependent on those in power than is the Leningrad Symphony Orchestra. Our Parliament grants poets' pensions and artists' pensions to meritorious authors and performers.

It is true that the Norwegian Broadcasting Corporation exercises a very lenient censorship, and it is also a fact that the Ministry of Finance has never attempted to instruct the Oslo Philharmonic Society with regard to its choice of repertoire. In a discussion on the level of principles, however, it seems necessary to abstain from purely practical arguments both ways. It must be realized that just as real and frightening as the danger that new rules of censorship may be introduced is the risk that a change of persons or of political climate might lead to the use of an existing opportunity to exercise censorship.

In parliamentary debates on questions of poets' pensions, some

[6] See, e.g., Seve Ljungman, "Upphovsrätten", *Svenska Dagbladet*, December 7, 1960.

representatives of the people have more than once pointed out that this or that book is immoral or indecent, and that its author should therefore be considered ineligible. It has, of course, been stressed that the intention is not to exercise censorship, it is simply a matter of evaluation of literary merits. It has also been questioned whether those in whom the citizens have vested their confidence and their tax money can in conscience subsidize artists, however great, if these artists obviously aim at the destruction of values which, according to the Constitution, Parliament has a duty to protect.[7] Of course, these members of Parliament are right —at least to a great extent. They are also right in stating that they are not exercising censorship. But the attitude is nevertheless disquieting.

The danger implied in a continued development along these lines should not be underrated. And the presence of this danger seems to be independent of socialization, independent of collectivism, and independent of the "Norwegian system". Moreover, the danger seems to be more or less the same, no matter whether the cause of authors' being State-paid and the means of communication being State-owned is a general socialization or merely the State's pursuance of an active policy to stimulate production in the cultural sphere. It is, therefore, hardly contestable that State broadcasting, State-owned theatres, State-subsidized production of films, State-owned publishing houses, State orchestras, etc. may in the long run present a risk of censorship just as dangerous and far more likely to be realized than the direct socialization of authors' rights.

The difference between these two systems is, on the whole, mainly a matter of principle. In reality the dissimilarities would probably be trifling. It is true indeed that total socialization of the means of exploitation may be effected without depriving the authors of their individual rights, while a socialization on the creative side is characterized by the very fact that these rights are extinguished. In practice, however, this fundamental difference seems to be reduced to a question of how the State's purchase of culture is organized. In the first case the intellectual products are bought retail from the individual author (or wholesale from an authors' association having a virtual monopoly, e.g. a performing rights society), while in the second case the State buys wholesale only.

[7] See, e.g., *Forhandlinger i Stortinget* (Norwegian Parliament Reports) 1948, pp. 1353 f., p. 1364, and 1952, p. 2178.

An altogether different kind of socialization is the one which occurs sporadically in Norwegian copyright law and its neighbouring fields, previously referred to as the "Norwegian system". Utilizers and "consumers" are—as long as they pay for what they use—free to choose and reject. There is no question of asking anybody's permission; neither the State nor the foundation board nor the artist has a right to prohibit the use. Fees are paid into a fund and redistributed according to rules strongly resembling socialistic principles.

Such a system has obvious disadvantages. It combines the disadvantages of a system of compulsory licensing with the risk that those controlling the disbursements may use their power as a means of censorship. It may also be maintained that collectivization might deprive the authors of the motive power of their creative activity—the hope of a "just remuneration" for their toil.

As pointed out, however, the danger of getting censorship as a by-product is not something peculiar to this system. The risk might be more marked, but can certainly not be considerably higher than in a system of individual rights where there is only one buyer—the State.

With regard to the element of compulsory licence, the drawbacks are rather unpredictable. But not even this element is something peculiar to collectivist systems. Compulsory licences are inevitable corollaries of collectivism, but they are also seen in combination with individual rights. Here again, therefore, argumentation against collectivism may easily become somewhat lopsided. However, it is difficult to contest that a system of compulsory licences is something to be viewed with suspicion. The idea of authors deprived of all control over the works they have created and of performing artists denied every right to decide over their own performances is rather alarming. It is sufficiently alarming, in fact, to make it a natural thought that such a system must, at any rate, be restricted in its applicability to secondary use only. With regard to such use, the elements of danger are clearly smaller and more predictable. Altogether, the introduction of compulsory licences—no matter whether it is in combination with individual rights or as a result of collectivization—should be effected with great care. On the whole, such caution has been exercised when we have, in this country, tried collectivization.

It is surprising, therefore, to see that in combination with individual rights, fairly comprehensive systems of compulsory licencing have been introduced in all the Nordic countries in

favour of the broadcasting corporations.[8] True, the author himself can always forbid the transmission of his work, but, at least according to the Norwegian provision, the compulsory licence is absolute as regards his successors.[9] This provision is far more drastic than the tentative and rather insignificant compulsory licences which have been the corollaries of the collective arrangements. Yet the rule is generally considered justified, or at least is not denounced. Very few would contest an author's personal right to withdraw his work into oblivion. It is not obvious, however, that his heirs or other successors should have for fifty years or more an unlimited right to suppress a work which has become part of our culture and perhaps even a document of our history. But, if we do deny them this right, we are well on the road to accepting—at least in certain fields—compulsory licences as necessary evils. This being so, the danger implied in compulsory licences has no longer the same strength as an argument against the so-called "socialistic" systems.

A further question raised by collectivization is whether this kind of socialization, if to some extent brought into the field of creative art, will bring about a poorer and more feeble intellectual and artistic production. It has been claimed that the artist's right to reap for himself the fruits of his spiritual production is the vital nerve of copyright, and that collectivization will weaken or

[8] The Norwegian Copyright Act 1961, sec. 20, subsec. 2, the Danish Copyright Act 1961, sec. 22, subsec. 1, the Finnish Copyright Act 1961, sec. 22, subsec. 2, and the Swedish Copyright Act 1960, sec. 22, subsec. 2. The Norwegian provision decrees that "The Norwegian State Broadcasting Institution shall have the right to broadcast, against remuneration, a published work, provided the said Broadcasting Institution by virtue of an agreement with an organization representing a majority of Norwegian authors in the field concerned, in the first place has the right to broadcast works of the type in question. This provision shall not apply to dramatic works or to other works if the author personally has prohibited broadcasting, or if there are special reasons to assume that he does not wish the work to be broadcast."

[9] The Norwegian Act states that *the author personally* can prohibit broadcasting of his works, whereas the other Nordic Acts give this right to *the author*. The preparatory documents of the Danish Act show clearly that this includes also the author's heirs (see, e.g., *Lovforslag Folketingsåret 1959–60*, p. 34), while the Swedish preparatory documents are not unambiguous on this point and might be interpreted as denying the author's heirs the right to forbid broadcasting (compare *Kungl. Maj:ts proposition nr. 17 år 1960*, pp. 150 ff., with *Statens offentliga utredningar* 1956: 25, pp. 243 ff., and *Första lagutskottets utlåtande nr. 41 år 1960*, pp. 64 ff.). It can, nevertheless, hardly be doubted that in Swedish law as well the heirs will be considered entitled to forbid broadcasting. This being the case, the term compulsory licence may not be quite appropriate, see Svante Bergström, "Program för upphovsrätten", *Rättsvetenskapliga studier ägnade minnet av Phillips Hult, Acta Universitatis Upsaliensis*, Uppsala 1960, pp. 58 ff., at p. 78 f.

even undo the motive power behind the talent. Although it may have been overestimated, this argument is certainly not without weight. True, *great* art would neither disappear nor be enfeebled by the introduction of collectivism; it is hard to imagine the activities of a van Gogh, a Sibelius or a Pasternak brought to a standstill because of loss of individual copyright. But it must be admitted that many a work of lasting value has been laboriously brought forth without any compelling creative urge merely in order to procure the wherewithal for food, housing or beer.

In Norway as elsewhere respect for the individual is a deeply rooted feeling. We have no plans to introduce purely socialistic systems in broader fields of copyright law. What is intended here is to show that a partial or limited acceptance of the so-called socialistic systems does not necessarily or always imply a cultural catastrophe, and, that the argumentation against our small sins of socialization has not always been quite pertinent.

The problem of "socialistic" copyright law is, on the whole, more complicated than it appears at first glance. We have in Norway today—it is not without embarrassment that this writer discloses the fact—the same purchase tax on books as on soap and margarine. The purchase tax on books brings in more than £500,000 a year, money which goes straight to the Treasury, and is probably spent on road construction, the running of hospitals, and similar useful ends. This, of course, is plain taxation, and has nothing to do with the authors' individual and exclusive right to edit printed copies of their works. But, if the State should decide that the money should not go to the Treasury after all but be paid into a writers' fund instead—would that be socialized copyright?

Sharp and clear distinctions cannot be made in this matter. And whichever system is chosen, the traditional one of individual rights or one of the "socialistic" systems, there are implicit dangers, dangers against which we must be on guard.

Only when this is made clear can the "Norwegian system" be seen in its proper perspective.

III

As already stated, it is only in very restricted fields that we have introduced a collectivist system by legislation.

The library-book arrangement and the visual arts fund are, in

fact, quite insignificant phenomena. The Norwegian painter or writer has, in all material respects, exactly the same individual rights as have his colleagues in the other Nordic countries. What are organized along collectivist lines are only two minor annexes of copyright. Norwegian authors have retained all the individual rights granted to them by the copyright law, but *in addition* get the collective funds.

As to the rights of performers and record producers, the situation may have looked different. In this field we had, for four or five years, *only* the collectivist system. But the law of today presents a different picture. If we compare the rights of a Norwegian performer with those of a Swedish one—it is natural to choose for comparison a country whose copyright legislation, although devoid of collectivism, so strongly resembles Norway's—only small differences can be found. The Norwegian artist can, to the same extent as his Swedish colleague, forbid recording of his performance on discs, tapes, film, etc.; he can forbid its being broadcast by direct transmission, and he can forbid its being otherwise made available by technical means to a wider audience than the one for which he gives the performance. The recording of his performance may not be copied without his consent until 25 years have elapsed since the making of the recording.[1] So far the Norwegian artist is granted as clear individual rights as his Swedish colleague. Likewise, the gramophone record producer's protection against copying of his discs or other recordings is the same in Norway as in Sweden—apart from the fact that under the Norwegian Act records must bear a notice stating the year when the recording was made.[2]

Collectivism has been introduced with regard to secondary use only. The performers' fund tax is—with some exceptions[3]—levied

[1] Norwegian Copyright Act 1961, sec. 42, subsecs. 1 and 2; cf. the Swedish Copyright Act 1960, sec. 45, subsecs. 1 and 2.

[2] Norwegian Copyright Act 1961, sec. 45; cf. the Swedish Copyright Act 1960, sec. 46.

[3] Tax is not levied on the Norwegian Broadcasting Corporation's use of its *own* recordings, or on the exhibiting of films in cinemas. Neither is tax to be paid when the performance or the transmission takes place under circumstances such that an *author* would not be entitled to remuneration under the Copyright Act (Performers' Fund Act, sec. 3, subsec. 2).

A special provision concerns the transfer of a recorded performance to a new recording, when the recording transferred was not originally intended to be included in the product to which it is now transferred. In such cases the duty to pay tax lapses if the artist's consent is necessary under the Copyright Act, sec. 42, *and* the artist has given his consent for consideration (Performers' Fund Act, sec. 4). Here, therefore, the collective system yields to

on performances and broadcasts by means of recordings, and on relays, by means of receiving sets, of broadcasts in which performing artists take part or in which recordings of their performances are used.

Formerly, producers of gramophone records could create for themselves, by way of contract, a right to forbid public performances by means of their recordings. The Performers' Fund Act now expressly states that such producers are not entitled to claim any special remuneration for use that is liable for payment of tax, nor "is a manufacturer of or a dealer in gramophone records, sound tracks, and similar technical means . . . entitled to forbid the purchaser of the recording to carry out public performance or relay which is liable for payment" of tax under the Act.[4] Apart from this, no existing individual rights have been socialized by the three tax statutes. The statutes embrace modes of utilization which were formerly "free", and in each particular instance it has been considered whether individual rights or collectivism would be the more desirable or profitable solution. The idea has been that authors or artists should not have to forgo new opportunities of income simply because the traditional principles could not easily be transferred to new fields.

The motives for choosing collective arrangements may also have been somewhat different in the three cases. Legislation in this field has, on the whole, been characterized by lack of planning rather than by co-ordination. A planned, general departure from the system of individual rights would, for instance, certainly have prevented the enactment of the "sculptors' picture postcard clause" in the 1961 Copyright Act, a provision entitling the creator of a public monument to payment when photographs of his work are reproduced for purposes of gain (sec. 23). In this very field, where the Act introduced a duty to make payment for a mode of utilization formerly free, and where the Berne Convention did not seem to be an insurmountable obstacle for a collective arrangement, one might have considered it natural to establish a new source of income for the visual arts fund. But a proposal to this effect was not even seriously discussed, and a unanimous Parliament created a new individual right.

Collectivism has been introduced only in the fields where the

individual rights. Generally, however, the opposite rule prevails. It is clearly stated in the preparatory documents (*Innstilling til Odelstinget XI* (1960–61), p. 28) that the collective arrangement shall have preference in cases of collision.

[4] Performers' Fund Act, sec. 3, subsec. 3.

artists concerned—or at any rate the greater number of them—have wanted it. They have not had a welfare state system pressed upon them in fields where they would have preferred an old-fashioned "capitalistic" system of individual rights.[5]

With regard to the visual arts fund and the writers' foundation, an important cause has obviously been that a system of individual rights has been considered—rightly or wrongly—a practical or economic impossibility. This is true also of the fund arrangement for performers.

The thesis that a fund arrangement entails much lower administrative costs than does a system of individual repartition might seem to call for some modification. True, the foundation for visual arts and the writers' foundation can both boast very moderate costs, but so can the Danish writers' foundation, which at least effects a repartition among some 1100 copyright owners. The Swedish library-book arrangement also reports a very favourable cost ratio.[6] It is quite possible, therefore, that the Norwegian writers' foundation might also be able to effect some repartition without collapsing from the pressure of administrative expenses; but it should be borne in mind that the total annual takings of the Norwegian fund are, for the time being, only some £6,000. Consequently, even a moderate increase in administrative work may cut quite deeply into the sums available. With regard to the visual arts foundation, not even an approximate standard of comparison seems to be available. It has been conjectured that repartition would prove unreasonably costly.[7]

The cost ratio of our performers' foundation is fairly high. In the first four years of the foundation's existence it was 16.25 per cent. A comparison of these figures with the most recently published accounts of our performing rights society, TONO, shows a difference of only 12 per cent, TONO's administrative expenses amounting to 28.32 per cent of its takings.[8] Even if allowance is made for possible differences in the

[5] See Birger Stuevold Lassen, "Sosialtrygd, monopol og forsvarspolitikk på åndsproduksjonsrettens område", *Nordiskt Immateriellt Rättsskydd* 1960, pp. 237 ff. (at pp. 238 f.), and "Lettre de Norvège", *Le Droit d'Auteur* 1961, pp. 76 ff. (at pp. 78 f.).

[6] See Torben Lund, "The Lending and Rental of Phonograph Records and Books", *Bulletin of the Copyright Society of the U.S.A.*, vol. 9 (1962), pp. 376 f.

[7] The *travaux préparatoires* of the Visual Arts Fund Act point out that those countries which have introduced *droit de suite* systems based on the principle of individual rights have encountered great difficulties in their endeavours to establish a workable arrangement. "The carrying into effect of the Acts often requires an expensive administration, and attempts are often made to circumvent the Acts' provisions by way of pro forma arrangements" (*Odelstingsproposisjon nr. 14* (1948), p. 1).

[8] The percentages are calculated from sums given in a Four Years' Report of the Performers' Foundation (1961, unpublished) and in the pamphlet *TONO*, ed. by TONO, Norsk Komponistforenings Internasjonale Musikkbyrå, Stavanger 1953, p. 8.

accounting systems and due regard is paid to the fact that TONO works with considerably greater real numbers, the disparity is amazingly small.

It is a fact, however, that administration of the performers' fund is conducted in an almost Spartan way, and that a couple of lucky combinations have made it possible to keep the costs lower than could have been indicated even by a most economical estimate. It is also a fact that more than 90 per cent of the foundation's expenses concern the task of bringing the money *in*. Redistribution of the sums incurs very moderate costs—being mainly a question of the printing of application forms, a few board meetings, and some postal expenses.

Repartition of the takings to the individual artists who contributed to each performance, would imply additional work necessitating a staff considerably larger than the present one of $1\,{}^{1}/_{2}$ persons, quite apart from the fact that all incoming payments would have to be itemized in detail. If one bears in mind that this concerns not only soloists, but also members of orchestras and choirs, it seems a safe guess that, on the present income level, administrative costs would amount to *at least* 50–70 per cent of receipts.

If individual repartition were to include foreign performers as well as Norwegians, administrative expenses would most probably exceed the receipts. "Il apparaît clairement que de telles rémunérations ne pourraient pratiquement jamais être réparties à ceux au nom desquels on prétendrait les percevoir."[9]

The Performers' Fund Act, however, is above all intended as a social insurance act, a deliberate attempt to alleviate the hardships caused by unemployment among musicians with money drawn from the media which are the cause of this unemployment. It has been pointed out by representative musicians that a system of individual rights with regard to secondary use would constitute a reward to "those musicians who have done most to saw off the bough on which the whole musical profession sits. In Norway, however, the takings will be used to remedy to some extent the *damage* caused by the use of mechanical music, in so far as this reduces the demand for live music."[1]

With regard to all three statutes there has, no doubt, been a conscious striving to establish a *national* arrangement, partly in order to enhance the nation's intellectual and artistic life, partly as a result of considerations of a purely politico-commercial kind,

[9] Adolf Streuli, *Examen du "Projet de Convention internationale concernant la protection des artistes interprètes ou exécutants, des producteurs de phonogrammes et des organismes de radiodiffusion" et du "Projet de clauses formelles"*, Brougg 1961, p. 34.

[1] S[igurd] L[önseth], "En dom", *Norsk Musikerblad*, no. 10, 1960, pp. 1 f. (at p. 2).

e.g. a wish to avoid loss of foreign exchange.[2] This problem—the international aspect—will be probed a little more deeply below.

The causes behind our three tax statutes are, on the whole, rather complex, and there is little to be gained from a study of the genesis of each Act. It is hard to accept, however, the flat statement that the collective arrangements are, to a great extent, produced by "the trend towards socialization which is at the bottom of a great part of recent Norwegian legislation" or that "the trend towards socialization prevalent in Norway today does not appear to consider the principle of collective copyright repulsive—rather, the reverse seems more true".[3] This view seems to be too superficial, overestimating "the trend towards socialization prevalent in Norway" as well as the importance—both in practice and in principle—of the three statutes.

These three Acts are certainly not special manifestations of a planned socialization by legislation. They are not sudden breakers rearing up in a calm sea of traditional copyright law, but rather insignificant ripples on the top of a great wave. The so-called general trend towards socialization in recent Norwegian legislation may be responsible for their formal enactment. The real cause, however, is to be found in deeper waters, in a general trend in practical copyright law—a trend away from individualism, towards collectivization.

IV

More interesting than to discuss these three tax statutes is to venture into those fields of copyright law where the system of individual rights reigns unchallenged and to attempt a brief survey of what in fact is happening there. For, oddly enough, this is where collectivism has really set in on a greater scale, in Norway as well as in other countries.

The supposedly normal system of remunerating authors is that each of them is paid in strict accordance with what the utilization of his works brings in. In broad fields, however, authors have long since voluntarily departed from this system, and have adopted

[2] See, e.g., letters from the Norwegian Broadcasting Corporation quoted in *Odelstingsproposisjon nr. 10* (1956), p. 18.

[3] Torben Lund in debates in the Danish Copyright Society, *Ophavsretlige perspektiver* (ed. Torben Lund and Niels Alkil), Copenhagen 1958, pp. 72 and 47.

new principles for the sharing of the sums paid for the use of their works.

The takings of a performing rights society are shared out between the copyright owners, but *not* in strict proportion with the income procured by the exploitation of the rights of each of them. The accounts are made up according to complicated rules set by a majority of the shareholders, rules which, apart from the number and duration of performances, usually take into account the location of the performance, and the category into which the work fits (song, sonata, symphony, etc.). This system in itself represents a long step towards collectivism; even if the individual rights of the copyright owners are intact, a performing rights society becomes a kind of composers' *kolkhoz*. But, although a long step, it is only *one* step. Even more striking is the fact that technological advances, together with a steady extension of the exclusive rights granted to authors, have confronted the performing rights societies with the problem of receiving large sums of money for which no account can be given as to *what* they are supposed to be the payment for. The money is paid in consideration of the performance of works belonging to the society's repertoire, but no one can say which music or whose songs.

The problem may be illustrated by the example of the record-playing slot machines called *jukeboxes*. The sums annually paid to the performing rights societies and to the Norwegian foundation for performing artists by the owners of these rather unpleasant contraptions are quite substantial. Each jukebox may, it is true, be fitted with a counting apparatus, so that the machine itself will know which records it has played and how many times. However, as the annual performing fee payable for a jukebox corresponds roughly to one sixth of a penny per work per performance, to achieve an accurate accounting and a correct distribution is evidently an economic impossibility. The performing artists' fund has no such problem; it collects the money and redistributes it according to principles of social policy. But the performing rights societies, holding in trust one or two million individual rights, can hardly get away with it so easily. They might simply add the sums to a bulk of takings for which a scale of redistribution is available, e.g. to the sums received from the national broadcasting corporation—with the result that every composer and every text writer whose works have been broadcast by that corporation will get a somewhat increased share. But another result is that the composer whose music is performed solely by means of jukeboxes

—and such composers do exist—gets nothing, while the musicians who made the recording of his music have at least a chance of getting a pension when they are old and in need—if they are Norwegians, that is. Another possible solution, of course, is to check *some* jukeboxes, and distribute the money in accordance with a statistical calculation. Whichever system is chosen, the fact remains that the owners of the individual rights will find themselves compelled to adopt some collectivist system with rather special schemes of distribution. No one contests the authors' individual right to a consideration, but confronted with this particular mode of exploitation they are forced to act *en bloc,* and are totally unable to share the takings in a "just" way.

The jukebox problem is one illustration. Similar problems exist in other fields of exploitation, especially where music is concerned.[4] An enormous number of cafés and small restaurants please or plague their guests by having a radio that plays assorted music from early morning till closing time. The fees paid for these performances could, of course, be shared out according to the programme reports of the national broadcasting corporations. The only snag is that these radios are not tuned to the national programme and kept on that wavelength—more probably they are constantly being switched between Radio Luxemburg and a few other "top hit" transmitters. Or are they? Nobody knows, and a "just" distribution of the fees is again impossible. It seems unnecessary to go much further into this matter, but it might be worth mentioning that, during a certain period, the German performing rights society, GEMA, strained the rather elastic concept of individual rights almost to breaking point. The repartition system was, at least to a great extent, based on the principle that payment to each composer should be stipulated in accordance with his significance for musical life as a whole, on the basis of certain fixed schedules, and regardless of the extent to which his works had in fact been performed.[5] This system was discarded years ago. But there are other examples, even outside the field of music performance rights. The exploitation of motion pictures offers similar problems. Scandinavian law—and the same is true of a number of other countries—grants individual, exclusive rights to the most humble of co-authors in a film, but, in the new Scandinavian Acts, lest the ownership of a film should become too

[4] Cf. Bergström, *op. cit.*, p. 63, pp. 72 ff.
[5] See Knudåge Riisager, report in *Ophavsretlige perspektiver,* p. 44.

complicated, the presumption is made that each co-author has transferred his rights in the film to the producer.[6] This is also a kind of collectivist system, and, from the point of view of the author, a quite alarming one—it does not even leave him the hope of a pension in his old age. The fact that his individual rights are not obliterated, but live on in the hands of the producer, disposes of any talk of socialism. But this seems cold comfort to the author. And yet—although it may be open to discussion whether the presumption rule has established the very best solution—it cannot realistically be disputed that in this field some sort of collectivization is necessary, otherwise a film would be much too unmanageable an article to sell.[7]

Sweden has granted individual rights to its performing artists with regard to secondary as well as primary use. True, as to secondary use the rights are rather limited. They cover no other use than that of broadcasting, and there is no question of the artist's authorizing the transmission.[8] His only right is the right to a consideration; he is at the receiving end of a compulsory licence. Nevertheless, the Swedish law in this field is based upon the safe, solid and traditional foundation of individual ownership. In principle, and in theory, this is certainly true. In practice, however, it might turn out differently. Swedish musicians are already advocating a plan whereby all group or team performers would transfer *in toto* their individual rights regarding secondary *and* primary use to a performers' fund—a performers' foundation, which would receive all fees for the exploitation of the individual rights of the performers. And it may not be only in Sweden that performers will find themselves forced into collectivism. In all likelihood similar results will be seen in most countries where artists working collectively are given individual rights with regard to secondary use.[9]

It is—not in general nor throughout the law of copyright, but in certain fields within and in the vicinity of it—a mere fiction to work with individual rights, a detour. In reality the individual rights often serve merely as a means of collecting for a collectivist

[6] The Norwegian Copyright Act 1961, sec. 39, subsec. 2: "Unless otherwise agreed, transfer of the right to utilize a work for filming also includes the right to make the work available to the public through the showing of the film in a cinematographic theatre, in television or otherwise". Cf. the Danish Copyright Act 1961, sec. 42, the Finnish Copyright Act 1961, sec. 39, and the Swedish Copyright Act 1960, sec. 39,

[7] Cf. Bergström, *op. cit.*, pp. 82 f.

[8] See the Swedish Copyright Act 1960, sec. 47.

[9] Cf. Streuli, *ibid.*, and *infra*, p. 100 at note 3.

system. The Norwegian tax laws have taken the shorter and more direct route, establishing a collecting system with levying of distress as in the case of ordinary taxes, and with the State being the offended party in criminal proceedings. If for practical reasons the system must needs be a collectivist one, it seems logical to go the whole way.

As pointed out, this is by no means a contention of general applicability. It is valid only in certain fields, and only with regard to certain modes of utilization. It is, for instance, quite probable that in Norway we might not be prepared to venture so far along the path of collectivism as is now suggested by the Swedish musicians. It seems unlikely that "the trend towards socialization prevalent in Norway" has sufficient strength to bring about a compulsory collectivist system concerning the primary use of performances, even where group performers are concerned.

We are, however, rather curious to see the results in those countries where performing artists have obtained individual rights with regard to both primary and secondary use. We shall take a special interest in the development in the German Federal Republic, where *all* performers, all members of orchestras and choirs, have obtained individual rights with regard to *all* secondary and primary use.[1] Slightly affected by the usual attitude towards "the Norwegian system", we might find it hard to watch without malice the German attempts to solve the problem.

V

Two complicated questions have so far only been very lightly touched: the problem of moral rights—*le droit moral de l'auteur* —under the "Norwegian system" and the international aspects of this system. One should, at least, give a rough outline of an answer to these questions.

The three Norwegian tax statutes create no great problems with regard to the protection of moral interests. As to the purchase tax for the benefit of the visual arts fund and the excise payable to the writers' foundation, it goes without saying that such problems cannot arise at all.

[1] See, e.g., Eugen Ulmer, "Lettre d'Allemagne", *Le Droit d'Auteur* 1961, pp. 12 ff. (at pp. 15 ff.); Dietrich Reimer, "La protection jurisprudentielle des artistes exécutants en Allemagne Fédérale", *Revue Internationale du Droit d'Auteur,* XXXIV (1962), pp. 97 ff.

With regard to performers, it must be kept in mind that the collective system is introduced only as far as *secondary* use is concerned. The right to decide whether, or for whom, the performance should be made available belongs, therefore, entirely and exclusively to the individual performer, so long as he has not authorized the recording of it. Furthermore, he has the right—with regard to secondary as well as primary use—to have his name stated to the extent and in the manner called for by "proper usage".[2] What he *cannot* do is to "stop" his performance once he has consented to the recording of it. Here, however, the performer's position strongly resembles the position of collectively working creative artists each of whom may authorize the redissemination or republication of the work in the same manner as previously. Apart from the fact that a unanimously protesting team of authors can stop redissemination, whereas a unanimous team of performers cannot, there is no difference. The problem is, therefore, purely a soloist's problem. It may well be considered detrimental that a soloist cannot prohibit the playing in public of a record on which he alone performs. But again, this is not something peculiar to the "Norwegian system". Neither Danish, nor Finnish, nor Swedish soloists can forbid the playing in public of lawful recordings of their performances. These countries have no collectivist system, but a system of compulsory licence in this field.[3]

A consistent collectivist system would obviously imply a serious threat to the moral interests of authors and performers. However, this threat is not caused by something peculiar to collectivist systems, but is due to the fact that any collectivist system must necessarily imply the introduction of *compulsory licences.* It is the compulsory licences that constitute the threat to moral interests in a narrower sense; and compulsory licences do not have a collectivist system as a necessary prerequisite, they are also seen in combination with individual rights.[4]

We are again faced with a problem of a general and fundamental nature. Again our three tax statutes are only ripples on a greater wave, and again we must seek a broader approach to the problem.

The complex problem of whether we are faced with a dehumanization of copyright, an era of falling respect for the personality of

[2] See the Norwegian Copyright Act 1961, sec. 42, subsecs. 1 and 5.

[3] See the Danish Copyright Act 1961, sec. 47, the Finnish Copyright Act 1961, sec. 47, and the Swedish Copyright Act 1960, sec. 47.

[4] Cf. the discussion above at pp. 88 f.

artist or author, cannot possibly be penetrated here. There seems, however, to be a certain downward trend in this sphere.

It is difficult to put a finger on the cause of this development. It seems too easy to argue that in the welfare state the individual will always be losing ground, although even such a broad statement no doubt contains a core of truth. What is probably much more important is the commercialization of art and of artists which is, to an ever increasing extent, taking place in most countries. Technicolour music, rock-and-roll mentality, and the jukebox cult are upon us. A decline in respect for the author's personality—for the individuality of the creative artist—may also be caused by the protection of business letters and bottle openers as works of literature or art.[5] It may have been a not too happy move to link all protection against plagiarism with the protection against piracy of works of greater cultural importance. And—another point worth noting in this connection—authors have often been only too willing to suffer their works to be mutilated if the violator pays in cash—*droit moral* becomes *droit immoral*.[6] If, lastly, the effacement of artistic individuality which must result from the private collectivization outlined above is taken into consideration, we may find it somewhat less surprising that creative man is no longer entirely and alone the cynosure of our concepts of copyright law or of the common attitude to moral rights. Culture is in the process of being mechanized—in more than one sense—and this process takes place regardless of whether a collectivist system is introduced by law or not.[7] The problem is not caused by collectivization. There are deeper causes underlying collectivization *as well as* the predicament of lack of respect for the author's personality and his moral interests. The problem is, as already stated, of a quite general nature, and, in my opinion, far more important than that of the plight of moral interests under the "Norwegian system".

[5] See, e.g., *Tett Bros., Ltd.* v. *Drake and Gorham, Ltd.*, 1928–1935 Macgillivray's Copyright Cases 492; *Henningsen* v. *Börgesen*, 1924 U.f.R. 588.

[6] François Hepp, *Radiodiffusion, Télévision et Droit d'Auteur*, Paris 1958, p. 27.

[7] "... this is characterized by a displacement of the centre of gravity in the relation of the author to his work and from the individual to the community, whereby the centre of gravity is shifted away from the person towards the work and away from the individual towards the mass. Technical and commercial interests preside with a cynical frankness or a cunning disguise over this soulless game in which the right of the author is devalued to an annoying obstacle." E. D. Hirsch Ballin, "Copyright at the Parting of the Ways", *Internationale Gesellschaft für Urheberrecht Schriftenreihe*, Band 25 (1961), pp. 33 ff., at p. 35.

VI

All things considered, only the international aspect seems to create problems entirely peculiar to collectivist systems.

Collectivism does not necessarily mean nationalism; in practice, however, there is a quite decisive connection. Even if all the countries concerned had collectivist systems, international repartition would mean the end of most of the advantages of collectivism. And an attempt to yoke together a collectivist system in one country with individual rights in other countries seems to be foredoomed to failure.

In the present situation, it is also a crucial fact that a country belonging to the Berne Union cannot without violating its international obligations adopt collectivism in broader fields. The "Norwegian system", it must be admitted, is already sailing quite close to the wind.

On the other hand, we cannot suffer all ideas to be fettered by the regulations of the Berne Convention such as these are today. Confronted with the developments outlined above, i.e. compulsory licences and collectivizations of different kinds and in several fields, we must be justified in posing the question whether the Berne Convention can, in the long run, stand up to this pressure. It is certainly being undermined and sapped in several ways.

Some countries have contributed to rendering the Convention unnecessary, by realizing the old great ideal of protection for all works regardless of nationality or of reciprocity. This applies to such countries as Argentina, France, Portugal, and—to some extent—Mexico. The other countries, in principle still clinging to what has been aptly named "the huckstering spirit" in copyright law,[8] may well in *reality* be obliged to protect all published works of consequence, as a result of the rules of the Berne Convention and the Universal Copyright Convention with regard to the "country of origin" of a work.[9] The most important state not a signatory to any of the Conventions is the Soviet Union. But Czechoslovakia has adhered to both Conventions, and it should mean no loss of prestige for the Soviet Union to arrange for all works of any importance to be published in Prague simultaneously with their first publication at home. Such simultaneous publication would

[8] Ragnar Knoph, *Andsretten*, Oslo 1936, p. 168.

[9] See the Berne Convention, Article 4 (3); the Universal Convention, Article II (1).

make them Czechoslovakian works under the two Conventions. Consequently, all new Soviet works might obtain protection in all the countries of the Berne Union, and in all those which have adhered to the Universal Copyright Convention, regardless of reciprocity. True, the Berne Convention has an "emergency exit", Article 6 permitting the restriction of protection in such cases. But obviously most countries will abstain from so signal a show of "the huckstering spirit". And the Universal Copyright Convention is not even equipped with an emergency exit.

It should also be pointed out that the very existence of the Universal Convention implies a threat to the continued potency of the Berne Convention. The younger nations of the world might come to feel the obligatory provisions of the Berne Convention as "an unbearable strait jacket".[1] They might follow the line of least resistance and prefer to join the Universal Convention which, in spite of its handsome preamble, makes no excessive demands as to the *substance* of the protection. That the Berne countries consider this threat a very real one can be seen from their slightly panicky "Appendix Declaration relating to Article XVII" of the Universal Convention, wherein they solemnly declare that works having as country of origin a country which withdraws from the Berne Convention "shall not be protected by the Universal Copyright Convention in the countries of the Berne Union; . . .".

However, these developments represent only one aspect of the undermining process. The Berne Convention is also submitted to a process of crumbling from within, a process caused by what might be called *"cultural protectionism"*. Practically all countries are, today, trying to promote there own intellectual production at the expense of that of foreign countries. This is, of course, nothing new. But a phenomenon which *is* new, at least in modern times, is that legislators no longer merely have an eye on the cultural trade balance, they are positively staring at it. Examples are easily found in most countries; that Norwegians live in a glass house will have appeared clearly from this article. In some countries the law lays down that every performance of music must include national compositions, and that theatres must give a certain quota of national drama. In other countries a deduction is made on all performance fees, for the benefit of national culture. A third method is to levy excessive income taxes on royalties payable

[1] Knoph, *op. cit.*, p. 177.

outside the country. There are several other ways, and few countries are justified in casting the first stone.[2]

These examples demonstrate one thing for certain: that the nations wriggle in the tight harness of the Berne Union, and circumvent the Convention to the best of their ability. But no state is willing to *admit* that it finds the harness inconvenient. On the contrary, at intervals these states assemble in revision conferences and unanimously decide to tighten some of the straps.

The new conference for revision of the Convention, planned to be held in 1967, will, however, probably confine itself to clarifying the provisions and generally straightening them out. It seems, however, to be time now to bring about a certain loosening on several points, before the cleavage between the demands of the Convention and the practice of the states becomes insurmountable. We must face the unpleasant fact that the Convention is probably no longer in keeping with the times. The difficult delivery and weak build of the Universal Convention demonstrate clearly that the Berne Convention could not possibly have been created today—we may have to take the consequences of this observation and somewhat reduce the demands. That one must, at times, bend in order not to be broken, is a truth also applicable to conventions.

It has been suggested that the performing rights societies should agree upon a system which allowed each of them to exploit within its territory the repertoire of all the others, without payment. If such an idea is accepted, the circle is closed.

With regard to the performing artist's rights, the idea of internationally protected individual rights came uppermost in the Rome Convention of 1961, but has nevertheless lost two important ensuing skirmishes. At the fifth ordinary congress of the International Federation of Musicians (FIM) in September 1962, where musicians' organizations of 18 countries were represented, the delegates were asked to recommend that sums accruing from the use of commercial records should not be distributed to the individual performers, but applied for the benefit of professional musicians as a whole. The congress declined to interfere with national affairs, but decided—by 30 votes against 4—to recommend agreements between the member unions to the effect that sums paid for the secondary use of performances by *foreign* musicians should be applied for collective ends in the country in which the secondary use in

[2] For an extensive documentation, see Erich Schulze, "Liberalisierung und Urheberrecht", *Internationale Gesellschaft für Urheberrecht Schriftenreihe*, Band 22 (1961).

question had taken place. The resolution seems to imply a preference for collectivism, but assumes that some countries will adopt or conserve systems of individual rights, and recommends that the organizations of these countries agree that remuneration which should have been paid to individual foreign performers be instead applied in the countries where the sums are collected. In close connection with this congress there was held another conference, at which not only the organizations of the FIM, but also the International Federation of Actors (FIA) was represented—a total of 44 delegates from 17 countries. The actors were more inclined towards individual rights than were the musicians, and the results of the deliberations of this conference appear as a compromise between the views of the FIM and those of the FIA. It was declared that the use *or* distribution of sums recovered for secondary use of performances was a matter for decision exclusively by the performers *through their respective representative organizations*. With regard to the rights of foreign performers, the conference declared that "although foreign performers are entitled to equitable remuneration, reciprocal agreements are nevertheless possible, by which distribution or application of equitable remuneration would be limited to the country in which the secondary use takes place".[3]

VII

I hope it has been evident that I do not without misgivings advocate any form of socialized copyright. On the contrary, I have watched the current trend with a good deal of concern. Certain disadvantageous consequences seem to be inevitable, whichever system we choose. True, it is my opinion that the three Norwegian tax statutes have successfully solved practical problems, and I think they have come to stay. They are, however, of minor importance and attract our interest for reasons of principle only.

Should we proceed along the path of collectivism? The question is somewhat rhetorical, as the truth seems to be that we shall all be compelled to do so. It is most unlikely that the development can be arrested. The question should be rephrased, to make it more realistic: Should the collectivism prevalent in certain fields be recognized by the legislators, or should the law still build on the idea of individual rights, even when these constitute only a roundabout way to collectivism? But if the problem is so formu-

[3] See reports in *Le Droit d'Auteur* (*Copyright*) 1962, pp. 185 f., and in *Norsk Musikerblad*, no. 11, 1962, pp. 5 and 7.

lated, it seems an irrefutable answer that this must, to a certain degree, be a matter simply of taste.

It has been maintained that the very technique of the "Norwegian system" implies a danger to the freedom of intellectual production.[4] This may well be so. But are the dangers perceptibly smaller if the collectivization is nevertheless in progress—and only the legislators are blinking the facts?

My view is that further steps along the path of collectivization should only be taken with infinite care. Rather than search for new fields where collectivism can be introduced by legislation, we should concentrate our attention on the problems which have caused the private collectivization and on the dangers described above as threatening any system.

It is true that copyright law has arrived at a parting of the ways. But we must bear in mind that it is not a crossroads, but a road fork. Whichever way we choose, we must be aware that it runs in a direction different from the one we have followed so far. We shall have to turn left or right, unless a third road can be found. Confronted with this choice, we may be reminded of what the Norwegian scholar Ragnar Knoph said in 1936: "... even within a system of 'intellectual property' which holds on to the traditional legal concepts as its foundation, there is plenty of room for new ideas and changes in order to adapt the law of authors' and inventors' rights to the social conditions of today. These changes must not be hampered by the fact that old concepts of law, even those once considered important cultural conquests, may have to be buried. It is true in the field of law also, that only where there are graves can there be resurrection."[5]

[4] See Seve Ljungman, "Utförande konstnärers rätt enligt det svenska auktorlagförslaget", *Ophavsretlige perspektiver*, pp. 110 ff. (at p. 118).

[5] *Op. cit.*, p. 50.