

December 1, 1958

Memorandum by Stan Ward, 'Dr. Zhivago Copyright'

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Summary:

A CIA IOD officer advises AMCOMLIB President Sargeant against broadcasting now the Russian-language text of Pasternak's Dr. Zhivago, as published by the University of Michigan Press

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1 December 1958

#16 of 1 Dec.

MEMORANDUM FOR: The President, AmComLib

ATTENTION: Assistant to the President

SUBJECT: Dr. Zhivago Copyright

1. Our legal advisers inform us as follows in response to our inquiry on the legalities involved should Radio Liberation broadcast without copyright clearance the Russian language text of Pasternak's Dr. Zhivago under an arrangement with the University of Michigan Press:

"Attached to your memorandum are copies of two opinions provided the University of Michigan Press by the New York City law firm of Weil, Gotshal & Manges, who we understand are counsel to the American Booksellers Association. Since receiving your request, we have had a number of discussions with interested persons inside the Agency. You have also given us a copy of a legal opinion of T. Newman Lawler, a New York City copyright authority, who was approached by Mr. Poor at our suggestion. We have, finally, Mr. Poor's thoughts.

There seem to be a number of contradictory conclusions. This is largely due to the absence of certain key facts or the lack of verification of others. In the first place, there is no exact description of Feltrinelli's relationship with Pasternak or what rights he holds. Without this, we are almost entirely in a land of surmise. There seem to be only a few firm conclusions. Publication in this country of the original Russian version would not be an infringement according to Weil, Gotshal & Manges. (This is not necessarily at variance with the rumor that Pantheon Books is paying royalties to Feltrinelli on the English translation, which is, in effect, a different work.) The freedom to publish is founded on the foreclosure of U. S. copyright--a result of Russia's failure to grant U. S. citizens

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citizens reciprocal protection. The work is therefore in the public domain (Manges). Nor is there any great doubt (by Lawler) that Feltrinelli has sound copyright protection for his Italian translation not only in Italy but also in all countries that are members of the Berne Union or signatory to the Universal Copyright Convention. Finally, under the Berne Convention (see Lawler) "it is a matter for legislation in the countries of the Berne Union to determine the conditions under which the radio broadcasting rights may be exercised."

We still have no answer as to who holds the broadcasting rights. Your Munich counsel has advised that "it is doubtful" if you could successfully defend an action for infringement based on a German broadcast. This opinion, however, is predicated upon an assumption that "as far as we know, he (Feltrinelli) has retained the original language broadcasting rights himself." Lawler, on the other hand, believes "a fair inference may be drawn that Pasternak has not granted any broadcasting rights in Russian to Feltrinelli." And again, the German laws on broadcasting are unknown. Under the Berne Convention, these apparently must "not be prejudicial to the moral right of the author, nor to his right to obtain just remuneration which in the absence of agreement shall be fixed by competent authority" (Lawler). This leads us to wonder: What is the "moral right of the author?" What is "competent authority?"

All in all, it seems that while we obviously have respectable authority from expert counsel on which to rely, the advice is itself based on assumptions rather than facts. This will continue to be the case until we know precisely what rights Feltrinelli got from Pasternak. And until then, this Office is not inclined to contradict the conclusions of Mr. Lawler, who is specially qualified in the copyright field. He says, in effect; There's a chance of suit but it's hard to believe that damages would be great. We should add quickly, in passing, that there seems to be no obligation to pay royalties to Michigan Press for use of a Russian text unless it can be firmly established that it is not the Pasternak version."

2. We have noted Bertrandias' comments contained in Munich telex #16 of 19 November, in which he suggested a decision in principle be made as to whether the book might be broadcast in full at some possible future date. As we see it now, we would have to

have to recommend that the decision be no, regardless of the cloudiness of the legalities concerned. The feeling here is that an American organization should not undertake to do more than Radio Liberation is currently doing.

STAN WARD