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# SOCRATIC METHOD AS A KEY PEDAGOGIC TOOL IN TEACHING INTELLECTUAL PROPERTY LAW

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## Abstract

Socratic Method has been widely used in teaching practice since the creation of academia. For the purposes of our research, we refer to Socratic Method as a dialogue between teacher and student, as well as dialectical and critical analysis of each topic, by means of questions. Accordingly, we will represent an overview of the origin of Socratic Method and its basic elements. Our research basically refers to the relevance of the Socratic Method for contemporary studies, namely while teaching Intellectual Property law. The forms of using Socratic Method have been changed according to the development of technology (i.e. online lectures and seminars, widely used during the recent years). Intellectual Property law is a field of legal studies which basically deals with the technological developments and novelties, in general. On the other hand, there are several controversial topics in the Intellectual Property law, which need to be analyzed by via Socratic Method - using dialectical and critical approach. The author of the research has to share several practical observations in this regard.

**Keywords:** Socratic Method, Dialogue, Questions, Intellectual Property, Critical Analysis, Technology

## Introduction

The Socratic Method has been an object of increasing interest from the ancient times until now. The strange Athenian, standing mostly in front of the market, or Agora, asking strange questions to his neighbors, acquaintances, or even strangers, was very popular in his home town. Since then these questions turned out to be so viable, that they moved from the ancient Athenian market to the modern universities and audiences. Nowadays Socratic Method is considered as one of the most successful methods of teaching several academic disciplines (Covid-19 pandemic and online lectures have confirmed its relevance once again). This method is successful especially when the topic is controversial and there are a lot of issues to discuss.

Being relatively new field and emerged as a result of technological developments, Intellectual Property law is indeed a collection of various controversial topics. It comprises copyright (authors' rights) and industrial property rights, both covering contradictory issues and creating ground for intense discussions. In this regard, Socratic Method can be relevant for the Intellectual Property law and this relevance has to be examined. Accordingly, the author of this research shares his own experience of teaching Intellectual Property law, within the framework of the interdisciplinary Master program in European Studies of Ivane Javakhishvili Tbilisi State University, through the Socratic Method. The research starts with defining and underlining the main characteristics of the Socratic Method which are relevant for the Intellectual Property law. Afterwards the controversial topics of the Intellectual Property law itself are discussed in order to highlight the necessity of applying the Socratic Method in this regard.

## I The Development of Socratic Method

Defining Socratic Method is a challenging task itself, as it leads to the number of Socratic questions about the validity of this definition. Like the abstract categories (i.e. thinking, reasoning, research, wisdom, etc.), Socratic Method is hard to explain<sup>1</sup> and it is even harder to have a universal definition of it. That is why the explanations of "Socratic method" vary according to the opinions of the authors of guidebooks, encyclopedias and dictionaries.<sup>2</sup> The majority of these definitions, however, refer to the *questions*; namely: asking questions as a cognitive method. If we simplify this method to the edge of extremity, then we can define this method, simply,

<sup>1</sup> See Giuseffi, Frank, *How the Socratic Method Engenders Authentic Educational Experiences*, Lexington Books, 2021, p. 7.

<sup>2</sup> Although some of the authors do not define them at all: either because of the difficulty of its definition, or they consider it known to everyone.

as just *asking the questions*.<sup>3</sup> However, if we would like to have more detailed and complete explanation of it, then Socratic Method should mean "the way Socrates elicited knowledge in his students"<sup>4</sup>. This, however, needs further explanations: how exactly Socrates educated his students. There is a rich literature about Socrates and his method of teaching: started from the works of his students<sup>5</sup> up to the very modern interpretations of Socratic dialogues. We surely do not intend to overview this huge corpus and resume it. Rather, in this chapter we will underline the main characteristics of Socratic Method and focus on the certain elements of it which are valid for our main topic – *teaching Intellectual Property law*. In this regard we will explore the foundations and origins of this method, discuss the practice of using it by Socrates and mention some general interpretations of Socratic Method after Socrates.

## 1 The Foundations of Socratic Method

Ancient Greek philosophy had already reached significant level of development before Socrates. The works of Heraclitus and several others were available by the time Socrates came to the stage. Accordingly, the roots of Socratic Method can be searched in the ideas of his predecessors. Nowadays it is hard to restore the complete picture of the literature which was available for Socrates in the fifth century BC, while many of these works did not survive and we have to rely on the surviving fragments, or on the reports and memoirs of their pupils.<sup>6</sup> We can only suppose that Socrates was aware of the works by his predecessors. For example, the famous saying by Heraclitus that "war is the father of all (πόλεμος πάντων μὲν πατήρ ἐστι)"<sup>7</sup> should have been known to him. This saying can also be spread (and was actually spread) over the ideas, meaning that the war, the struggle between the ideas gives birth to the truth.<sup>8</sup> The Socratic dialogues are the illustrations of such struggles between the ideas. For example, the dialogue between Socrates and Protagoras illustrates a real struggle between the positions, provoked by the questions they asked to each other (this even led to the theory that the Socratic Method of asking questions was first developed by Protagoras).<sup>9</sup> Whatever impulses, or inspirations Socrates would have while creating this method, the method itself has been created and practiced by him until the very end of his life.<sup>10</sup> Accordingly, the method of asking questions and attempting to reach truth through the questions has ultimately been associated to Socrates.

## 2 Practicing Socratic Method

The first and the most well-known practitioner of the Socratic Method was Socrates himself. He was popular for practicing his method in everyday life in the crowded places of Athens, such as the gate of Athenian market, or Agora.<sup>11</sup> His collocutors and audience comprised the variety of people from the ordinary neighbors to the most popular Sophists. The latter were the most favored antagonists for Socrates; they shared the same objectives – achieving the knowledge, but their ways in this regard were rather different.<sup>12</sup> Derived from the Ancient Greek σοφός (wise, skillful, clever), the word "Sophist" means "a person who has wisdom, skill and perhaps knowledge, a person who is wise, skillful and clever".<sup>13</sup> Although this word has a negative connotation today,<sup>14</sup> in fact, the aim of the Sophists was to spread knowledge among the people and they played an important role indeed in

<sup>3</sup> See Drozdek, Adam, Peoples, Katarzyna, *Using the Socratic Method in Counseling: A Guide to Channeling Inborn Knowledge*, Routledge 2018, p. 21.

<sup>4</sup> See Dillon, James J., *Teaching Psychology and the Socratic Method: Real Knowledge in a Virtual Age*, Palgrave Macmillan 2016, p. 19.

<sup>5</sup> I.e. Plato, Xenophon, etc.

<sup>6</sup> See Emlyn-Jones, Chris, *Early Socratic Dialogues*, Penguin Books 2005, p. 10.

<sup>7</sup> See Heraclitus, *Fragments*, Translated by G. T. W. Patrick, Digireads 2020, fragment 53.

<sup>8</sup> This construction has become a foundation of dialectic method, introduced by Plato and developed by Hegel.

<sup>9</sup> See Corradi, Michele, *Protagorean Socrates, Socratic Protagoras: A Narrative Strategy from Aristophanes to Plato*, in: *Socrates and the Socratic Dialogue*, Edited by Alessandro Stavru, Christopher Moore, Brill 2018, p. 85.

<sup>10</sup> *Phaedo* (Φαίδων) is the last dialogue initiated by Socrates about the immortality of the soul, right before being executed by drinking poison.

<sup>11</sup> See Lang, Mabel, *Socrates in the Agora (Excavations of the Athenian Agora: Picture Book)*, American School of Classical Studies at Athen, 1978, p. 11.

<sup>12</sup> See Kerferd G. B., *The Sophistic Movement*, Cambridge University Press 2001, p. 55.

<sup>13</sup> See O'Grady, Patricia, *What is a Sophist?*, in: *The Sophists, An Introduction*, Edited by Patricia O'Grady, Bloomsbury, 2008, p. 9.

<sup>14</sup> See Denyer, Nicholas, *Introduction to Plato, Protagoras*, Cambridge University Press 2008, p. 1.

this enlightening process.<sup>15</sup> Generally acknowledged to be wise, skillful and clever, the Sophists had their own method of spreading the knowledge. Comparing to Socratic attitude, their method might seem rather arrogant, as an attitude of the one who considers himself wise and clever, willing to share this wisdom and cleverness to the public, standing on the pedestal and preaching. On the other hand, Socratic Method is much more modest, rather sly, claiming that he knew nothing,<sup>16</sup> playing a childish ignorant who is eager to be enlightened by one of these Sophists.<sup>17</sup> Usually Socrates – the mysterious ironist,<sup>18</sup> after pretending to be delighted by the wisdom of these Sophists and lamenting his own ignorance, wonders whether the answer is really right<sup>19</sup> and that's where he applies his famous method of interrogation.

Here we can summarize the *characteristics* of the Socratic Method which might be interesting for us: first of all, Socrates comes to an issue not as a clever and all-knowing Sophist, but as a modest investigator, who wants to clarify the issue. Afterwards he tries to define the object at first. After listening to the definition, he starts to find out whether this or that explanation is really satisfactory. Disregarding authorities and focusing on the research question itself is one of the main attributes of the Socratic Method. It is also typical, that Socrates does not insist on resolving the problem at the end. Many of the dialogues described by Plato end ambiguously, without a clear answer (or no answer at all) to the main question raised in the beginning.<sup>20</sup> Accordingly, the main goal of the Socratic Method is to *raise a question*, to start philosophizing, and not to find an ultimate, universal solution of the problem.

### 3 Interpretations of the Socratic Method

The earliest interpreters of the Socratic Method were the students of Socrates, who, being inspired by the life of their teacher, fascinated by his personality and shaken up by his death, started to memorize and immortalize him.<sup>21</sup> Plato had certainly been the most famous and influential among them. The main protagonist of the dialogues written by Plato is Socrates, which makes the interrelation between the author and the protagonist very complex: it is impossible to differentiate, which idea belongs to the student and which one to the teacher, while there is no border line between the ideas of Socrates and Plato, according to these dialogues. That's why the researchers are having hard time to differentiate one from another. Whatever the result can be, it is obvious that the method of achieving knowledge by means of asking questions is Socratic. The main idea is that this knowledge can be achieved only by interaction, dialogue, asking questions and searching for the answers. Monologue and preaching regime (often used by the Sophists) is not the way of perception for Socrates – and, accordingly, for Plato. The only difference is that Plato has written down these dialogues, while Socrates was famous for never writing anything. Although Plato's works are written texts, all of them still have a form of dialogue, where the ideas are opposed to each other<sup>22</sup> in order to reach *synthesis* between them.<sup>23</sup> However, Plato's student, Aristotle, whose style of reasoning and writing was more like monologue than dialogue, took the philosophy to rather different direction. Contemporary style of academic writing is influenced more by Aristotle than by Plato, as it usually has the form of monologue. The Socratic (and Platonic) elements like *research question* and *hypothesis* are still involved in this contemporary academic style, though. Modern style of lectures and, more importantly, seminars still allow us to use Socratic Method of questioning. This method can be widely used in order to discuss controversial topics of relatively 'modern' subjects, such as Intellectual Property law.

<sup>15</sup> About the role of the Sophists and its later interpretations see Kerferd G. B., *The Sophistic Movement*, Cambridge University Press 2001, p. 9.

<sup>16</sup> "I know that I know nothing" is a famous saying by Socrates, see Plato, *Apology*, Translated By Benjamin Jowett, Qasim Idrees, 2017, p. 23.

<sup>17</sup> See Emlyn-Jones, Chris, *Early Socratic Dialogues*, Penguin Books 2005, p. 20.

<sup>18</sup> Friedrich Nietzsche called Socrates "geheimnisvoller Ironiker" (mysterious ironist), see Nietzsche Friedrich, *Die Geburt der Tragödie*, Outlook Verlag 2018, S. 3.

<sup>19</sup> See Emlyn-Jones, Chris, *Early Socratic Dialogues*, Penguin Books 2005, p. 29.

<sup>20</sup> See, for example, *Gorgias*, *Laches*, *Lysis*, *Meno* and other early dialogues by Plato.

<sup>21</sup> See Brisson, Luc, *Plato and the Socratics*, in: *Socrates and the Socratic Dialogue*, Edited by Alessandro Stavru, Christopher Moore, Brill 2018, p. 237.

<sup>22</sup> According to the famous saying by Heraclitus that "war is the father of all (πόλεμος πάντων μὲν πατήρ ἐστι)", see Heraclitus, *Fragments*, Translated by G. T. W. Patrick, Digireads 2020, fragment 53.

<sup>23</sup> See Cirne-Lima Carlos, *Dialectic for Beginners*, Porto Alegre, 1997, p. 79.

## II Intellectual Property Law as an Object for applying Socratic Method

The division of legal studies into public and civil laws is an old tradition.<sup>24</sup> We can also divide private law (or civil law) into ‘traditional’ and ‘modern’ fields. For example, the fields like property law, or obligatory law, existed even in ancient Rome since the very beginning of Roman civil law and belong to the ‘traditional’ fields of law, which count millennia of their existence in the European continent.<sup>25</sup> On the other hand, there are some, rather new, fields in private law, which owe their existence to the technological and social developments, such as Banking law, Media law, Business law and several others (many of them are still on their ways to appear sooner or later). In the ‘traditional’ fields of law the basic values and principles have been elaborated millennia ago. What has been left for discussion is the application of these values and principles in certain practical cases. The ‘modern’ fields of law, on the other hand, are much more controversial: not only certain norms and notions, but sometimes even their existence at all can be in question.

Intellectual Property law belongs to this relatively modern, controversial area of the law. It comprises of several fields, which have come into being as the results of the technological, or social developments. Copyright law, for example, has been developed after the invention of printing press by Johannes Gutenberg, while its continental European counterpart – authors’ right<sup>26</sup> has been created as a result of the development of human rights doctrine in the late 18th century after the French revolution.<sup>27</sup> Industrial property law also owes its existence to the development of industry and rising technological progress, especially in the 19th century.<sup>28</sup> The main characteristic of the Intellectual Property law is its dynamic nature: the speed of technological progress becomes more and more rapid as the time goes by and Intellectual Property law tries to run after these developments by creating new norms and notions. On the other hand, not only these new norms and notions, but even the existence of the Intellectual Property law at all can be questioned. Here we need to apply Socratic Method and its main character – asking questions.

In this regard we can differentiate two types of professors mentioned above: *professor-Sophist* and *professor-Socrates*. The former would invest most of the energy in enlightening the students regarding the basic concepts, principles and norms of the certain field – which might be useful especially when it refers to the ‘traditional’ fields of the law. On the other hand, professor-Socrates would concentrate on asking questions about the opinions of the students concerning these concepts, principles and norms, instead of urging them to memorize certain definitions, norms, or dates. Intellectual Property law has a variety of issues which can be questioned in a Socratic way. The existence of this law, at all, is also a controversial issue: both copyright law and industrial property law are often considered as the artificial obstacles for the development of invention, or for the knowledge society, in general.<sup>29</sup> The certain topics of it, such as economic rights, free use, ‘censored’ symbols and several other issues might also be controversial. In this regard, the experience shows that professor-Socrates can have more fruitful experience while leading discussions about these issues. The recent experience has also illustrated that the involvement of the students, especially in the online lectures,<sup>30</sup> has been rather challenging task. The dialogue regime led by the professor-Socrates turned out to be much more relevant in this case than the monologue regime of the professor-Sophist.

The interdisciplinary character of the Master program in European Studies at TSU also encourages us to use the Socratic Method. The students of this program have different backgrounds: some of them have not studied even the basics of the law, in general, which inevitably leads to the necessity of asking questions. Besides that, Intellectual Property law is taught not as an isolated topic, but as a part of the whole interdisciplinary program

<sup>24</sup> It is hard to find an exact date of dividing the spheres into public and private spheres. In the *Odyssey* Telemachus differentiates public and private businesses. See Homer, *The Odyssey*, Translated by Dominic Rieu, Penguin Books, 2003, II, 40.

<sup>25</sup> See, for example, Huschke, Philipp Eduard: *Ueber das Recht des nexum und das alte römische Schuldrecht: eine rechtshistorische Untersuchung*, Leipzig : Gebauer, 1846, S. 2.

<sup>26</sup> *droit d'auteur* – authors’ right, which has to be differentiated from the English concept of copyright law.

<sup>27</sup> See Meskhi, George, *From Soviet to European Copyright: The Challenges of Harmonizing the Copyright Legislations of Post-Soviet Non-EU States with the European Copyright Law (Georgian Case)*, Refubium, Berlin 2019, pp. 13-16.

<sup>28</sup> See Seville, Catherine, *EU Intellectual Property Law and Policy*, Second Edition, Edward Elgar Publishing 2016, p. 106.

<sup>29</sup> See, for example, Gascón, Francesc Joan Fondevila / Garcia-Navas, Raul Lopez: *New Digital Production Models: The Consolidation of the Copyleft*, in: DeVoss Daniele, Nicolle / Rife, Martine Courant: *Cultures of Copyright*, Peter Lang 2015, p. 69.

<sup>30</sup> This online format of the lectures and seminars was inevitable due to the Covid pandemic especially in 2020-2022 years.

and its compliance with the common EU policy, together with the attempt of harmonizing the different laws of the EU member states, is also an interesting topic for discussion. The syllabus of the teaching course is structured in a way that understanding and explaining the basic concepts of the Intellectual Property, as well as analyzing critically, has a significant value. Adjusting this theoretical knowledge to the practical examples is also highly valuable. These elements of the syllabus, as well as the whole MA program of the European Studies at TSU, highlight the importance and relevance of the Socratic Method once again.

As the Intellectual Property law comprises both *copyright (authors' right)* and *industrial property rights*, and the syllabus also cover both of these parts, below we will shortly discuss the characteristics of these certain parts of the Intellectual Property law.

## 1 Controversies of Copyright and Authors' Right

The Socratic Method suggests to start from the definitions of the main notions, which is obviously relevant in our case, while the interrelation between the main concepts – copyright and authors' rights – is a controversial topic already. The former has been created in the UK as a result of rising the number of printed book copies in 1710<sup>31</sup> and the latter has been emerged as a result of developing human rights doctrine during the French revolution by the end of the same century<sup>32</sup>. Derived from different roots, belonged to the different legal systems,<sup>33</sup> these two concepts have a lot of differences and EU legislators had hard time to harmonize them with each other.<sup>34</sup> Copyright is more focused on economic rights, while authors' rights are more oriented on the moral rights, which is another controversy and provides fertile ground for the discussion – which one should prevail. The same kind of discussion can be initiated also about the interests of the right-holder, on one hand, and public, on the other, while balancing them is one of the challenging tasks for the copyright law. Finally, even the existence of the copyright (authors' rights) and its justification (*raison d'être*) is controversial, since there are alternative movements<sup>35</sup>, which question the existence of this field, as such. As we can see, copyright (authors' right) provides a variety of topics which can be discussed by using the Socratic Method.

## 2 Questions of Industrial Property Rights

According to the universal division of the Intellectual Property law, another part of it is the industrial property, which is also divided into several parts: Patent, Trademark, Design, Geographical Indications and the other, relatively new concepts.

*Patent* has initially been developed in order to protect the inventor and his/her invention from the infringement, which should lead to the development of technologies and to the security of the competitive gains in the national and international markets.<sup>36</sup> However, nowadays patent is seen as an obstacle for innovation and tool for misusing dominant position.<sup>37</sup> As we can see, the *raison d'être* of patent is under question, similarly to that of the copyright (authors' right). Accordingly, this can be an interesting topic for discussion in a Socratic manner.

*Trademark* law also has several controversial issues due to its dynamic character. According to my experience, absolute grounds for refusal are often a topic for discussion. Trademark law regulations define, that the registering authorities should not register those trademarks "which are contrary to public policy, or to accepted principles of morality".<sup>38</sup> Definitions of these 'public policy' and 'principles of morality' are the main

<sup>31</sup> See Stokes, Simon, *Art and Copyright*, Hart Publishing 2003, p. 23.

<sup>32</sup> See Berger, Christian, *European Copyright in Germany – A brief Overview*, in: Enders, Christoph / Kusumandra, Afifah / Mrozek, Anna, *United in Diversity: Freedom, Property and Property Rights*, Leipziger Universitätsverlag 2014, p. 91.

<sup>33</sup> Here we mean common law and continental European legal systems.

<sup>34</sup> See Aplin, Tanya, *Subject Matter*, in: Derclaye, Estelle, *Research Handbook on the Future of EU Copyright*, Edward Elgar Publishing 2009, p. 54.

<sup>35</sup> I.e. Copyleft and free use doctrine, see Gascón, Francesc Joan Fondevila / Garcia-Navas, Raul Lopez: *New Digital Production Models: The Consolidation of the Copyleft*, in: DeVoss Daniele, Nicolle / Rife, Martine Courant: *Cultures of Copyright*, Peter Lang 2015, p. 69.

<sup>36</sup> See Bagley, Margo A., *Introduction*, in: *Patent Law in Global Perspective*, Edited by Ruth L. Okediji, Margo A. Bagley, Oxford University Press, 2014, p. xv.

<sup>37</sup> See Straus, Joseph, *Patent Application: Obstacle for Innovation and Abuse of Dominant Position under Article 102 TFEU?*, in: *Journal of European Competition Law & Practice*, Volume 1, Issue 3, June 2010, p. 189.

<sup>38</sup> See Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark, Article 7, 1 (f).

topics for discussion. According to the Socratic Method, these concepts have to be defined at first and then these definitions should be examined critically, which can lead to the interesting consequences.

*Design* law provides several practical cases, where the protection of the certain designs can be arguable. The same refers to the law of *Geographical Indications*, where the protection of the certain objects can be discussed in national and international levels.

Due to the dynamic character of the Intellectual Property law, there are several other fields which already emerged, or are going to emerge in the nearest future. The protection of plant and animal varieties, as well as trade secrets, 'good-wills' and other objects also belong to this area. This dynamic development of the Intellectual Property law creates fertile ground for discussing the creation of the new objects for protection in a Socratic way.

## Conclusions

The present study aimed to examine the applicability of the Socratic Method for teaching the Intellectual Property law. The research is based on the experience of teaching Intellectual Property law, within the framework of European Studies Master program of the Institute for European Studies of Ivane Javakhishvili Tbilisi State University, by the author. The Socratic Method has been discussed and the main characteristics of it, which turned out to be relevant for Intellectual Property law, have been highlighted in the beginning. The certain topics of the Intellectual Property law itself, which are mostly controversial and, therefore, need to be discussed in a Socratic manner, have been presented in the second part of the research. The structure of this second part reflects the construction of the syllabus of the Intellectual Property law teaching course, elaborated by the author. According to this structure, the Intellectual Property law is divided into two basic parts: copyright (authors' rights) and industrial property rights. The study has confirmed the relevance of the Socratic Method for teaching Intellectual Property law. This relevance is based on the viability of Socratic Method, on one hand, as well as the dynamic and controversial character of the Intellectual Property law, on the other. The research discusses general applicability of the above-mentioned method for the Intellectual Property law and gives possibility to examine the relevance of the Socratic Method for the certain fields such as copyright, patent, trademark, design laws and geographical indications more specifically in the future.

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