The U.S.S.R. As a Member of the Universal Copyright Convention: Will It Really Be As Bad As All That?*


This excerpt is from a rather small and unassuming Izvestiia news article, which provided no real clue as to the importance of these changes or the reasons that lay behind them. It was four days later in Paris that the significance of these amendments in Soviet copyright law became clear: UNESCO headquarters announced that the U.S.S.R. intended to become a participating member of the Universal Copyright Convention (UCC) on May 27, 1973 (New York Times, Feb. 28, 1973, at 1).

This paper will begin with a description of Soviet copyright, including reference to United States copyright law for purposes of comparison. It will then examine how foreign copyright holders had fared under the Soviet law prior to the 1973 amendments and the attempts that were made at improving the treatment they received. On the basis of the existing theory and practice of Soviet copyright law, and the results of those attempts at securing better treatment for foreign authors, the author will next state what it is believed was, at the beginning of 1973, the most likely area of any changes in the legal status of foreign authors under Soviet law. Following an explanation of how the UCC
operates, the 1973 amendments to Soviet copyright law, the potential ramifications of Soviet adherence to the UCC and the means for neutralizing any detrimental effects on Western use of *samizdat*\(^2\) literature that might be created by Soviet membership in the UCC will be discussed. The final section of this paper will attempt to predict how the Soviets will conduct themselves as UCC members in light of the factors that caused them to finally adhere to this copyright treaty.

1.0 Soviet Copyright Law Prior to 1973

The Soviet Union has been a federation of 15 Union Republics since 1922, and the division of state power between the federal, all-Union government and the governments of the Republics is regulated by the U.S.S.R. Constitution of 1936 (*Konstitutsiia soiuza sovetskikh sotsialisticheskikh respublik*; Eng. trans. in Berman & Quigley, 1969, at 3-28). Under Article 14(u) of the Constitution the all-Union government has the sole authority to establish basic principles of legislation on the judicial system and procedure and basic principles of criminal and civil legislation. The bicameral U.S.S.R. Supreme Soviet, as the highest agency of federal power, enacts this basic legislation which is often issued first as edicts of the Supreme Soviet Presidium or of the federal Council of Ministers and subsequently ratified by the entire Supreme Soviet.

The 1961 Basic Principles of Civil Legislation of the Soviet Union and the Union Republics (*Vedomosti verkhovnogo soveta SSSR* (1961), No.50, item 525; Eng. trans. in A. Kiralfy, 1963) are the most recent all-Union statutes enacted by the U.S.S.R. Supreme Soviet pursuant to Article 14(u). Included in the 1961 Basic Principles of Civil Legislation (hereinafter referred to as the 1961 Principles) are the basic principles of all-Union copyright law (Section IV). The right of the individual Union Republics to exercise state power is restricted only by the exclusive powers given to the federal government under Article 14 and by the “supremacy clause” of Article 20 of the U.S.S.R. Constitution, which holds that, in case of a direct conflict between federal and Union legislation, the federal law will prevail.

Each of the Supreme Soviets of the 15 Union Republics has enacted its own specific code of civil and criminal laws and procedure which are based upon the corresponding federal principles of legislation. For purposes of this paper, the author will refer exclusively to the various codes of legislation of the Russian Soviet Federated Socialist Republic (RSFSR), since it is the largest Republic and its codes are very similar to those of the other Union Republics.

2.1 Objects of Soviet Copyright Under the 1961 Principles

In the Soviet Union “...copyright law is a system of norms regulating

\(^2\) *Samizdat* is a contraction of *samostoiatel'noye izdatel'stvo* or self-publishing.
personal and property relations which arise in connection with the creation and use of authors' works as individual and unique creative reflections of objective reality" (Ioffe, 1969, at 15). Under Article 96 of the 1961 Principles and Article 475 of the RSFSR Civil Code (Grazhdanskii kodeks RSFSR, 1972 ed.), the objects of copyright protection are scientific, literary and artistic works of an independant and creative nature, which are embodied in an objective (ob'ektivnaia) form capable of reproduction. In a list that is exemplary and not exclusive (Ioffe, 1969, at 15), Article 475 of the RSFSR Civil Code contains the following as permissible objects of copyright:

a. oral (speeches, lectures, reports, etc.) and written (literary and scientific) works;
b. dramatical and musico-dramatic works, including musical works with or without words;
c. translations;
d. scenarios and scenario plans;
e. motion picture or television films, and radio and television programs; choreographic and pantomime works, for which the staging instructions are in either a written, or some other, form;
f. paintings and works of sculpture, architecture, graphic and decorative art, illustrations, sketches and drawings;
g. plans, outlines and plastic works relating to science, technology, or to the presentation on stage of a dramatic, or musico-dramatic, work; geographic, geologic and similar maps;
h. photographic works and works obtained through methods analogous to that of photography;
i. grammophone records and other types of technical recordings of works; other works.

These broad categories are generally similar to those listed as permissible objects of United States federal copyright protection (17 U.S.C. § 5; see Nimmer, 1973, at 32-164).

The term “objective form” simply means that it be “...possible to reproduce [a work] independently of the author's participation in this process” (Ioffe, 1969, p.21). With the exception of choreographic and pantomime works which must be tangibly fixed in a physical medium before they are considered to be objects of Soviet copyright, the requirement of “objective form” does not connote fixation in a tangible medium (I.A. Gringol'ts, 1966, at 546-47). Contrasted with this is the language of the U.S. Constitution which requires that a work be in the form of a “writing” before it is eligible for copyright under the federal copyright statutes (art. 1, § 8, cl.8). It is less clear whether tangible fixation is required for common-law protection of unpublished works which is provided by the laws of the 50 states (see Nimmer, 1973, at 38-42.1).
The moment an independent, creative work has been produced in an objective form by a person who qualifies as a subject of Soviet copyright, the work is immediately protected by Soviet law without any need of registration or notice, regardless of whether or not the work has been published (Ioffe, 1969, at 23; Gringol’ts, 1966, at 547). Within the United States, all unpublished works are protected without need for notice or registration by the several states under the theory of common-law copyright (Nimmer, 1973, at 38-42.2).

Any published work in a tangible form can be accorded the protection of the U.S. Copyright Act, subject to the requirements of notice, registration and deposit (17 U.S.C. §§ 10, 11 & 13). However, if the author is a United States national, he must also satisfy the “domestic manufacture” clause (17 U.S.C. § 16) by manufacturing within the United States those copies of the work that will first be made available to the public outside of the United States (see Nimmer, 1973, at 360-64.4).

Although Soviet federal and Union copyright legislation does not differentiate between published and unpublished works as objects of copyright, the term “publication” (vypusk v svet) is important in other contexts. One prominent Soviet jurist defines “publication” under Soviet law as “... any communication to an indeterminate group, regardless of its means or form (printing, public performance, or transmission by radio or television, etc.)...” (Boguslavskii, Voprosy avtorskogo prava, 1973, at 192). The U.S. Copyright Act does not define the term “publication,” but judicial decisions “... indicate that publication occurs when by consent of the copyright owner, the original or tangible copies of a work are sold, leased, loaned, given away or otherwise made available to the general public...” (Nimmer, 1973, at 194-95). A third definition of “publication” must be referred to when dealing with questions of copyright protection under the Universal Copyright Convention (see § 6 below).

2.2 Subjects of Soviet Copyright Under the 1961 Principles

A second condition must also be fulfilled before a person who is the proprietor of a recognizable object of Soviet copyright can receive the protection of Soviet copyright law: the person must be a subject of copyright under the federal and Union copyright legislation. Article 97 of the 1961 Principles and Article 478 of the RSFSR Civil Code list three ways in which a person may acquire the status of a copyright subject. First, any author and his heirs, regardless of their citizenship, are entitled to Soviet copyright if the author's work is first published within the territory of the U.S.S.R., or if it is unpublished but located in an objective form within the Soviet Union. Secondly, an author-citizen of the Soviet Union and his heirs automatically possess a Soviet copyright on all of the author's published and unpublished works that may be located in a foreign state, provided that they are in an objective form.
Finally, an author and his heirs can be considered subjects of Soviet copyright on the basis of an applicable international agreement signed by the U.S.S.R., even if the author does not fit into either the first or second categories. Under American copyright practice, common-law copyright for unpublished works is available for any author, regardless of his nationality (Nimmer, 1973, pp.250-51). On the other hand, United States federal copyright protection is extended to a foreign author only if: the author is domiciled within the United States at the time of first publication or; the author is a national of a "proclaimed country" or; the author is a national of a state that has signed the Universal Copyright Convention or the work was first published in a UCC state; or the author's state of nationality is party to a bilateral or multilateral copyright treaty with the United States (17 U.S.C. § 9).

As already noted above, the heirs of a person who qualifies as a subject of Soviet copyright are themselves eligible subjects of copyright protection, but are accorded lesser prerogatives than the author himself. However Levitsky (1964, at 112-13) has concluded that assignees and other successors-in-law of an author-subject, other than the author's direct heirs, were not considered to be subjects of Soviet copyright under the 1961 Principles.

When an independent, creative work is authored by two or more subjects of Soviet copyright, the copyright in the work belongs jointly to all the authors, who also retain an individual copyright on their own contributions if the joint work is susceptible to such a division (1961 Principles art. 99). Article 100 of the 1961 Principles permits juridical persons (such as an educational institution) to be subjects of copyright, within the limits of Union legislation. Under Articles 485 and 486 of the RSFSR Civil Code, an organization publishing scientific collections, encyclopedic dictionaries, journals or other periodicals may possess a copyright on the publication, while a firm producing cinema or television films, or radio or television programs may also have a copyright on the film or program. At the same time that a juridical person holds a copyright on the entire publication, the individual authors who have contributed to the publication retain a copyright in their component works (Ioffe, 1969, at 25).

Under United States copyright practice, joint ownership of a copyright is an established principle but unlike Soviet law, the two or more persons in the United States own an undivided interest in the work (Nimmer, 1973, at 271-98). Similar to Soviet legislation, United States law permits a separate copyright to be accorded an individual contribution to a periodical (Nimmer, 1973, at 61-2).

However within the United States, many contributions to publications result from an employment relationship between the author and a physical or juridical person. The U.S. Copyright Act (17 U.S.C. § 26) creates a presumption that the copyright in a commissioned work, or a work made for hire, vests in the employer rather than in the employee. Normally the employer will have exclusive rights to use the work in all media. United States practice does
recognize an agreement between employee and employer to rebut this presumption, and in this case the employer will usually have limited use rights only (Nimmer, 1973, at 238. 1-246.1).

2.3 Duration of Copyright Protection Under the 1961 Principles

Article 105 of the 1961 Principles authorizes copyright protection for the life of the author, but Union Republics are allowed to shorten the period for certain unspecified works. The RSFSR Supreme Soviet has not reduced the duration of an author's copyright protection (RSFSR Civil Code art. 496). Article 105 of the federal statute gives the Union Republics the authority to establish the manner and limits of copyright inheritance and in the RSFSR, a copyright that passed to an author's heirs was valid for 15 years from January 1st of the year of the author's death (RSFSR Civil Code art. 496). In contrast to the ultimate expiration of the copyright held by a physical person, the copyright possessed by a juridical person is valid indefinitely (RSFSR Civil Code art. 498). In the United States, common-law copyright of both physical and juridical persons lasts as long as the work remains unpublished, while protection under the Copyright Act runs for 28 years from the date of first publication, with provision for an additional 28-year term if proper renewal is made (17 U.S.C. § 24).

2.4 The Nature of Soviet Copyright

2.41 Personal Rights (lichnye neimushchestvennye prava)

The right to be acknowledged as the author of a work, the right to publish, circulate and reproduce, and the right to the inviolability of the work are the personal or moral rights granted to a subject of Soviet copyright under Article 98 of the 1961 Principles and Article 479 of the RSFSR Civil Code. During his lifetime, the author could neither transfer these rights or repudiate them (Gringol'ts, 1962, at 346) and the right of authorship could not be passed by inheritance (Ioffe, 1969, at 39). The right to publish, circulate or reproduce a work may be passed by inheritance and a contract of use will then have to be concluded with the author's heirs except in those instances of permissible free use (Ioffe, 1969, at 39). The right to publish, circulate and reproduce for either the author or his heirs is more in the nature of a privilege however, since "... neither of these rights can be exercised ... without the medium of the appropriate 'social organization' (publishing house, theatre, entertainment enterprise, etc."") (Levitsky, 1964, at 81). The right to the inviolability of the work may also be transmitted by inheritance and no additions or changes can normally be made in the original work without the heirs' consent. An exception to this rule is made for the state organ in charge of ideological work which has the power to make any changes necessary in the work of a deceased author.
(Ioffe, 1969, at 39). Although the U.S. Copyright Act does not specifically protect an author's moral rights, Professor Nimmer (1973, at 443-53) writes that American case law is gradually extending the essence of moral rights under such theories as unfair competition, defamation, invasion of privacy and breach of contract.

2.42 Property Rights (imuschestvennye prava)

It is the property right of a subject of Soviet copyright to receive remuneration for the use of his work (1961 Principles art. 98; RSFSR Civil Code art. 479), except as may be modified by three doctrines discussed below (see § 2.43). In a small number of cases such as when a sculptor is hired to create a monument, the rate of remuneration is the result of a mutual bargain between the creator and the user of the work. In the vast majority of cases however, standard publishing contracts (a copy in Eng. in Book Publishing in the USSR, 1970, at 45-50) and the rates of payment for use of a copyrighted work are established by statute—normally as decrees issued by the U.S.S.R. or Union Republic Councils of Ministers, or at times as directives issued by a specific government Ministry or department (Ioffe, 1969, at 35).

The terms of a standard publishing contract must always be followed and any provision inserted into the contract that alters these terms is void (1961 Principles art. 101; RSFSR Civil Code art. 506; Kamyshev, 1972, at 127; Sutulov, 1968, at 26). The exact amount that an author will receive for the use of his work depends on: 1) the statutory rates; 2) the quality of the work as determined by the socialist organization using the work; 3) the quantum of labor expended by the author; and 4) the genre of the work. As an example of how a particular author's royalty payments are a function of these four criteria, let us imagine a hypothetical belle-lettre prose work by Ivan Ivanovish Ivanov which is ten author's lists long (each author's list equals 40,000 typographical characters including spaces, or about 16 pages of an ordinary book) and which Ivanov has submitted to an RSFSR publishing house.

Under RSFSR legislation, there are separate payment schedules in effect for such categories of literature as: belles-lettres prose (including poetry and literary criticism) (SP RSFSR, 1960, No. 16, item 64 as amended by SP RSFSR, 1968, No. 17, item 90 and SP RSFSR, 1970, No. 17, item 105); political, scientific, technical and other literature (SP RSFSR, 1962, No. 3, item 19, as amended by SP RSFSR, 1967, No. 5, item 41); and musical works (SP RSFSR, 1958, No. 2, items 18-19). The RSFSR rates for belle-lettre prose direct a publisher to pay an author either 150, 175, 200, 225, 300 or 400 rubles for each author's list of a book issued in a standard edition. Assuming that Ivanov has

3 Any belle-lettre work issued in less than 50,000 copies is classified as a standard edition. A separate schedule of royalties is used for belles-lettres issued in quantities greater than 50,000 copies per publication. For a detailed account of the whole royalty system in the Soviet Union, see Kamyshev, 1972, pp. 57-102 or Levitsky, 1964, pp. 194-215.
written a fairly good work, the RSFSR publishing house has selected 300 rubles from the statutory rates as the contract price for each author's list of Ivanov's work, or 3,000 rubles.

Then in the case of belle-lettre literature only, reference is also made to the size of the standard edition; if a work is published in a greater quantity than the established norm of 15,000 copies for a belle-lettre book, it is treated as more than one edition for which the author receives additional royalties. If our RSFSR publishing house decides to print 45,000 copies of Ivanov's work, he will be paid for three editions; for the first edition Ivanov will receive the full amount of 300 rubles for each author's list, but for a second or a third edition he receives only 60 percent of the first edition total, 40 percent for the fourth edition, 35 percent for a fifth, and 30 percent for the sixth and each subsequent edition. So for an edition of 45,000 copies, Ivanov will receive $3,000 + (0.6 \times 3,000) + (0.6 \times 3,000) = 6,600$ rubles. At any time during the three years that most standard publishing contracts are valid, the publisher can reprint additional copies of Ivanov's work and the edition number for royalty calculations will continue from where it left off (i.e. the next 15,000 copies will be paid for at the fourth edition rate).

Under Article 105 of the 1961 Principles, Union Republic legislatures were authorized to determine the extent of remuneration that an author's heirs could receive for the use of a deceased author's works, but in no case could the royalties to heirs exceed 50 percent of the amount a living author would have received. This figure was reduced to 20 percent for the heirs of a political, scientific, scholarly or other work (except belle-lettre which was left at the 50 percent figure) (SP RSFSR, 1960, No. 16, item 64).

2.43 Exceptions to the Personal and Property Rights of an Author

2.431 Free Use

Article 103 of the 1961 Principles permits five basic uses of copyrighted material that require neither permission from, nor payment to, the author, but which must nevertheless be accompanied by the original author's name and by indication of the work used, unless otherwise stated.

Article 103(1) allows the "use of another's published work for the creation of a new and independently creative work, except for the conversion of a narrative work into a dramatic work or scenario or vice versa, and for the conversion of a dramatic work into a scenario or vice versa." Examples of free use under this section are creating a musical composition from a poem or a sculpture from a painting (Ioffe, 1969, at 34). Section 1(b) of the United States Copyright Act reserves the exclusive right to make other versions to the proprietor of a copyrighted work.
Article 103(2) permits "the reproduction (vosproizvedenie) in scientific and critical works, and in scholarly and political-educational publications, of published scientific, literary or artistic works, or selections from such works within the limits established by Union Republic legislation." Although one American lawyer reaches a different conclusion (Baumgarten, 1973, at 88), Soviet commentators are in agreement that this section does not grant unlimited free use privileges (Kamyshev, 1972, at 173; Ionas, 1966, at 15; Mozolin, 1970, at 471). Their opinions are based upon a 1928 decree of the RSFSR Soviet of Peoples' Commissars (the forerunner of today's Council of Ministers), apparently still in force, which limits this free use to the reproduction of excerpts of not more than 10,000 typographical characters of prose, 40 lines of poetry or 40,000 characters of a major scientific work (SU RSFSR, 1928, No. 132, item 861). If any reproduction of a published work under this section of Article 103(2) exceeds these limits, the author has an enforceable right under Article 499 of the RSFSR Civil Code to remuneration for the use of the entire excerpt (Ionas, 1966, at 15; Kamyshev, 1972, at 174). Professor Nimmer writes (1973, at 648) that in the U.S. "... substantial passages may be quoted..." from copyrighted works for literary review or for purposes of a scientific, educational historical nature under the judge-made doctrine of "fair use."

Article 103(3) allows the free use of "...information concerning works of literature, science and art by the press or cinema and on radio and television." The information which can be disseminated under this section may be either a paraphrase of the work or verbatim reproduction, but only "... so far as is necessary to bring [the work] to the attention of the public" (Gringol'ts, 1966, at 564). Within the U.S., similar use of a copyrighted work is not considered to be an infringement where the quoting and quoted work are not used for the same purpose (Nimmer, 1973, at 648).

Article 103(4) permits the "... reproduction (vosproizvedenie) of publicly delivered speeches and reports and of published literary, scientific and artistic works in newspapers and cinema or on radio and television." The RSFSR Civil Code also adds the transmission of publically performed works directly from the place of performance as permissible free use in this area (art. 492(4)). The application of this section appears to be limited to familiarizing the public with works of high cultural value (Mozolin, 1970, at 471). The U.S. Copyright Act reserves the exclusive right to authorize any public performance of a dramatic work, and public performances of musical and non-dramatic works for profit, to the copyright holder (17 U.S.C. §§ 1 (c)(d)(e)). Although the broadcast of copyrighted sound recording is a free use under Article 493 of the RSFSR Civil Code (Gringol'ts, 1966, at 564), the U.S. Supreme Court considers radio and television broadcast to be a public performance that is reserved to the copyright holder within the provisions of 17 U.S.C. §§ 1 (c)(d)(e) (Fortnightly Corp. v. United Artists Television, Inc., 392 U.S. 390 (1968)).
Article 103(5) lists the final free use under the 1961 Principles as "... reproduction (vosproizvendenie) by any means except mechanical contact copying of works of applied art, which are located in places open to the public with the exception of those located in exhibitions and museums." This section has a rather narrow practical value since the reproduction of a work of art in the mass media must be accomplished under the provisions of Article 103(4) (Gringol'ts, 1966, at 564). In the United States, copyright is accorded all original works of art and artistic craftsmanship, regardless of whether or not they have been published, and any published reproduction of an original work of art; no copying of these art works is permitted without the copyright proprietor's consent (Nimmer, 1973, at 84-98).

2.432 Compulsory Licensing Under the 1961 Principles

There are four types of compulsory licenses which permit the use of a copyrighted work without the author's consent, but which must be accompanied by royalties paid to the author and by the author's name.

Article 104(1) of the 1961 Principles permits the "... public performance of published works; however, if no admission is charged the public, the author has the right to remuneration only in those instances established by Union Republic legislation." When the public performance is for profit, a Russian author is entitled to receive a percentage of the total ticket receipts; four percent for a prose play and five percent for a play in verse (Ioffe, 1969, at 37; SP RSFSR, 1958, No. 2, items 18-19). The same RSFSR decree also requires that an author receive royalties even for the non-profit use of his work, except when the performance is in a museum, library, educational institution, agricultural club, reading room or lecture bureau. As noted above in § 2.431, the U.S. Copyright Act gives the copyright holder the exclusive right to authorize all public performances of a dramatic work, and public performances for profit of other works.

Article 104(2) authorizes a compulsory license for "... recording on film, records, magnetic tape or by any other means, previously published works with the aim of public reproduction or circulation, except the use of these works by cinema, radio or television (point 4, Article 103 of these Principles)." A prominent Soviet jurist (Gringol'ts, 1966, at 566) writes that this section allows the recording of every published work that can be accomplished with the aid of technical means today and that may become known in the future, so long as the recording (such as grammophone records, magnetic tape, photographic film and microfilm, etc.) is intended for public reproduction, sale or circulation. The only type of compulsory license that can be obtained under American law is for third parties who wish to record a musical composition which has previously been recorded with the copyright holder's consent (17 U.S.C. § 1 (e)). All other recording and reproduction rights are vested in the copyright proprietor, and
any reproduction or recording made without his consent is permitted only within the limits of the "fair use" doctrine.

Article 104(3) allows a compulsory license for the "... use of published literary works by composers for the creation of musical compositions with words." The RSFSR Civil Code provides that the compensation due the author from this license must be made by the organization using the work and not by the composer (art. 495(3)). Any similar use of a copyrighted work in the U.S. is an exclusive right of the copyright holder (17 U.S.C. §§ 1(a)(b)), qualified only by the "fair use" doctrine.

Article 104(4) contains the final compulsory license provided for by the 1961 Principles. It allows the "... use of works of fine art and also photographic works, for industrial products; in these cases, mention of the author's name is not required." Examples of industrial products that can be manufactured using designs, patterns or images obtained from copyright works under this section include fabrics and crockery. Gringol'ts writes however (1966, at 556), that the provisions of this section do not permit the manufacture of a copy of a work of fine art even though it is accomplished through industrial techniques, such as casting a sculpture in porcelain. The U.S. Copyright Act (17 U.S.C. §§ 1, 5(g)) gives the copyright proprietor the exclusive right to reproduce his work in any manner whatever; this protection applies to all works of art that are creative and original, and to the form, but not utility, of works of artistic craftsmanship. Original photographs can be protected against unauthorized reproduction in the original, or any other, medium (17 U.S.C. § 5(j); Nimmer, 1973, at 98 & 380).

2.433 The Principle of Free Translation Under the 1961 Principles

Article 102 of the 1961 Principles, prior to the February, 1973 amendments, read as follows:

Every published work may be translated without the author's consent but with notification to the author and under conditions that preserve the integrity and the meaning of the work. The right to receive remuneration for use of a work in translation is accorded to the author of the original in those instances provided by Union Republic legislation. The translator is accorded the copyright in the translation that he makes.

Before promulgation of the February, 1973 amendments to the federal copyright law, any remuneration for an author whose work had been translated depended on the genre of the work. Written works were divided into two categories: 1) political, scientific, scholarly and other works and 2) belles-lettres. No payment was required in any Republic when a work in the first category, originally published in Russian, was translated into one of the other national languages of the U.S.S.R. When these works were translated from a

*In Mazer v. Stein, 347 U.S. 201 (1954) the U.S. Supreme Court upheld the copyright in a statuette used as a lamp base because there was artistic form, as well as utilitarian value, present.
national language into Russian, or from one national language into another, the
majority of Republics (RSFSR, Ukraine, Byelorussia, Moldavia, Lithuania,
Latvia, Estonia, Kazakhstan, Tadjikstan, Uzbekistan, Azerbaidzhan and
Armenia) still did not require any royalties be paid to the author of the original
work. Only Georgia, Kirghizia and Turkmenistan had enacted legislation
requiring compensation for an author whose work was translated from a national
language into Russian, or from one national language into another (Kamyshev,
1972, at 179). Prior to 1969, an author of a work in the second category that
was originally published in Russian did not receive royalties in any of the
Republics when his work was translated into another language of the U.S.S.R.
Since 1969 however, most Republics provided that an author of a belle-lettre
work should be compensated when his work was translated into another
language, regardless of what language the work was first published in
(Kamyshev, 1972, at 179-80). The exact amount that the author received for the
translation of his work was usually calculated as a percentage of the minimum
allowable statutory rate used to compensate the author when he first created the
work. The percentage figure used in the Russian Republic is 60 percent (SP
RSFSR, 1968, No. 17, item 90). So if Ivan Ivanov's belle-lettre work was
translated into another language within the RSFSR after 1969, he would be
paid 60 percent of the minimum rate of 150 rubles for each author's list of his
work, or $0.6 \times 150 \times 10$ (author's lists) = 900 rubles. The remuneration a
translator receives for his efforts is paid according to the same general formula
used to compensate an author for the creation of an original belle-lettre work
(see § 2.42 above).

2.434 Personal Use Under the 1961 Principles

Article 493 of the RSFSR Civil Code authorizes "... the reproduction or
other use of another's published works for the satisfaction of personal needs"
and it is not necessary to obtain the author's consent, or to make royalty
payments to him or even to acknowledge him as the source. In contrast to the
free uses of Article 103 of the 1961 Principles (see § 2.431 above), this use does
not allow repeated publication of another's work (Gringol'ts, 1966, at 565).
Although there is no specific personal use exemption in U.S. copyright
legislation, an individual can make limited, non-profit personal use of a
copyrighted work under traditional United States practice.

2.435 The Concept of Eminent Domain in Soviet Copyright Law:
The Right of the State to Compulsorily Purchase an
Author's Publication Rights

Under the authority of Article 106 of the 1961 Principles, the RSFSR
Supreme Soviet has enacted the following provision:

An author's right to publication, public performance or other use of his work may be
compulsorily purchased by the state from the author or his heirs upon the issuance, in each case, of a special decree by the RSFSR Council of Ministers. The manner and conditions for use of the work, the rights to which have been purchased, are to be set by the RSFSR Council of Ministers.

The potential use of this section appears to be unlimited, since there is no requirement that a work have been published before a compulsory purchase decree can issue (Kamyshev, 1972, at 13). Soviet commentators have stated however, that this section is only intended to curb the misuses of copyright by an author or his heirs (Kamyshev, 1972, at 14; Gringol’ts, 1966, at 572). These same prominent Soviet jurists also write the primary use of this provision is against an author's heirs who might seek to prevent publication or to unduly profit from publication of the work. Boguslavskii . . . (Voprosy avtorskogo prava, 1973, at 198) asserts that the application of this provision to the publication rights of a foreign author's heirs is unknown. The publication rights that are acquired by the state under Article 501 are valid indefinitely.

2.5 Protection of the Copyright Within the Soviet Union

2.51 Criminal Liability for Copyright Infringement

Article 141 of the RSFSR Criminal Code (VVS RSFSR, 1960, No. 40, item 591; Eng. trans. in Soviet Statutes & Decisions, Fall 1964, at 64-65) provides criminal liability for intentionally plagiarizing or for illegally reproducing or circulating another's work, regardless of whether or not it has been published, or for compelling an author to become one's co-author. A person found guilty of violating Article 141 can be imprisoned for up to one year or fined not more than 500 rubles. Not all of the author's personal and property rights are fully protected by this statute however, and the author will frequently turn to other legal, or even non-judicial, means to secure complete protection for the rights that he is accorded under Soviet law (Ioffe, 1969, at 56). Section 104 of the U.S. Copyright Act makes it a misdemeanor willfully, and for profit, to infringe upon another's copyright; penalties for conviction are imprisonment for up to one year and/or a fine of not less than $100 nor more than $1,000. This section “. . . has only rarely been invoked” (Nimmer, 1973, at 709).

2.52 Civil Law Remedies

Article 4 of the RSFSR Civil Code states that civil rights and duties arise from the creation of works of science, literature and art, and Article 6 directs that civil rights are to be protected by civil courts, commercial courts (arbitrazh) and arbitration tribunals (treteiskii sud). The jurisdiction of civil and arbitrazh courts depends upon the identity of the parties: if one, or both of the parties are individuals, the regular civil courts have jurisdiction, while arbitrazh courts are used where both parties are socialist organizations (RSFSR Civil Code of Procedure art. 25, VVS RSFSR, 1964, No. 24, item 407; Eng. trans. in Kiralfy,
1963). Judgments of all lower civil and arbitrazh courts are subject to appeal (RSFSR Civil Code of Procedure art. 44). In general, arbitration tribunals are regulated by Appendix III to the Code of Procedure; the parties to the dispute must agree in writing to the tribunal's jurisdiction and the tribunal's final decision cannot be re-tried in the regular courts. Of the two types of disputes concerning authors that can be settled by arbitration, those between authors themselves may nevertheless be tried de novo in the regular court system after a final arbitration decision. Normally an arbitration judgment of a dispute between an author and his editor or director cannot be taken to the civil court system (Chertkov, 1971, at 11).

2.521 Judicial Enforcement of Personal Rights

Article 499 of the RSFSR Civil Code states that an author, or his heirs, or organizations protecting authors' rights may petition a civil court for such relief as is necessary to re-establish a violated personal right (e.g., corrections in the work or an announcement in the press). The only burden upon the plaintiff is to prove damage to his personal rights; he need not prove that the defendant was at fault or acted intentionally (Gringol'ts, 1966, at 570). Once damage has been proven, the judge can even order a halt to publication or distribution of a work if he finds this is necessary to make the plaintiff whole. Professor Ioffe (1969, at 57) suggests that such an order should only be made when no other remedy proves adequate and when such measures do not encroach upon the other interests of society. There is no statute of limitations for enforcement of personal rights (RSFSR Civil Code art. 90).

2.522 Judicial Enforcement of Property Rights

The author or his heirs can seek compensation in civil courts for any provable damage to those property rights guaranteed by Soviet law (RSFSR Civil Code art. 500). Damages may be either in the form of physical damage to the copyrighted material or lost income from misuse (RSFSR Civil Code art. 219; Gringol'ts, 1966, at 571), but to receive the latter type of compensation, the plaintiff must prove that the defendant had knowledge of the infringement (Matveev, 1973, at 232). Further, any damages that the plaintiff is entitled to may be reduced if he is also found to be partially at fault (RSFSR Civil Code arts. 225 & 458; Gringol'ts, 1966, at 571). No court costs are assessed to either party in suits to enforce both personal and property rights, but there is a statute of limitations for commencing a property rights damage suit: three years if an individual is a party, or one year if both parties are socialist organizations (RSFSR Civil Code ch. 6).

In the United States the author of an unpublished work can claim damages or lost profits if he can prove infringement by the defendant (Nimmer, 1973, at 666-67). Since common-law copyright protection is provided by the several
states, these actions are usually within state court jurisdiction, subject of course to federal diversity jurisdiction. The U.S. Copyright Act, which is enforced primarily by federal courts (see Nimmer, 1973, at 567-72.2), permits a copyright proprietor to recover either his lost profits or actual damages (17 U.S.C. § 101 (b)) and he may also petition the court to enjoin all further infringements of his copyright (17 U.S.C. § 101(a)). A schedule of statutory damages is found in 17 U.S.C. § 101(b) and these may be awarded to the plaintiff who has proven infringement by the defendant, but who is unable to prove any injury, damage or lost profits. The statute of limitations for both criminal and civil actions under the U.S. Copyright Act is three years (17 U.S.C. § 115).

2.53 Other Measures Within the Soviet System for Protecting Authors' Rights

Many disputes over author's rights never reach the formal judicial system. Most disagreements between authors and their editors are resolved by chief editors or heads of publishing houses (Chertkov, 1971, at 7). If an author or his heirs are unsatisfied with this decision, or if the local procurator (district attorney) feels the laws have not been properly applied, they may protest the allegedly wrongful decision to a higher state authority having control over the user organization (Mozolin, 1970, at 484). The matter can of course be taken to the court system for resolution if the author or the procurator still remain unsatisfied (Chertkov, 1971, at 7-11).

The all-Union administration for the protection of authors' rights (VUOAP), in existance since 1938, is a specialized arm of the writers' professional organization, the Union of Soviet Writers; a similar administrative organization has been set up by the Union of Soviet Artists. VUOAP's main function has been to assist in controlling the use of authors' works, and to collect royalty payments from users, which VUOAP then turned over to the author (Ioffe, 1969, at 56; Chertkov, 1971, at 25). On its own initiative VUOAP can bring suit against a user to collect royalties, and at the request of the authors or his heirs, VUOAP can become a party to, or even conduct, a suit for enforcement of an author's personal or property rights (Chertkov, 1971, at 26-7). Under Article 481 of the RSFSR Civil Code, VUOAP has the authority to protect the integrity of an author's work after his death and can fulfill this function even after the copyright has expired.

3.0 Soviet Copyright Law and the Foreign Author

There are four ways that a foreign author can receive royalties for the use of his work in the Soviet Union: 1) under the territorial principle of Article 97 of the 1961 Principles (§ 2.2 above); 2) under the terms of a bilateral or a multilateral treaty; 3) under the provisions of an agreement concluded between
a foreign author and a Soviet publishing house; or 4) through direct payments from a Soviet user organization without any formal agreement.

3.1 The Territorial Principle of Article 97

In 1828 Russian authors were first granted the legal right to receive royalties for the publication and use of their works, and in 1857 this right was extended to all authors, regardless of nationality, whose works were first published on Russian soil (Boguslavskii, Voprosy avtorskogo prava, 1973, at 91). The same principle of territorial acquisition of copyright was used by the Soviet government in Article 1 of both the federal Copyright Act of 1925 (SZ SSSR, 1925, No. 7, item 67) and the Basic Principles of Copyright of 1928 (SZ SSSR, 1929, No. 27, item 245), and was retained by the enactment of the 1961 Principles. The use of this principle to gain a Soviet copyright, and the property rights which flow from it, has only been rarely used by foreign authors.

Further, if the author is an American national and the Soviet publisher wants to print an English-language edition, the author has to contend with the provisions of the "domestic manufacturing" clause of the U.S. Copyright Act (17 U.S.C. § 16) in order to secure an American copyright for an English-language edition of his work that is not first published within the United States (see Nimmer, 1973, at 360-65). One of the few works of an American author to have been accorded a Soviet copyright under the territorial principle is Mitchell Wilson's Meeting at a Far Meridian (Boguslavskii, Voprosy avtorskogo prava, 1973, at 196).

3.2 International Copyright Treaties

If a work is first published, or is located in an objective form, outside the territory of the U.S.S.R., the only other way that a foreign author can obtain a Soviet copyright under the 1961 Principles is through the provision of an international agreement ratified by the U.S.S.R. In addition to the language of Article 97 (see § 2.2 above), Article 129 of the 1961 Principles states that if an international agreement signed by the U.S.S.R. has provisions different from those contained in the Principles, the international treaty will prevail. The supremacy of an international agreement over Soviet domestic law is repeated in Article 64 of the 1961 Principles of Civil Procedure of the U.S.S.R. (VVS SSSR, 1961, No 50, item 526).

Yet despite these provisions, the Soviet Union, like Tsarist Russia, had never been a party to any type of multilateral copyright treaty before 1973. A recent statement of why the U.S.S.R. had continually refused to join either the Berne Copyright Convention of 1886 or the Universal Copyright Convention of 1952 is contained in Vestnik moskovskogo universiteta (1970 No. 1; Eng. trans. in Soviet Law & Government, 1970, at 159-71). The article's author, Ms. G.A. Kudriavtseva, stressed the fact that both of these Conventions recognize the

International Lawyer, Vol. 8, No. 4
author's exclusive translation rights in his work, and recognize his freedom to assign these rights to any enterprise or entrepreneur, in opposition to the 1961 Principles. According to Kudriavtseva, a definite problem would arise if the Soviet Union adhered to either of these Conventions and was thereby obligated to grant a copyright holder exclusive translation rights. Most Western authors, Kudriavtseva continued, do not have the means to disseminate their works and are forced to assign their publication and translation rights to capitalist firms. Not only are the capitalists thus able to exploit the labor of another human being, they also "... in turn attempt to derive the greatest possible political and material advantage ..." (Kudriavtseva, 1970, at 56-7). She concluded her article by pointing out that the freedom of translation under the 1961 Principles made possible the unhindered and extensive use of the achievements of world science and culture, and by stating:

... it is impossible at the present time to depart from the principle of freedom of translation with the goal of joining an international copyright treaty.

... it would seem more correct to conduct our legal relations with foreign authors by concluding bilateral ... agreements. (at 167-8).³

Unlike multilateral copyright arrangements, bilateral agreements protecting authors' rights have found a place in the history of both Imperial Russia and the Soviet Union. The government of Alexander II signed Russia's first bilateral copyright treaty with France in 1861, and a similar agreement with Belgium in 1862. These both expired after 25 years however, and were not renewed (Boguslavskii, Voprosy avtorskogo prava, 1973, at 94), but new treaties were signed with France in 1911 and with Belgium in 1915. Imperial Russia also entered into bilateral copyright treaties with Germany (1913) and with Denmark (1915). After the October 1917 Russian Revolution, all of these bilateral accords were annulled by the Soviet government (Boguslavskii, Voprosy avtorskogo prava, 1973, at 104).

During the 1920s, the Soviet government held bilateral discussions with Germany, France and Italy on the subject of mutual copyright protection, but it was not until November, 1967 that the Soviet Union entered into its first bilateral copyright agreement (SP SSSR, 1967, No 30, item 213; Eng. trans. of the accord in Copyright, 1968, No. 3). This treaty with the Hungarian Peoples' Republic does not establish a uniform standard of copyright protection, but rather provides for reciprocity of national copyright protection for Hungarian and Soviet nationals whose works are first published within their own country. Reciprocity of treatment means that Hungarian authors now receive the same

³In 1968 the U.S.S.R. did ratify the Convention establishing the World Intellectual Property Organization (WIPO), whose purpose is to promote worldwide protection of intellectual property. At the time however, the Soviets only appeared to be interested in the WIPO as it related to inventions and discoveries (see Nedeliia, 1968, No. 43, p. 4; Eng. trans. in 20 Current Digest of the Soviet Press, 1968 No. 43, p. 19). Ratification of this Convention by the Presidium of the U.S.S.R. Supreme Soviet is in VV S SSSR, 1968, No. 4, item 363.
copyright protection in the U.S.S.R. as Soviet citizens do, and that Soviet authors are accorded the same copyright within Hungary as Hungarian authors receive. The only exception to this régime is Article 6 of the treaty, which provides that:

There shall be no obligation to pay copyright royalties for the utilization in the territory of one of the Contracting Parties of a work . . . in cases where citizens of the said Contracting party are not entitled to royalties for utilization of their works in the territory of the other Contracting Party.

This means that if a Hungarian author is not entitled to receive payment for a particular use of his work in the U.S.S.R. (e.g., the free uses of Article 103, § 2.431 above), Hungarian publishers will not have to pay Soviet authors for a similar use of their works in Hungary, even if Hungarian law normally requires payment for such use. The U.S.S.R.-Hungarian treaty was scheduled to expire after three years in operation, but it was renewed in March of 1971 and will now be valid until January, 1978. On January 1, 1972 the Soviet Union signed a second three-year copyright treaty with the Peoples' Republic of Bulgaria (SP SSSR, 1971, No. 1, item 4; Eng. trans. of the treaty in Copyright, 1972, No. 8) that is almost identical to the Hungarian-Soviet agreement. A 1972 cultural and scientific co-operation agreement between the Soviet Union and Czechoslovakia also has a provision for both countries to establish a mutual system of copyright protection (SP SSSR, 1973, No 4, item 18).

3.3 Royalties for the Use of Foreign Works in the U.S.S.R.

Although the Soviet Union did not ratify any multilateral copyright conventions or bilateral copyright treaties prior to 1973, Soviet publishers have made isolated payments to Western authors for the use of their works in the U.S.S.R. A partial list of those who have received some form of compensation includes: Upton Sinclair, Waldo Frank, Art Buchwald, Erskine Caldwell, Ernest Hemingway and André Gide.

Some of these payments were the result of contracts between the author and the Soviet publisher, while others were made upon demand of the author and some were even made without any request whatever. The payments were sometimes made in the currency of the foreign author's residence, but most often they were in the form of rubles that could only be spent in the U.S.S.R. (in general see: Levitsky, 1964, at 240-52; Berman, 1959, at 70; Iseman, 1960, at 156). Not all the claims of Western copyright holders were satisfied however. A famous case in point was the attempt by the heirs of Sir Arthur Conan-Doyle to receive some compensation for the unauthorized publication of Doyle's works in the U.S.S.R. Professor Berman of Harvard was retained by the Doyle heirs and was given special permission to argue the case in the Russian courts. Since neither Doyle nor his heirs were subjects of Soviet copyright (see § 2.2 above), Berman tried the case on a theory of unjust enrichment. The suit was taken all
the way to the RSFSR Supreme Court, which upheld the lower court’s dismissal of the claim (for accounts of this case, see: Berman, 1959, at 67-81; Berman, 1960, at 246-47).

In the late 1950s, the Authors’ League obtained powers of attorney from about 80 American authors whose works were being published in the U.S.S.R. without permission. The League commissioned the late Adlai Stevenson to act as chief negotiator in informal talks with the Soviet government. He sought both payments for the past use of American works and a promise of future payments on a regular basis. Stevenson’s efforts were no more successful than those of Professor Berman (Iseman, 1960, at 155-59). Two delegations of American book publishers also visited the Soviet Union in 1962 and 1970, and pointed out the potential benefits the Soviet government could enjoy if it were to join an international copyright convention, but did not achieve any immediate results (Book Publishing in the USSR, 1970 ed.).

In 1965 Professor Berman made another trip to the U.S.S.R. on behalf of some American Literary and publishing organizations. He suggested to the Soviets that American publishers pay compensation in dollars for the exclusive right to publish Soviet works in the United States, and that Soviet publishing firms pay for their use of American works in either dollars or rubles, but only up to the limits of the total amount paid by the American firms.

This would have solved the balance of payments problem previously voiced by the Soviets during the 1962 visit of the American book publishers (Book Publishing in the USSR, 1970, at 172), and the proposal could have even functioned without any money leaving the shores of either country. Despite Professor Berman’s laudable efforts, he was unable to find any Soviet official or organization with an interest in, or responsibility for, the foreign copyright problem (Berman, 1965, cited in Griff, 1969, at 58).

3.4 Recent Proposals to Compensate American Authors for the Unauthorized Use of their Works in the U.S.S.R.

A proposal, similar to Professor Berman’s 1965 plan, was made by Robert Shaye (1964). He suggested that Congress pass special legislation requiring payment of royalties by American publishers in exchange for exclusive American publishing rights to works by Soviet authors. The money collected from the U.S. firms would then be paid on a pro rata basis to those American authors whose works were being published without permission in the Soviet Union.

A trust fund to compensate Soviet, as well as American, authors was suggested in 1969 by David Griff. This plan would have begun without Soviet participation. American firms would bid for the exclusive right to publish Soviet authors within the United States with the minimum bid being determined by reference to the Soviet statutory fee schedule (see § 2.42 above). This money
would then be turned over to the American authors, as in the Shaye proposal. But Mr. Griff favored the inclusion of this arrangement in a bilateral treaty, rather than the unilateral implementation of such a plan by the United States. He concluded by stating that if the United States based its arguments for such a régime on economic considerations, rather than on moral or legal rights, "... agreement with the Soviets does seem possible" (Griff, 1969, at 101).

3.5 An Optimistic Prediction for Improvement in the Soviet Treatment of Western Authors Prior to 1973: Bilateral Copyright Agreements

Despite the attempts of Adlai Stevenson and Harold Berman to reach some form of modus vivendi with the Soviet government, and despite the carefully formulated proposals of Berman, Shaye and Griff, no copyright treaty between the U.S.S.R. and a Western nation was ever concluded, nor was a trust fund plan established, even on a unilateral basis. During the remainder of the 1960s, the Soviets continued to translate and publish works of foreign authors without paying royalties on a regular basis. From 1917 to 1957, over 77,000,000 copies of 2,572 books by 218 American authors were printed within the U.S.S.R. (Pechat' SSSR za sorok let, 1957, at 96), and in 1971, Soviet publishing houses printed 4,170,000 copies of 64 American books (Pechat' SSSR v 1971 godu, 1972, at 53). At the beginning of 1973, one could reasonably predict upon the basis of past Soviet history and prevailing Soviet attitude that the U.S.S.R. was not about to join either of the two international copyright conventions. The author doesn't believe that the Soviet Union could have been expected to agree to any trust fund proposal since the Berman plan was introduced to the Soviet government in 1965, and yet was never acted upon by the U.S.S.R.

The greatest opportunity for more favorable treatment of foreign copyright holders at the beginning of 1973 seemed to be in the area of bilateral agreements with the Soviet Union. The continued warming of diplomatic and economic relations between the United States and the U.S.S.R. might have resulted in a bilateral copyright agreement; however, not a treaty of the trust fund variety, but rather a treaty similar to the Russo-Hungarian and Russo-Bulgarian agreements. The national treatment provisions of such a treaty would have extended the same copyright protection to American authors as Soviet citizens enjoy under the 1961 Principles and would have guaranteed the same level of protection to Soviet authors that American citizens receive under United States copyright law.

Although American authors would have received a lesser standard of protection in the Soviet Union than Soviet authors in the United States because of the free use and compulsory license features of the 1961 Principles, Americans would at least have been accorded some copyright protection, where previously they had received none. Yet if the Soviet government had concluded this type of an agreement with the United States, it would not have been
establishing United States copyright protection for works of Soviet dissidents first published outside of the U.S.S.R.; both the Hungarian and Bulgarian treaties provide that only those authors whose works are first published within their own country are considered subjects of copyright within the other treaty state. Thus, any underground Soviet literature that was not first published in the U.S.S.R. would not have received United States copyright protection under such a treaty, and would therefore not have been eligible for federal copyright.

4.0 The Improbable Becomes Reality: The Decision of the Soviet Union to Join the Universal Copyright Convention

The past history and present attitudes of the Soviet government notwithstanding, Soviet Foreign Minister Gromyko announced in a letter released by UNESCO on February 27, 1973, that the Soviet Union desired to become a party to the UCC (New York Times, Feb. 28, 1973, at 1). In order to meet the minimal requirements of membership in the UCC, the Presidium of the U.S.S.R. Supreme Soviet has made several changes in the 1961 Principles (VVS SSSR, 1973, No. 9, item 138).

5.0 The Universal Copyright Convention of 1952

There are three international copyright treaties in existence today. The first is the Berne Convention of 1887, which has been revised in 1948, 1967, and 1971. Neither the United States nor the Soviet Union are members of the Berne Convention. However, copyright protection in Berne countries for Soviet and American authors can be obtained if their works are first published in a Berne member country (Berne Convention, art. 4(2), 6(1)). The second international copyright treaty is the Buenos Aires Convention of 1910; again, the U.S. and the U.S.S.R. are not parties to this agreement. Finally, there is the Universal Copyright Convention, created in 1952 under the auspices of UNESCO. This is the treaty to which the Soviet Union has become a party and it joins the U.S. and 61 other countries as signatories to this accord. The UCC was revised in Paris in 1971, and this Revision will come into force when 12 countries ratify it; at the beginning of 1974, only five countries had done so. The Soviet Union did not sign the 1971 Revision. To understand better how membership in the UCC effects the operation of Soviet copyright law, the main provisions of the 1952 Convention will first be examined. (The full text of the 1952 UCC can be found in Nimmer, 1973, Appendix K.)

Article I of the UCC provides that all contracting parties will undertake to

---

4Presently the United States Copyright Act accords a U.S. copyright to works of foreign authors first published outside of the United States only if: 1) the alien author is domiciled within the U.S. (17 U.S.C. § 9(a)); 2) the author is a national of, or the first publication occurs in, a UCC member state (17 U.S.C. § 9(c)); or 3) the author is a national of a "proclaimed country" (17 U.S.C. § 9(b)). The Soviet Union has never been a "proclaimed country" for purposes of the U.S. Copyright Act.
protect the rights of authors, and other copyright proprietors, in literary, scientific and artistic works, regardless of whether or not the work is published. Member states are not obligated by the UCC (Article VII) to provide any retroactive copyright protection for nationals of other UCC countries. Since the Soviet Union became an official participant in the UCC three months after filing its letter of intent, or on May 23, 1973, most Soviet and American commentators agree that any work of a Soviet or American "published" under the UCC definition of that term before May 23, 1973, or any work "published" in the United States or the U.S.S.R. prior to that date, will not receive copyright protection in either country through operation of the UCC (Matveev, 1973, at 219; Boguslavskii, 1973, at 58; Baumgarten, 1973, at 29-31; Bromberg, 1973, at 99). Of course, these works can still be protected under other provisions of Soviet or American copyright law. On the other hand, all works "published" by American or Soviet authors, or "published" within the U.S.S.R. or the United States on or after May 23, 1973 are entitled to copyright protection in the other country under the UCC. This category includes those works that were created, but remained "unpublished," prior to May 23, 1973.

With the exception of Article I of the UCC plus those Convention sections concerning translation rights, copyright duration and registration formalities, the UCC does not provide for a uniform standard of copyright protection in all of the member states, or for the extraterritorial effect of a member state's laws to protect its nationals in other UCC countries. Rather, national treatment is the key provision of the Convention (UCC, art. II), as it is in the Soviet copyright treaties with Hungary and Bulgaria (see § 3.2 above). Under Article II of the UCC, each contracting state agrees to extend to 1) works first "published" in other UCC states and to 2) works of member state nationals the same standard of copyright protection that the contracting state provides for its own citizens.

The domestic law of some UCC states normally requires compliance with certain formalities in order for an author to obtain a copyright in that country. Article III of the UCC requires a contracting party to consider any such formalities satisfied with respect to all works by foreign authors, that are first published outside of its territory, if all the copies of the work bear the © symbol, the name of the copyright proprietor and the year of first publication. Article III does not prohibit a contracting party from imposing certain procedural requirements before it will allow a person to seek judicial enforcement of his copyright within the territory of the contracting state. Any person desiring judicial enforcement of his copyright in the United States courts must first fulfill the registration and deposit requirements of 17 U.S.C. § 13.

"Publication," when used in connection with the operation of the UCC, connotes "... the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived" (UCC, art. VI).
Furthermore, United States participation in the UCC does not nullify the federal statutory requirements of notice, registration and deposit that must be met before a United States author, or domiciliary, of a work first published in the United States can receive a United States copyright (UCC, art. III (2)).

Article IV (2) of the Convention provides that the minimum term of copyright protection in all member states shall be the life of the author plus 25 years after his death, except that a member state may compute the term of protection from the date of first publication if the term is not less than 25 years. A copyright under the U.S. Copyright Act runs for 28 years from the date of first publication, and may be renewed (see § 2.3 above).

The right of translation under the UCC starts off with a broad grant of exclusive rights for authors of literary, scientific and artistic works. Article V states, in part: "The rights referred to in Article I shall include the exclusive right of the author to make, publish and authorize the making and the publication of translations of works protected under this Convention" (Nimmer, 1973, at 992). At the same time however, UCC Article V also contains the following provision. If, after seven years from the first UCC "publication" of a writing, an authorized translation has not been published in the language(s) of a contracting state, or if the translation is out of print, a national of the contracting state can obtain a non-exclusive license to translate and publish the work provided the following conditions are fulfilled: 1) the contracting state has domestic legislation authorizing such a non-exclusive license; and 2) the national of the contracting state has been refused permission by the copyright holder to make such a translation, or has been unable to locate the copyright holder. If this licensing provision is used, Article V also requires that compensation be paid to the author of the original work, that the translation be correct, that the license be valid only for publication within the contracting state, that the license be non-transferable and that no license be issued if the author of the original work has withdrawn all copies from circulation.

6.0 Amendments to the 1961 Principles
Resulting from Soviet Adherence to the UCC

Article X of the UCC requires each contracting state to adopt those measures which are necessary to ensure the full application of the Convention in that State. On February 21, 1973, the Presidium of the U.S.S.R. Supreme Soviet issued an edict in the form of amendments to the 1961 Principles (VVS SSSR, 1973, No. 9, item 138), which contained those measures required to ensure that Soviet law complies with UCC Article X. The amendments to Article 97 of the 1961 Principles (see § 2.2 above) bring that section into conformity with UCC Article I by extending Soviet copyright to authors, their heirs and legal assigns. Now the holder of a Soviet copyright may not only transfer his interest by
inheritance, but also by sale or assignment. A new paragraph was also added to Article 97:

Foreign copyright holders who acquired rights from author-citizens of the USSR are deemed to have a copyright in the territory of the USSR in the manner specified by legislation of the USSR.

This amendment, which deals with the recognition of a Soviet copyright within the U.S.S.R., does not violate the UCC, so long as the work was originally published in the Soviet Union or was created by a Soviet national.

The 1973 edict also amends Article 98 of the 1961 Principles by adding a new paragraph:

The manner of transfer of the right to use a work of an author-citizen of the USSR in the territory of a foreign state is determined by legislation of the USSR.

As noted above (§ 5.0), the UCC does not provide for the extraterritorial effect of the laws of any member state, so the United States is not bound by the Convention to disregard rights acquired from a Soviet author merely because they have been transferred in violation of Soviet law (Baumgarten, 1973, at 4). However, this new paragraph of Article 98 can be used by the Soviet government, under UCC Article III(2), to establish conditions that must be observed before Soviet nationals, or authors of works first published within the U.S.S.R., are recognized as subjects of copyright under Soviet law. It may also be valid under the same UCC section as a basis for conditions that must be fulfilled before a foreign copyright holder can obtain judicial or administrative enforcement of his rights within the U.S.S.R.

Article 102 of the 1961 Principles, which previously contained the principle of free translation (see § 2.433 above), has now been amended to read as follows:

The translation of a work into another language for the purpose of publication (vypusk v svet) is permitted only upon the consent of the author or his legal assigns. The copyright of the completed translation belongs to the translator.

The use of the Russian term vypusk v svet indicates that the translation rights under this amendment encompass translation for all public forms of communication (see definition of vypusk v svet in § 2.41 above) and are not limited to translations made only for the purpose of printing a work. Only after the copyright holder has given his permission for publication and translation of his work can free use or compulsory purchase be made of the translation (see Boguslavskii, 1973, at 62; and Voprosy avtorskogo prava, 1973, at 210).

The free use section of the 1961 Principles has itself been amended by the 1973 edict. What was previously § 5 of Article 103 (see § 2.431 above), has now been renumbered § 6; the word "newspapers" has also been removed from § 4 of Article 103. A new § 5 has been inserted into Article 103 by the 1973 edict, which now permits "the reproduction (vosproizvedenie) in newspapers of publicly delivered speeches and reports, and also of published literary, scientific
and artistic works in the original and in translation." Although this new section appears to grant a rather large exception to a copyright holder's rights in the U.S.S.R., its application may well be limited by the same narrow interpretation given its predecessor §4 of Article 103 (see §2.432 above). The only portion of this new §5 which might be questionable under the UCC is the free use of published works "in translation," since the press is not specifically exempted from observing an author's exclusive translation rights accorded him by UCC Article V (see §5.0 above). It could nevertheless be argued that the new §5 does not violate the spirit of the UCC, if the new provision is used primarily for information dissemination, (see Baumgarten, 1973, at 111).

An additional free use has also been added to Article 103 by the 1973 edict. What is now Article 103(6) permits the "reproduction (reprodutsirovanie) of published works for non-profit scientific, educational or instruction purposes." A prominent Soviet jurist writes that this new provision is mainly intended to permit photocopying of previously published works within libraries or educational institutions (Boguslavskii, 1973, at 62). Even though the free uses permitted by Soviet copyright law are much broader than those permitted by United States law, the Soviet free uses do not violate any specific UCC provision, since the Convention does not explicitly guarantee exclusive reproduction rights to copyright holders (Bogsch, 1958, at 5-7). Further, the preamble of the UCC encourages the development of literature, science and the arts, and seeks to facilitate a wider dissemination of the works of the human mind. The Soviets can argue that the free uses under the 1961 Principles adhere to this spirit of the UCC, since all the free use provisions "... were enacted with the aim of widening the development of culture" (Boguslavskii, Voprosy avtorskogo prava, 1973, at 191).

The final amendment to the 1961 Principles concerns the duration of a Soviet copyright after the death of the author. In compliance with UCC Article IV, the U.S.S.R. now recognizes a copyright for the life of the author, plus 25 years after his death. There is only one exception to this lengthened duration of copyright within the Soviet Union; the 1973 edict allows Union Republics to establish reduced terms of copyright for photographs or for works of applied art, so long as the term is a minimum of 10 years from the appearance (vypusk v svet) of the work. This exception is permitted by UCC Article IV(3). In addition, the provision of Article 105, which limited the royalties that an author's heirs could receive to 50 percent of what an author would himself have been paid (see §2.42 above), has been repealed by the 1973 edict (Boguslavskii, 1973, at 61).

7.0 Other Recent Changes in Soviet Copyright Practice

On September 20, 1973, the U.S.S.R. Writers' and Artists' Union, the U.S.S.R. Academy of Science, the Novosti Press Agency, the U.S.S.R. Council
of Ministers' State Committee for the Affairs of Publishing Houses, Printing and Book Trade, and the Ministries of Culture and Foreign Trade among others, formed an all-Union Copyright Agency (VAAP). The former head of the Komsomolskaia Pravda newspaper, Boris D. Pankin, was elected chairman of the board of VAAP, and in a recent interview, he characterized the sale or assignment of a Soviet author's right to a foreign firm, and the acquisition of Soviet publication rights from a foreign copyright holder, as a foreign trade (Literaturnaia gazeta, Sept. 26, 1973, No. 39 at 3; Eng. excerpts in 25 Current Digest of the Soviet Press, 1973, No. 38 at 11, 20). This is significant because the conduct of foreign trade is a monopoly enjoyed by the Soviet state, and any Soviet physical or juridical person may only engage in foreign commercial transactions with government permission (U.S.S.R. Constitution, arts. 14, 77; 1961 Principles, arts. 3, 124-26; RSFSR Civil Code, arts. 3, 564-66; Bykov, 1961, at 359).

The U.S.S.R. Council of Ministers passed a resolution in December of 1973, which specified in detail the functions of VAAP (Izvestiia, Dec. 27, 1973, at 2; Eng. trans. in 25 Current Digest of the Soviet Press, 1973, No. 52 at 3). The all-Union Copyright Agency is to act as an intermediary in the conclusion of contracts for the use of Soviet works abroad and for the use of foreign works in the U.S.S.R. The December resolution also assigns VAAP some tasks that were previously performed by VUOAP (see § 2.53 above). It is now the duty of VAAP to collect and pay out royalties to Soviet authors for use of their works outside the U.S.S.R. and to foreign authors for the use of their works within the Soviet Union. Probably the most important function of VAAP, under the December resolution, concerns the manner of transfer of rights by a Soviet citizen-author to a foreign person, mentioned in the amendments to Articles 97 and 98 (see § 6.0 above). Unpublished works of Soviet citizens can only be authorized for foreign use by the author or his assigns through VAAP, and the right to use abroad a work first published in the U.S.S.R. by a Soviet can be transferred by the author or his assigns only through VAAP and with the initial Soviet user's permission. Any violation of the provisions of the December Council of Ministers resolution invalidates the entire transaction and also entails "... other liability in accordance with existing legislation."

Another recent piece of Soviet legislation that deals with both Soviet and foreign authors is a September, 1973 decree on taxation of authors' royalties (VVS SSSR, 1973, No. 37, item 497; Eng. abstract in 25 Current Digest of the Soviet Press, 1973, No. 52 at 20). This decree establishes a three-tiered, progressive taxation scheme for all royalties earned by Soviet authors and their heirs, and for royalties earned by foreign authors and their heirs in the U.S.S.R.; one rate for authors whose works are used in the Soviet Union (from a

---

*VAAP = Vsesoiuznoye agentstvo po avtorskim pravam.*
minimum of 1.5 percent to a maximum of 13 percent for yearly royalties over 1,200 rubles); a second rate for Soviet citizens, or domiciliaries, whose works are used abroad (from a minimum of 30 percent to a maximum of 75 percent for annual royalties over 5,000 rubles); and a third rate for the heirs of an author of a belle-lettre, musical, or artistic work (from 60 percent to a maximum of 75 percent for royalties of over 3,000 rubles per year). The heirs of an author of other types of literature are taxed from 80-95 percent of the royalties they receive in any one year. The all-Union Copyright Agency is authorized to withhold the tax on royalties received from abroad or paid to foreigners, and on all royalties paid to the heirs of Soviet or foreign authors.

The September decree also contains a provision that exempts royalties of a foreign author, or his legal successors, from taxation in the Soviet Union if an international agreement guarantees the same waiver of taxation on foreign royalties earned by Soviet citizens. An Income Tax Convention between the United States and the U.S.S.R. which has been signed but not yet ratified by the United States government, would provide for income received from sources within one contracting state by a resident of the other state to be taxed only by the other state; the U.S.S.R. would not tax royalties received by an American resident from sources within the U.S.S.R. and vice versa. This treaty was signed in June of 1973, and was sent by President Nixon on September 19, 1973 to the U.S. Senate for their advice and consent to ratification; as of early 1974, the treaty was still in the Senate Foreign Relations Committee. (The Eng. text of the treaty is in 31 Congressional Quarterly Reports, June 23, 1973, at 1575-78.)

8.0 The Ramifications of Soviet Adherence to the UCC

8.1 For Foreign Authors Whose Works Will Be Commercially Distributed Within the U.S.S.R.

Under the national treatment provision of UCC Article II (see § 5.0 above), the Soviet Union now provides the same level of copyright protection for foreign authors of UCC countries, or for works first published in UCC states, as it extends to its own author-citizens, provided that the foreign author's work did not appear in print before May 27, 1973. Foreign copyright holders who are thus eligible for UCC copyright protection in the U.S.S.R. will now enjoy all of the personal and property rights accorded by Soviet law, and will be able to make use of the available Soviet administrative and judicial measures to protect these rights. Of course, the works of foreign authors will also be subject to the free use and compulsory license provisions of the 1961 Principles as amended, as well as to the Soviet tax laws, unless otherwise exempt.

8.2 For American Users of Copyrighted Soviet Works

National treatment also means that the United States, and other UCC states,
must extend copyright protection to works of Soviet authors and to works first published in the U.S.S.R. on, or after, May 27, 1973. Unpublished works of Soviet authors will automatically receive common-law copyright in the United States. Published works first printed in the U.S.S.R., or authored by Soviet nationals, need only bear the © symbol, plus the name of the copyright proprietor and the date of first publication, to obtain a statutory United States copyright. If the Soviet copyright proprietor files a renewal application with the U.S. Copyright Office during the 28th year of the first copyright term, he will be entitled to a second, U.S. 28-year copyright term (17 U.S.C. § 24; Nimmer, 1973, at 480-89).

To translate and reproduce a copyrighted Soviet work without subjecting themselves to a copyright infringement action, American publishers will now have to secure the permission of the Soviet copyright holder, and must do so through VAAP if the Soviet copyright holder does not wish to violate Soviet law. This will probably not pose a big problem to many US firms that have only published an occasional Soviet work, since failure to obtain authorization at times in the future will not seriously harm their business. But for other firms who have made extensive use of published Soviet material in translation and without the permission of the author or news source, such as the publisher of the Current Digest of the Soviet Press, the failure to secure authorization might seriously effect their continued operations. Although any article that appears in print in the Soviet Union has already been censored by Glavlit, the main organ of censorship in the U.S.S.R. (see Vladimirov, 1972), there still might be instances where the Soviet copyright holder, or VAAP, might refuse to authorize the American publication and translation of a published Soviet news article, or periodical story, that could be used in an anti-Soviet context. To avoid this possible result, the Current Digest might have to abstract these articles in English. Historical facts are generally not copyrightable under judicial interpretation of American copyright law, but nevertheless courts have not allowed word for word, or closely paraphrased, copying of a copyrighted work (see Nimmer, 1973, at 127-34). Yet simply loose abstracting of important Soviet news stories would not be as valuable for scholarly use as direct translation; under a liberal interpretation of the “fair use” doctrine in United States courts, the Current Digest, as a non-profit user of published materials for educational purposes, might be able to continue word for word translation of published Soviet works without the Soviet copyright holder's permission. On November 27, 1973, the U.S. Court of Claims held that non-profit reproduction of copyrighted articles from medical journals for educational purposes did not constitute copyright infringement on the part of either the National Library of Medicine (NLM) or the National Institute of Health (NIH) (Williams & Wilkins Co. v. US; court's decision in Patent, Trademark and Copyright Journal, 1973, No. 155 at A-1, D-1).
If a copyright infringement suit were filed against the *Current Digest* for the unauthorized translation and publication of copyrighted materials, it could defend its actions by citing the *Williams* case, and by arguing that the *Digest* performs a valuable and necessary function for American educators and scholars, analogous to the function performed by the National Library of Medicine and the National Institutes of Health when they reproduced articles for educational uses.

A second possibility that would permit the *Current Digest* to continue its translation and publication of copyrighted Soviet materials is for the U.S. Congress to amend the U.S. Copyright Act with a provision similar to Article 103(5) of the 1961 Principles, as amended (see § 6.0 above), which would create a free use out of the limited, non-profit reproduction of copyrighted works for educational purposes. And although the UCC does not specifically exempt educational, or non-profit information disseminating organizations from observance of an author's translation rights, the *Digest* could argue that its translation of Soviet materials is consistent with the goals of the UCC, which are to "... facilitate a wider dissemination of the works of the human mind and increase international understanding" (UCC Preamble).

The unauthorized reproduction and/or translation of Soviet works by American educators for non-profit classroom use might also be permitted under the *Williams* interpretation of the "fair use" doctrine, or under Congressional characterization of such non-profit reproduction as "fair use." It should be noted however that under present case law, a teacher's verbatim reproduction by a copying device of a work for free classroom use is not a "fair use," and is therefore an infringement (*Wihtol v. Crow*, 309 F.2d 777 (8th Cir. 1962); see Nimmer, 1973, at 652).

### 8.3 For Soviet Author-Citizens

The ultimate effect of Soviet adherence to the UCC for Soviet authors will be a slight improvement of their financial status, since translations of their works is no longer permitted without their consent in the U.S.S.R.; the compensation that Soviet authors receive for the translation of their works will most likely be the 60 percent rate that was previously used (see § 2.433 above). Another source of income for Soviet authors will be royalties from the use of their works in the

---

*The Copyright Revision Bill (H.R. 2512, 90th Cong., 1st Sess.) passed by the House of Representatives in April, 1967 and sent to the Senate, included an exemption for non-profit institutions to copy unpublished works for the purposes of preserving them, or making them available for research purposes within the institution. The Senate version of the Revision Bill (S. 1361, 93rd Cong., 1st Sess.) adds an additional exemption permitting semi-public, and public, institutions to copy certain types of published works for replacement purposes, or for users of the institutions' collections; in both Senate exemptions, there must be no commercial advantage, and a certain degree of unavailability of the work. As of April, 1974, the Senate bill was still in the Senate Subcommittee on Patents, Trademarks and Copyrights, chaired by Sen. John L. McClellan (D-Ark). Hearings on the whole Revision Bill were held in the summer of 1973.*
West. However, since foreign trade (see § 7.0 above) and foreign currency transactions are monopolies of the Soviet state, a Soviet author who is caught receiving money under a foreign agreement not concluded through VAAP will be subject to the “other liability” referred to in the Council of Ministers’ December, 1973 resolution. This would probably be imprisonment for illegally engaging in foreign trade and currency exchanges and confiscation of all monies so received (RSFSR Criminal Code, art. 88; U.S.S.R. Customs Code of 1964, art. 100-102; see Loeber, 1973, at 6). Any income that a Soviet author legally receives will of course be subject to the new Soviet income tax rates (see § 7.0 above).

8.4 For Soviet Dissidents and Samizdat

Some Americans in the fields of law, publishing and Russian studies are concerned about the effect Soviet adherence to the UCC may have on the publication of dissident Soviet authors (e.g., see: New York Times, Mar. 10, 1973, at 29, Mar. 21, 1973, at 42; Publishers Weekly, Mar. 26, 1973, at 47, May 14, 1973, at 32, Sept. 17, 1973, at 30, Oct. 8, 1973, at 33). Soviet dissidents such as Andrei Sakharov, Alexander Galich and Vladimir Maximov warned that the Soviet government might use its membership in the Universal Copyright Convention to tighten its control over writers (New York Times, Mar. 28, 1973, at 15). It is feared that the U.S.S.R. government might attempt a form of “reverse copyright” to suppress foreign publication of anti-Soviet writers. A possible scenario might be as follows: using the “eminent domain” feature of the 1961 Principles (see § 2.435), the Soviet government would compulsorily purchase the publication rights to any published or unpublished works of dissident writers. Then, if an American publisher obtained a copy of these works and attempted to publish and sell them in the U.S., the Soviet government, as “legal successor” to the publication rights of these works, would seek a permanent injunction in United States courts to prevent American publication, and might also ask for compensatory damages. If the American publisher claimed express or implied authorization from the Soviet author to publish these works, the Soviet government would point to its domestic law, which invalidates any such agreement not concluded through VAAP (see § 7.0 above). The Soviet government might also argue that, should it be denied injunctive relief, there should at least be a judgment that the American publisher has no exclusive publication rights to the work under the UCC, since the author did not validly agree to the use through VAAP.

When contemplating such a scenario, it should not be forgotten that there are a number of other measures that the Soviet government can use to suppress dissidents. Most of these are strictly internal measures. Although the criminal codes now in force in all the Union Republics do not contain provisions which

International Lawyer, Vol. 8, No. 4
specifically make publishing and circulating *samizdat* a criminal offense (Loeber, 1973, at 19-22; Bloom, 1973, at 14), there are a number of civil and criminal code provisions that can be used against activities connected with *samizdat* publication and circulation. If state-owned duplicating machinery is used to circulate *samizdat*, or if *samizdat* is engaged in as a business, those responsible can be prosecuted under Article 94 or 153 of the RSFSR Civil Code.

Article 141 of the RSFSR Criminal Code makes it a criminal offense to reproduce another's literary works without his permission, and Soviet citizens who reproduce *samizdat* literature can be convicted and imprisoned under this provision. Other criminal statutes which have already been used against Soviet dissidents include Articles 70 and 190-1 of the RSFSR Criminal Code. Article 70 provides six months to seven years imprisonment for a person found guilty of circulating or possessing slanderous fabrications that defame the Soviet state and social system for the purpose of subverting or weakening the régime, while Article 190-1 prohibits the preparation and distribution of fabrications in any form, which are known to be false and which defame the Soviet state and social order. Siniavski and Daniel were convicted of violating these RSFSR Criminal Code provisions in 1966. The organs of Soviet state security can continue to wage a cat and mouse game of harassment against *samizdat* authors, as they have done recently in the Ukraine, for example (Swoboda, 1973). An author can also be threatened with expulsion from the Writers' Union, which results in the loss of certain political and economic advantages that members of the Union regularly enjoy; a Ukrainian author, O.P. Berdnyk, was recently expelled from the Ukrainian Writers' Union for "anti-social actions and deviations" (*Literaturna Ukrayina*, May 15, 1973, at 3).

Another way for the Soviet government to suppress the publication of dissident Soviet writers is to appeal to the profit motives of American and other foreign publishers. Alan Schwartz (*New York Times*, Mar. 10, 1973, at 29) believes that the Soviet copyright agency might tempt American publishing firms with favorable contracts for the works of approved Soviet authors, if the United States firms would agree not to publish *samizdat*, or dissident literature. VAAP's exclusive licensing authority might also enable them to use the censor's stamp abroad. If a work has already been published by the Soviet state publishing houses, it has already been censored by Glavlit, and it's extremely doubtful that VAAP would license any other version of the work. If the work had not previously been published within the U.S.S.R., or for a work whose Soviet edition may contain some harmful sections, VAAP would most likely demand that certain terms and phrases be translated in certain ways, or even that passages or entire sections be eliminated from a licensed version. It is conceivable that the all-Union agency would refuse to sign a licensing agreement unless they were given the contractual power to determine who would edit, introduce or preface the work (Kristol, 1965, at 13).
8.5 How to Deal with Any Soviet “Reverse Copyright” Practices

The first thing that a United States publisher could do to counter the effects of “reverse copyright” is take advantage of the provisions of UCC Article V (see § 5.0 above). The United States government would have to pass legislation permitting the issuance of the Article V non-exclusive license. Furthermore, this device could only be used for the translation of those works that had already been published within the U.S.S.R., and “publication” here refers to the UCC definition (see § 5.0 above) which may not cover the limited and clandestine circulation of samizdat (Loeber, 1973, p.13). And since the Article V non-exclusive license can only be issued if an edition has not previously been printed in the language of the country issuing the license, all the Soviet government would need to do is publish a small number of English-language copies of a dissident work to satisfy the UCC definition of “publication,” and fulfill the notice requirements of the UCC; no other UCC state could then issue an Article V, English-language license.

A second possibility to counter any attempted “reverse copyright” is use of the Inter-Governmental Committee, provided for in UCC Articles XI and XII. The Committee, which must be called for by at least 10 UCC member states, has authority to give opinions and advice to UCC states on the question of whether the copyright laws of a particular country conform to the requirements of the Convention. But even if the Committee were to find that Soviet copyright law and practice did not conform to the UCC, its decision would only be advisory in nature, since it has no judicial, administrative or legislative powers (see Bogsch, 1958, at 117-18). Article XV of the UCC does state that disputes between Convention members concerning the application, or the nature of the UCC shall be submitted to the International Court of Justice for resolution, provided that no alternative dispute settlement mechanism has been agreed to by the disputants. But again, even if the Court were to decide that Soviet attempts at a “reverse copyright” violated the spirit of the UCC, there are no sanctions for the Court to use to make the U.S.S.R. change its law or practices.

There are other ways that would be more effective in negating an attempted “reverse copyright.” The Soviet government could only succeed in tempting American publishers not to print dissident literature if it assured the American firms they would make more money from the works of officially approved authors than from dissident works. Yet in order for an American publisher to make more money from publishing Sholokhov than from publishing Solzhenitsyn, the Soviets would have to write a mighty favorable contract benefiting the American firm, or even include some form of subsidy payments; this potential drain on the Soviet fisc would surely incur the disapproval of the Ministry of Finance. To prevent control by VAAP over the exact translation of a work suitable for licensing, the American firm could simply refuse to conclude any such agreement and bargain for a less restrictive license. Of course, the
United States government could also bring diplomatic pressure to bear against the U.S.S.R., or it could bargain for the end to any "reverse copyright" in future, bilateral negotiations.

But perhaps the most effective means of neutralizing a "reverse copyright" maneuver in the United States is the liberal interpretation of American laws by the United States judiciary. In the scenario described above, the Soviet government might attempt to put a "reverse copyright" into effect by seeking a permanent injunction in United States courts to prevent American publication of a compulsorily-purchased dissident work, and perhaps by claiming monetary damages as well. The defendant-publisher could first argue that the suit should be dismissed because the plaintiff has no standing, or legal right, to maintain such a cause of action. In support of this argument, the defendant would state that the issue of plaintiff's standing is a procedural question that should be resolved by reference to American, not Soviet, law. And there is American case law\(^{10}\) to support the contention that the Soviet government's expropriation of publication rights to a work by a Soviet citizen violates American principles of justice embodied, in the Fifth Amendment, that private property shall not be taken for public use without just compensation.

Therefore, American courts are not bound to, and indeed should not recognize, within the United States any rights that the plaintiff claims to have as "legal successor" to a Soviet dissident writer. Assuming that the American publisher has permission from the Soviet author to print the work in the United States any claim by the Soviet government that this transfer is invalid even within the United States because it is invalid under Soviet law, can be met by the following argument: the transfer is valid under American law, and United States law should decide the issue because the most important elements of a contract between defendant-publisher and the Soviet writer, such as publication and distribution, occur within the United States. As a defense against the plaintiff's claim for injunctive relief, the American publisher can contend that the plaintiff is, at best, only entitled to money damages, and not to an injunction. The defendant would be asking, in effect, for a judicially-created compulsory copyright license.\(^{11}\) The defendant's theory for urging denial of

\(^{10}\)In 1972 the Fifth Circuit Court of Appeals refused to recognize, within the U.S., a foreign national's intangible property right, where that right had been expropriated by the foreign national's government. The Court stated that "U.S. courts will not give extraterritorial effect to a confiscatory decree of a foreign state even where directed against its own nationals." *Maltina Corp. v. Cawy Bottling Co., Inc.* 462 F.2d 1021 (5th Cir. 1972) at 1027.

\(^{11}\)A judicially-created compulsory license was granted in a patent infringement suit, where the court found the patentee had misused the patent privilege (city of Milwaukee v. Activated Sludge, 68 F.2d 577 (7th Cir. 1934)). A 1940 anti-trust suit against the American Society of Composers, Authors and Publishers (ASCAP) ended in a consent decree, which contained provisions for granting compulsory licenses to ASCAP works. These cases can be used as precedent by the defendant for his claim that the most the Soviet government is entitled to are the financial benefits of a compulsory license.
injunctive relief to the plaintiff is that any attempted "reverse copyright" would suppress the free flow of ideas and information and thereby undermines and abuses the entire American copyright system.

American public policy, as contained in the First Amendment, favors free speech and the free dissemination of ideas, and this policy would suffer, and the United States copyright laws would be given an effect they were never intended to have, if the United States courts granted the plaintiff's motion for a permanent injunction. Therefore in this case, the public policy of free speech should prevail over the plaintiff's attempted misuse of its compulsorily purchased copyright. In a 1966 case, the second circuit Court of Appeals denied injunctive relief to a copyright proprietor who attempted a similar form of "reverse copyright" (Rosemount Enterprises Inc. v. Random House Inc., 336 F.2d 303 (2d Cir. 1966); certiorari denied, 385 U.S. 1009). In a concurring opinion, Chief Judge Lumbard stated:

The spirit of the First Amendment applies to the copyright laws, at least to the extent that the courts should not tolerate any attempted interference with the public's right to be informed regarding matters of general interest when anyone seeks to use the copyright statute which was designed to protect interests of a quite different nature. (Rosemount Enterprises Inc., at 311).

The defendants can also argue that the plaintiff's attempted misuse of American copyright law is so great that it should be denied all monetary relief as well.12

There is one final way to prevent a "reverse copyright" from being successful in the United States: pass special legislation to eliminate the loopholes that provide an opportunity for the Soviet government to export its homestyle censorship. At the request of the Authors League of America, Senator McClellan introduced just such a bill on March 26, 1973 (S. 1359), as an amendment to the Copyright Revision Bill (S. 1361); a similar bill (H.R. 6214, 6418) has been introduced in the House of Representatives by Rep. Jonathan D. Bingham (D-NY). Upon introducing his bill into the Senate, Senator McClellan remarked that:

...this legislation would...provide that a U.S. copyright secured to citizens of foreign nations shall vest in the author of the work, his executors, administrators or voluntary assigns. For the purposes of U.S. copyright law, any such copyright shall be deemed to remain the property of the author regardless of any law of a foreign state which purports to divest the author or other persons of the U.S. copyright of his work. My bill further provides that no action for infringement of such copyright may be

12The U.S. Supreme Court has ruled that a patentee's misuse of his patent contrary to the public interest will result in a denial of injunctive relief (Morton Salt Co. v. G.S. Suppiger Co., 314 U.S. 488 (1942)), and has also suggested that the same result will occur in an infringement action by a copyright holder who has misused his copyright (United States v. Loew's Inc., 371 U.S. 38 (1962)). The defendant-publisher can use this theory of misuse as a bar to equitable relief to argue that plaintiff's misuse should bar it from receiving monetary damages, especially since the Soviet author would be unlikely to receive any part of the damage award.
INTERNATIONAL LAWYER

maintained by any nation claiming rights in such copyright by virtue of any such foreign statute. (*Patent, Trademark and Copyright Journal*, 1973, No. 122 at A-12).

If this amendment, and the entire Copyright Revision Bill are marked up for consideration to the full Senate Judiciary Committee, they must be approved by that body before being voted on by the entire Senate. Once passed by the Senate, they would then be sent to the appropriate House Judiciary subcommittee, where a similar process must be repeated before these pieces of legislation can ever become law.

9.0 Conclusion

One question that seems important when discussing Soviet membership in the UCC is: why did the Soviet government decide to become a member of the UCC? Many people believe that the Soviet Union's principle motive for joining the Convention is to suppress dissident Soviet writers and the literature that has become a vehicle of their dissent.\(^{13}\)

To better examine this hypothesis, the subject of control over Soviet authors and their literature by the Soviet state should first be separated into its two component parts: control over both the dissidents and the distribution of their works within the U.S.S.R., and control over the circulation of their works abroad.

Membership in the UCC does not provide the Soviet government with any new measures to use against dissident authors or samizdat readers within the U.S.S.R. All of the legislation that the Soviet government can apply to those authors who fail to use the services of VAAP, or to those Soviet citizens who participate in the circulation of samizdat, was already on the statute books before 1973 (see § 8.4 above). The December, 1973 resolution of the U.S.S.R. Council of Ministers only provided another excuse to apply these measures. To be sure, Soviet membership in the UCC does present a new opportunity for the Soviet government to attempt to suppress the foreign circulation of dissident works through a "reverse copyright" scheme.

It is submitted however, that the Soviet government will make little, if any use of "reverse copyright." First, because it is an unwieldy and cumbersome tool for suppression. Second, because the lawsuits that are required to enforce a "reverse copyright" would in effect be highly visible trials of the Soviet censorship system and of the Soviet government's control of the ideas and expressions of its citizens. This certainly would not help the U.S.S.R. achieve some of its more important foreign policy objectives, such as a grant of

\(^{13}\)In an October 2d, 1973 samizdat letter to the Chairman of VAAP, a Soviet writer, Vladimir Voinovich, suggests that the agency be known as VAPAP (*Vsesoiuznoye agentstvo po prisvoeniu avtorskikh praw* or all-Union Agency for the Appropriation of Copyright, "to help the true meaning to come through."
most-favored-nation status by the United States Congress or guaranteed credits from the U.S. Import-Export Bank. Third, because the Soviet government is surely well aware of the strong legal defenses that are available in the United States to prevent any "reverse copyright" from succeeding. Fourth, because less visible and more effective means can be used to attempt control over dissidents within the U.S.S.R. and over the foreign use of their works, such as the Republic Criminal Codes and contractual agreements with Western publishers. And fifth, because the U.S.S.R.'s principal motive for joining the UCC is not suppression of dissent.

There are three main reasons why the Soviet Union finally decided to join the UCC: 1) the necessity of such a move as a quid pro quo for American agreement to the U.S.-U.S.S.R. Income Tax Convention; 2) the desire to obtain tax revenues from foreign publication of approved Soviet authors, and to encourage such foreign publication; and 3) the realization that membership in the 1952 UCC places fewer specific demands upon member states than does participation in the 1971 Paris Revision.

The Soviet government has been anxious for some time to obtain an exemption from the 30 percent U.S. withholding tax that is applied to royalties paid for the American use of Soviet patents and technical processes. But the U.S. Department of State Acting Legal Advisor told the Soviets during 1972 trade negotiations that the U.S. Senate was not likely to approve such an exemption as long as Soviet publishing houses continued to use American works without obtaining permission or paying royalties (New York Times, Mar. 21, 1973, at 44; Publishers Weekly, Mar. 12, 1973, at 37; Benjamin, 1973, at 394).

The Soviet government also realized that the royalties Soviet authors would receive, if their works were copyrighted in foreign countries, could be a new and valuable source of tax revenues in the form of foreign currency (valiuta a ne den'go)! Further, foreign publishers, who could acquire exclusive publication rights to Soviet works within their own countries if the U.S.S.R. joined a copyright convention, would be likely to invest more money in the translation, publication and promotion of Soviet works than they had in the past (Boguslavskii, Voprosy avtorskogo prava, 1973, at 276). This would help to increase sales of Soviet works abroad, and thus yield still greater tax revenues for the Soviet treasury.

Finally, the Soviet government is aware of the advantages in adhering to the 1952 UCC rather than to the 1971 Paris Revision, and when the Paris Revision comes into force after ratification by seven more countries, Article IX(3) of the Revision provides that no country may accede solely to the 1952 Convention. One advantage to membership in only the 1952 UCC is that, after 20 years of being in force, its meaning and application are well-defined (Boguslavskii, 1973, at 58). And a second, more important advantage is that the U.S.S.R. can avoid
granting the concessions to developing countries, or the higher level of copyright protection especially for broadcasting rights, contained in the 1971 Revision (Baumgarten, 1973, at 63-4).

It will be a while before an established practice of dealing with the U.S.S.R. as a UCC member is achieved, and any severe imbalance in foreign currency payments may well cause the Soviet publishing houses to translate fewer United States works than they previously have done. But the fear of widespread use of "reverse copyright" by the Soviet government is overexaggerated, and samizdat literature will continue to be published within the United States. It will be a surprise if the Soviets do attempt to implement any "reverse copyright," but if they should ever try it, the American Congress and judicial system will be ready!

10.0 Glossary


**SP SSSR**  Sobranie postanovlenii Pravitel'stva Soiuza Sovetskikh Sotsialisticheskikh Respublik (Collection of decrees of the Government of the Union of Soviet Socialist Republics).

**SU RSFSR**  Sobranie Uzakonenii i Raspordarenii Raboche-Krest'ianskogo Pravitel'stva RSFSR (Collection of laws and decrees of the Workers' and Peasants' Government of the RSFSR).

**SZ SSSR**  Sobranie Zakonov i Raspordarenii Raboche-Krest'ianskogo Pravitel'stva SSSR (Collection of the laws and decrees of the Workers' and Peasants' Government of the USSR).

**VVS**  Vedomosti verkhovnogo soveta (Gazette of the Supreme Soviet)

11.0 Selected Bibliography

11.1 Bibliography


11.2 Books in Russian


Ioffe, O.S. *Osnovy Avtorskogo Prava.* Moscow, 1969.
Koretskii, V.I. *Avtorskie Pravootnochenia v SSSR.* Stalinabad, 1959.
*Grazhdanskii Kodeks RSFSR.* Moscow, 1972.
*Grazhdanskoye Pravo.* Vol. II. Moscow, 1970. (Chapter XXII, dealing with copyrigths, was written by V.P. Mozolin.)
*Grazhdanskii Protssensual'nyi Kodeks RSFSR.* Moscow, 1968.
*Nauchno-Prakticheskii Kommentarii k GK RSFSR.* Ed. Ye. A. Fleishits. Moscow, 1966. (Section IV on copyright law was written by I. A. Gringol'ts.)
*Nauchno-Prakticheskii Kommentarii k Osnovam Grazhdanskogo Zakonnadoatel'stva Soiuza SSR i Soiuznykh Respublik.* Eds. S. N. Bratus' and Ye. A. Fleishits. Moscow, 1962. (Section IV on copyright law was written by I.A. Gringol'ts.)
*Ugolovnyi Kodeks RSFSR.* Moscow, 1970.

11.3 Books in Other Languages

Griff, David P. *Royalties Without Copyright: Proposals for a Payments Agreement Between the United States and the Soviet Union.* In *Copyright Law*

11.4 Articles in Russian
Sedugin, P. "Izmenenie Zakonodatel'stva ob Avtorskom Prave." Chelovek i Zakon, No.6, June 1973, at 35-36.
"V Presidiume Verkhovnogo Soveta SSSR." Izvestiia, 23 February 1973, at 3.
"VAAP: Tseli i Zadachi." Literaturnaja gazeta, 26 September 1973, at 3.

11.5 Articles in Other Languages


Berman, Harold J. "Decision of the RSFSR Supreme Court." Bulletin of the Copyright Society of the USA, 7 (1960), 246-47.


"Criminal Code of the RSFSR." *Soviet Statutes and Decisions*, No. 1, Fall 1964, at 3-111.


