INTERNATIONAL COPYRIGHT AND THE SOVIET UNION

ALLAN P. CRAMER*

I

INTRODUCTION

THE COPYRIGHT laws of a country have no extraterritorial application.[1] Nevertheless, practically every nation in the world, by adherence to either bilateral or multilateral treaties or conventions, protects copyrights of foreign nationals.[2] The Soviet Union alone among the major world powers has refused to recognize international copyright[3] and does not adhere to any treaty or convention for the protection of copyrights.[4] As a result, that country's state-

* A.B. 1958, University of Pennsylvania; LL.B. 1964, University of Connecticut. Member, Connecticut Bar. Attorney, Office of the General Counsel, United States Department of Health, Education, and Welfare.

This article was awarded First Prize in the 1964 Nathan Burkan Memorial Competition at the University of Connecticut Law School. The views expressed herein are those of the author and in no way represent the position of the United States Government or any agency thereof.

[1] American Code Co. v. Bensinger, 282 Fed. 829, 833 (2d Cir. 1922).

[2] *E.g.*, Treaty on Literary, Artistic and Scientific Copyright between Nicaragua and Spain, Nov. 20, 1934, translated in U.N.E.S.C.O., COPYRIGHT LAWS AND TREATIES OF THE WORLD (Supp. 1961). The two principal conventions are the original Berne Convention of 1886, with the additional articles of 1896, which was successively revised at Berlin in 1908, at Rome in 1928, and at Brussels in 1948, and the Universal Copyright Convention (UCC), which was dated September 6, 1952, and became effective on September 16, 1955. Fifty-four countries are members of the Berne Union, composed of countries which have adhered to the original Berne Convention or one of its revisions, while forty-nine countries have, as of March, 1965, adhered to the UCC. For the complete text of both conventions, see U.N.E.S.C.O., *op. cit. supra*. See generally BOGSCH, THE LAW OF COPYRIGHT UNDER THE UNIVERSAL CONVENTION (1964); Bogsch, *The First Decade of the Universal Copyright Convention*, 10 BULL. CR. SOC. 71 (1962); Dubin, *The Universal Copyright Convention*, 42 CALIF. L. REV. 89 (1954); Hepp, *The Universal Copyright Convention*, 7 REV. INT'L DU DROIT D'AUTEUR 2 (1955); Warner, *The UNESCO Universal Copyright Convention*, 1952 WIS. L. REV. 493; Comment, *International Copyright Protection and the United States: The Impact of the UNESCO Universal Copyright Convention on Existing Law*, 62 YALE L.J. 1065 (1953).

[3] "By international copyright is understood copyright, acknowledged and mutually protected by various independent nations, so that a copyright having originated in one country, is of equal legal value among the people living under a different independent government." LIEBER, INTERNATIONAL COPYRIGHT 4 (1840).

[4] In the Treaty of Commerce of February 7, 1924, which the U.S.S.R. concluded with Italy, it was stipulated that nationals of each country "were to enjoy reciprocally in the other with regard to literary and artistic property the treatment of the most favored nation." This protection was granted only if reciprocity existed. The treaty

controlled publishing firms have, generally without seeking permission or paying royalties, printed whatever foreign works they felt were suitable for Soviet minds. During the period from 1917-1950, it has been estimated that one billion copies of books protected by foreign copyright were published in the Soviet Union.[5] Among these were more than seventy-seven million copies of 2700 books by some 200 United States authors,[6] including Jack London, Mark Twain, Theodore Dreiser, Upton Sinclair, Erskine Caldwell, Sinclair Lewis, John Steinbeck and Ernest Hemingway.[7] Numerous foreign scientific and technical publications,[8] short stories,[9] plays[10] and miscellaneous articles[11] have also been published in the U.S.S.R. Thus, that country has been characterized as "the world's most active literary pirate."[12]

This article will consider various reasons for the Soviet Union's position concerning international copyright. In addition, it will

went into effect on March 7, 1924, and terminated at some date prior to 1937. 1 LADAS, THE INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY 165, 168 (1938). No other international agreements affecting copyright have been entered into by the U.S.S.R.

[5] Berman, *Rights of Foreign Authors Under Soviet Law*, 7 BULL. CR. SOC. 67, 80-81 (1959).

[6] Iseman, *Governor Stevenson's Mission to Secure Payment to American Authors and Playwrights for Use of Their Works in the Soviet Union*, 7 BULL. CR. SOC. 155, 156 (1960).

[7] London has been the most popular foreign author in the Soviet Union. From 1918 to July 1, 1959, 691 editions of his works totaling 20,416,000 copies were published there. Twain, the second most popular American author, had 256 editions of his works totaling 10,926,000 copies published in the U.S.S.R. during the same period. The figures for the others were: Dreiser, 133 editions totaling 9,531,000 copies; Sinclair, 249 editions totaling 4,167,000 copies; Caldwell, 12 editions totaling 1,112,000 copies; Lewis, 36 editions totaling 996,000 copies; Steinbeck, 12 editions totaling 835,000 copies; and Hemingway, 17 editions totaling 487,000 copies. BENJAMIN, ENOCH, FRASE, LUNT, ROBINSON & WILEY, BOOK PUBLISHING IN THE U.S.S.R. 95 (1963). Numerous younger American writers have also been published in the U.S.S.R. For example, John Updike's novel, THE CENTAUR, was recently published by the Soviets. Letter From John Updike to Allan P. Cramer, Feb. 27, 1965. See generally HINDUS, HOUSE WITHOUT A ROOF: RUSSIA AFTER FORTY-THREE YEARS OF REVOLUTION 88-96 (1961).

[8] For example, over 150 U.S. scientific and technical periodicals are reproduced in the U.S.S.R. for distribution to subscribers. N.Y. Times, Sept. 16, 1962, p. 13, col. 1. See HOLT & TURNER, SOVIET UNION: PARADOX AND CHANGE 122 (1962).

[9] For example, a Soviet edition of 43,000 copies of MODERN AMERICAN SHORT STORIES, which included works by Hemingway, Thomas Wolfe and John O'Hara, was printed in English in 1963. N.Y. Times, Nov. 24, 1963, § 7, p. 8, col. 3.

[10] For example, unauthorized versions of *My Fair Lady* and *West Side Story* were recently performed in the Soviet Union. N.Y. Times, Dec. 31, 1964, p. 12, col. 1. See N.Y. Times, Dec. 30, 1964, p. 17, col. 3; N.Y. Times, Dec. 29, 1964, p. 22, col. 1; N.Y. Times, May 24, 1964, § 2, p. 3, col. 2.

[11] For example, several articles by humorist Art Buchwald have been printed by Soviet magazines. Letter From Art Buchwald to Allan P. Cramer, Nov. 15, 1963.

[12] N.Y. Times, May 24, 1959, § 2, p. 3, col. 1.

outline some attempts which have been made to change the Soviet view and evaluate future prospects for solution of the problem.

II

HISTORICAL BACKGROUND

The lack of interest in international copyright on the part of the Soviet Union dates back to Imperial Russia. Statutory copyright protection for literary works was first afforded in Russia in 1828,[13] but this protection, as has been the case under subsequent Russian copyright statutes, extended only to works first published in Russia. On April 6, 1861, the Russians concluded a bilateral convention with France which afforded reciprocal protection for the works of each country's nationals; however, the Russian government renounced the agreement in 1885, and its protection ended on January 1, 1887.[14] Russia also terminated a similar convention with Belgium that had been entered into in 1862, and its protection ended on January 14, 1887.[15] In 1863, Russia executed a Treaty of Commerce with Italy which reserved to the parties the right to enter into a treaty to secure reciprocal rights for authors from the two countries, but no such agreement was ever concluded.[16] Prussia unsuccessfully made overtures to Russia in 1869 for a copyright treaty.[17]

The Russians failed to attend the 1886 conference which drafted the Berne Convention,[18] and, as a result, the International Literary and Artistic Association, at its Congress of Paris in 1900, passed a resolution calling for special efforts to persuade Russia to accede to the Convention.[19] Possibly because of this resolution, Russia was represented at the Conference for the Revision of the Berne Con-

[13] Statute on Censorship of 1828, §§ 135-39; Statute on the Rights of Authors; SECOND COMPLETE COLLECTION OF LAWS OF THE RUSSIAN EMPIRE 1533 (1828), cited in 1 GSOVSKI, SOVIET CIVIL LAW 606 (1948). Prior to this, in 1827, a regulation granted authors whose works were performed in the Imperial theaters an opportunity to collect royalties. Masouyé, *Le Droit d'Auteur en U.R.S.S.*, 29 REV. INT'L DU DROIT D'AUTEUR 2, 42 (1960).

[14] DESBOIS, LE DROIT D'AUTEUR DANS LES RAPPORTS ENTRE LA FRANCE ET LES PAYS SOCIALISTES 180 (1959).

[15] 1 LADAS, *op. cit. supra* note 4, at 50.

[16] COLLES & HARDY, PLAYWRIGHT AND COPYRIGHT IN ALL COUNTRIES 80 (1906).

[17] BRIGGS, THE LAW OF INTERNATIONAL COPYRIGHT 77 (1906).

[18] For a history of the preliminary meetings and final conference, as well as a list of the participating countries, see 1 LADAS, *op. cit. supra* note 4, at 71-83.

[19] BRIGGS, *op. cit. supra* note 17, at 464. Seven years prior to this, Emile Zola had pleaded in a "lettre ouverte" for international protection of authors' rights in Russia. His plea, which appeared in the newspaper *Le Temps*, was based on the principles of honesty and justice. DROIT D'AUTEUR 21 (1894).

vention which was held in Berlin in 1908.[20] The Russian representatives took an active part in the conference discussions[21] but failed to adhere to the Convention. Subsequently, Russia did enter into bilateral copyright conventions with France,[22] Germany,[23] Belgium[24] and Denmark,[25] but again their duration proved brief.[26] The convention with France served as a model for the other agreements.[27] Under its terms protection was given to published or unpublished works by nationals of the two countries, as well as works published in one of the two countries by a national of a third country. The treaty stipulated national as well as most favored nation treatment, and no compliance with formalities was required in order to gain protection, other than a notice of reservation of translation rights for literary works and performance rights for printed musical works. Although a step in the right direction, the agreements were helpful to only a small number of foreign authors due to their limited applicability and brief existence. All in all, since Imperial Russia entered into only six limited bilateral copyright treaties with four countries, the present Soviet position can be viewed as consistent with the country's historical attitude in this area.

III

Legal Basis for the Soviet Position

Soviet jurists take the position that copyright confers upon the author of the work in question the right to be regarded as the author of the work, the right to publish the work, and the right to reproduce and distribute the work.[28] In addition, under Soviet law the

[20] Solberg, *The International Copyright Union*, 36 YALE L.J. 68, 85 (1926).

[21] *Ibid.*

[22] Convention of November 29, 1911. DROIT D'AUTEUR 119 (1912). For a discussion of the effect of this convention, see DROIT D'AUTEUR 54 (1913). A delegation from France had visited St. Petersburg in 1905 in an attempt to secure recognition for foreign authors. Masouyé, *supra* note 13, at 42.

[23] Convention of February 28, 1913. DROIT D'AUTEUR 121 (1913).

[24] Convention of January 15, 1915. 1 GSOVSKI, *op. cit. supra* note 13, at 608.

[25] Convention of February 18, 1915. DROIT D'AUTEUR 97 (1915).

[26] The treaty with France was permitted to expire on November 3, 1915. The treaty with Germany was annulled under article 292 of the Versailles Treaty. The treaty with Belgium expired on January 15, 1918, and the treaty with Denmark expired on July 29, 1918. 1 GSOVSKI, *op. cit. supra* note 13, at 608.

[27] See 1 LADAS, *op. cit. supra* note 4, at 170.

[28] Berman, *supra* note 5, at 74. For a comprehensive discussion of authors' rights in the Soviet Union, see HAZARD, LAW AND SOCIAL CHANGE IN THE U.S.S.R. 187-211 (1953); LEVITSKY, INTRODUCTION TO SOVIET COPYRIGHT LAW 68-89 (1964). Since private publishing is forbidden, these rights are actually quite limited. 2 GSOVSKI, *op. cit. supra* note 13, at 401; 2 GSOVSKI & GRZYBOWSKI, GOVERNMENT, LAW AND COURTS IN THE

author of a copyrighted work has the right to prohibit alteration of his work and to gain royalties for its use under the copyright law's system of compensation.[29] Nevertheless, under the Soviet Union's current civil code,[30] which contains separate sections dealing with copyright,[31] the foreign author, unless his work is first published in the U.S.S.R.,[32] is specifically excluded from any copyright protection. Article 97 of the civil code provides in part as follows:

> [C]itizens of the U.S.S.R. and their heirs shall . . . enjoy copyright in respect of a work first published abroad or established abroad in any material form.

SOVIET UNION AND EASTERN EUROPE 1185 (1959). On Soviet publishing, see generally BENJAMIN, ENOCH, FRASE, LUNT, ROBINSON & WILEY, *op. cit. supra* note 7; GOROKHOFF, PUBLISHING IN THE U.S.S.R. (1959); Nowicki, *Publishing in the U.S.S.R.*, 31 SOVIET SURVEY 32 (1960).

[29] Berman, *supra* note 5, at 74. Soviet copyright law establishes a system of royalties based on the type of literary work (genre), its length and its idealistic and artistic value. See, *e.g.*, Resolution Concerning New Literary Royalty Rates in the R.S.F.S.R., July 15, 1947, translated in U.N.E.S.C.O., COPYRIGHT LAWS AND TREATIES OF THE WORLD (Supp. 1962). For a discussion of the Soviet royalty system, see LEVITSKY, *op. cit. supra* note 28, at 194-215; Berman, *supra* note 5, at 73; Levitsky, *The Soviet Press and Copyright Legislation: Some Legal Concepts*, 25 FORDHAM L. REV. 469, 477-81 (1956).

[30] The official title of the civil code is the Fundamental Principles of Soviet Civil Legislation. It was first published in draft form in 1960. Following discussion and modification, it was adopted by the Supreme Soviet of the U.S.S.R. on December 8, 1961, and went into effect on May 1, 1962. The resolution adopting the Principles is translated in U.N.E.S.C.O., *op. cit. supra* note 29. For general discussion of the Principles, see Grzybowski, *Reform of Civil Law in Hungary, Poland and the Soviet Union*, 10 AM. J. COMP. L. 253 (1961); Shapiro, *Soviet Civil Law as Reflected in the 1961 Fundamental Principles of Soviet Civil Legislation*, A.B.A. REP., SECTION ON INTERNATIONAL AND COMPARATIVE LAW 212 (1962). Since the legislative function in the Soviet Union is divided, the federal government promulgates general copyright principles, while the governments of the various republics are responsible for specific sections to implement the principles. As a practical matter, the other republics usually imitate the laws of the R.S.F.S.R., the leading republic.

[31] Arts. 96-106, translated in U.N.E.S.C.O., COPYRIGHT LAWS AND TREATIES OF THE WORLD (Supp. 1963). For a summary of the provisions, see 15 U.N.E.S.C.O. CR. BULL. 193 (1962). See generally LEVITSKY, *op. cit. supra* note 28; Levitsky, *The New Soviet Copyright Law*, 9 BULL. CR. SOC. 295 (1962). Two other Iron Curtain countries, Hungary and Poland, also have recently drafted civil codes, but their codes do not have separate sections dealing with copyright. Grzybowski, *supra* note 30, at 262.

[32] Art. 97 of the civil code provides in part: "Copyright in respect of a work first published on the territory of the U.S.S.R. or in respect of an unpublished work in any material form, located within such territory, shall belong to the author or his heirs, irrespective of their nationality." U.N.E.S.C.O., *op. cit. supra* note 31. Of course, if a foreign author first publishes his work in the Soviet Union he will lose the protection he would have gained by first publishing in a country that adheres to one of the international copyright agreements. See Shostakovich v. Twentieth Century-Fox Film Corp., 196 Misc. 67, 80 N.Y.S.2d 575 (Sup. Ct. 1948), *aff'd mem.*, 275 App. Div. 692, 87 N.Y.S.2d 430 (App. Div. 1949); Colino, *Copyright Protection Abroad for United States Cultural Exports*, 1962 DUKE L.J. 219, 237-38. Protection would be given in the United States, however, under the proposed new copyright law. See REGISTER OF COPYRIGHTS, REPORT ON THE GENERAL REVISION OF THE U.S. COPYRIGHT LAW 118 (1961).

> Other persons shall not enjoy copyright in respect of a work first published or located abroad in any material form, other than by virtue of and within the limits of international treaties concluded by the U.S.S.R.[33]

Thus, since the Soviet Union does not adhere to any international copyright treaties, the right of foreign authors to have copyright protection in the U.S.S.R. is effectively foreclosed.

There is another provision of Soviet copyright law which, in most cases, also prevents copyright protection for foreign authors. This provision, article 102 of the civil code, states:

> Any published work may be translated into another language without the consent of the author, but must be brought to his knowledge to ensure respect for the integrity and spirit of the work. The right to remuneration for the utilization of the work belongs to the author of the original work in the cases envisaged by the legislation of the Federated Republics.
>
> The translator shall enjoy copyright in his translation.[34]

Since the vast majority of foreign works published in the U.S.S.R. are translated by the Soviets, rather than printed in their original language, this clause prevents such publication from being considered infringement. In addition, Soviet translators, when dealing with a foreign work, usually ignore the requirement of informing the author.[35]

This provision is justified by the Soviets as being necessary in order to encourage translation of published works into the little-known languages spoken by minority groups in the U.S.S.R.[36] This reasoning seems spurious, however, since the government, by virtue of its control of Soviet publishing, can obviously force translation into minority languages whenever it wishes.[37] Moreover, the Soviets

[33] U.N.E.S.C.O., *op. cit. supra* note 31. For similar provisions in the previous federal law, see Basic Principles of Copyright, May 16, 1928, § 2, translated in U.N.E.S.C.O., *op. cit. supra* note 29.

[34] U.N.E.S.C.O., *op. cit. supra* note 31. The previous federal law had a similar provision. See Basic Principles of Copyright, May 16, 1928, § 9(a), translated in U.N.E.S.C.O., *op. cit. supra* note 29.

[35] Iseman, *supra* note 6, at 158. The Principles do not include any penalties if the translator fails to notify the author.

[36] See Heifetz, *Le Droit d'Auteur en U.R.S.S.*, 49 DROIT D'AUTEUR 86, 89 (1929); Lashkul, *Prevent Copyright Violations*, Sovetskaya Moldavia, Aug. 28, 1955, p. 3, translated in 7 CURR. DIG. SOVIET PRESS, No. 37, at 21 (1955).

[37] "[T]he author in the U.S.S.R. does not have a monopoly in his work and he does not need it; if the work deserves wide circulation, the Socialist society will also have an iuterest in the matter." 2 SOVETSKOYE GRAZHDANSKOYE PRAVO 226 (1955), translated in Levitsky, *supra* note 29, at 483.

indirectly acknowledge the unfairness of the principal provision of article 102, since the laws of the republics authorized by that section frequently lessen the effect of the provision on Soviet authors by providing that translation of their works entitles them to royalties at something less than the normal rate.[38] It seems probable that the provision is retained merely to thwart claims by the owners of foreign copyrights.[39]

IV

Efforts to Change the Soviet Position

Despite the obstacles presented by Soviet law, numerous efforts have been made to convince the Russians to recognize foreign copyrights. The Confédération Internationale des Sociétés d'Auteurs et Compositeurs, a large European league of authors and composers, has been especially active in trying to achieve some solution to the problem.[40] Literary organizations in the United States have also attempted to persuade the Soviets to change their position. In 1958, the Author's Leagne of America retained Adlai Stevenson to negotiate with Soviet officials concerning this matter.[41] Before going to Moscow, Stevenson presented a brief to the Soviet authorities in which he stated that the purpose of his visit would be to present a compensation claim on behalf of certain American authors for Soviet appropriation of their works and to suggest procedures for effecting future royalty payments. His brief admitted that the American authors had no legal basis for their claims. Instead, reliance was placed upon principles which have been codified in various Soviet statutes, including a provision against unjust enrichment, a prohibition against discrimination because of a person's nationality,

[38] For example, if a literary work which originally appeared in Russian is translated into one of the national minority languages of the U.S.S.R., the author gets 60 percent of the normal rate. Resolution Concerning Literary Royalty Rates in the R.S.F.S.R., April 7, 1960, discussed in Levitsky, *op. cit. supra* note 28, at 203.

[39] Considerable profits can result from translation of foreign works in the Soviet Union. For example, a Russian woman received more than 1,000,000 rubles for her translation of Pygmalion. Chaplygin, *Gold Mine,* Pravda, Oct. 15, 1954, translated in 6 Curr. Dig. Sov. Press, No. 42, at 28 (1954). Chafee humorously noted that "in Russia, while native authors earn the largest of incomes, bourgeois authors learn with profitless pleasure that translations of their works are selling like hot cakes along the Volga." Chafee, *Reflections on the Law of Copyright: I,* 45 Colum. L. Rev. 503, 523 (1945).

[40] See Levitsky, *op. cit. supra* note 28, at 275-77; Malaplate, *Les Demarches Enterprises Par la CISAC, Depuis Sa Création, Pour Obtenir Une Protection des Auteurs Etrangers Sur le Territoire de l'Union Soviétique,* 150 Interauteurs 39 (1963).

[41] See Iseman, *supra* note 6.

and a provision stipulating that no useful labor should go uncompensated. During conferences in Moscow with several Soviet officials, Stevenson was unable to achieve a solution despite the fact that his claim for royalties dating back to 1917 was eventually reduced to a claim for royalties dating only from 1953. At the conclusion of the negotiations Stevenson issued a press statement to the effect that the Soviets obviously wished to continue their exploitation of defenseless foreign writers.[42]

During a 1959 visit to Moscow, Norman Cousins, editor of *The Saturday Review,* unsuccessfully attempted to convince Soviet officials of the unfairness of their position.[43] Cousins also tried to persuade leading Soviet authors to support international copyright, and although the authors were cordial and frank, their support of Cousins' ideas was less than enthusiastic. That same year Professor Harold Berman of Harvard Law School, whose specialty is Soviet law, brought a suit in Moscow City Court for royalties allegedly due the estate of Sir Arthur Conan Doyle.[44] The sum sought was 2,033,347 rubles, which was fifteen percent of the 13,558,850 rubles that the Ministry of Culture and the defendant publishing houses had allegedly earned from Doyle's books. The complaint acknowledged that the plaintiff had no rights under Soviet copyright law. Instead, the claim was based on article 399 of the R.S.F.S.R. Civil Code, which provides compensation for unjust enrichment. The court rejected the plaintiff's reliance on this provision, however, and the case was dismissed. On appeal, the Supreme Court of the R.S.F.S.R. held that the plaintiff's reliance on article 399 was an attempt to evade the provisions of the copyright law and affirmed the lower court decision.[45]

Recently, a delegation of American publishers touring the U.S.S.R. under the 1962-63 Cultural Exchanges Agreement also tried

[42] *Id.* at 158.

[43] See Cousins, *Of Rubles and Royalties,* Saturday Review, Sept. 5, 1959, p. 26.

[44] For a translated abridgement of the oral argument in this case, see Berman, *supra* note 5.

[45] Estate of Sir Arthur Conan Doyle v. Ministry of Culture, Sup. Ct., R.S.F.S.R., Case No. 5-573d 9, [1959], on appeal from decree of Moscow City Court of Nov. 15, 1958, translated in 7 BULL. CR. SOC. 246 (1960).

The following year about 50 books, including several works by Doyle, were withdrawn from an exhibition of Soviet books in London after it was made known that they were protected by English copyright. The head of the delegation in charge of the Soviet exhibition said the withdrawal was made "to preserve good will." 7 BULL. CR. SOC. 200 (1960).

to convince the Soviets of the virtues of international copyright. The Soviets were hospitable but were unwilling to recognize any obligation to foreign writers.[46] In addition to the efforts of private organizations and individuals, officials of several governments have unsuccessfully attempted to arrive at a solution to the copyright problem with the U.S.S.R.[47]

V

Underlying Reasons for the Soviet Position

The numerous negotiations with the Soviets concerning international copyright have made obvious a variety of reasons for the U.S.S.R.'s refusal to extend legal protection to foreign copyright owners. One of these reasons, a direct result of the Cold War, is an unwillingness to protect capitalists.[48] Since the major demands from foreigners in this area have centered upon royalties, the Soviets claim that the concern over international copyright is merely a manifestation of the typical capitalist interest in money.[49] Furthermore, they are aware that often a publisher, rather than the author himself, owns the foreign rights to a work. This affords a basis for the Soviet claim that their avoidance of royalty payments is due to their opposition to "enriching an exploiting class."[50] This appears to be simply a smokescreen, however, for their real political reason for denying protection, namely that recognition of international copyright would prevent official editing of foreign works.[51] Their position thus facilitates the dissemination of Communist propaganda.[52] This

[46] See Benjamin, Enoch, Frase, Lunt, Robinson & Wiley, *op. cit. supra* note 7; N.Y. Times, Sept. 16, 1962, § 1, p. 13, col. 1.

[47] For example, the United States Department of State "has approached the Soviet Union on this general problem (of copyright protection) at various times, but these efforts have not resulted in any satisfactory conclusion." Letter From Fred T. Teal, Assistant Legal Advisor, U.S. Department of State, to Allan P. Cramer, Dec. 16, 1963. See N.Y. Times, June 21, 1961, p. 34, col. 6.

[48] Obviously this reason is not responsible for Soviet refusal to protect copyrights of authors from neutral and Communist countries. These authors are probably appeased by informal payments.

[49] See Cousins, *supra* note 43, at 39.

[50] See Grazhdanskoe Pravoe 254 (1938), translated in Hazard & Weisberg, Cases on Soviet Law 76 (1950); Russak, *Russian Copyright: Is There Common Ground for a Convention?*, 178 Publishers' Weekly 38, 39 (1960); *cf.* Chafee, *supra* note 39, at 509.

[51] Both the Berne Convention and the UCC prevent alteration of a work. Brussels Revision of 1948, art. 6; UCC, art. 5 (1). See Evans, *Role of Translation in the Achievement of Peace*, Lib. Cong. Info. Bull., App. (Dec. 22, 1952).

[52] For example, the Soviets published, prior to the last presidential election, a translation of the novel, Seven Days in May, by Fletcher Knebel and Charles W. Bailey II. The book deals with a fictional military coup in the U.S. The introduction to the Soviet edition indicated that since Barry Goldwater was a candidate, the events por-

political obstacle does not seem to be insurmountable, however, for despite their forms of government, Bulgaria, Czechoslovakia, Hungary, Poland and Rumania are members of the Berne Union,[53] and Czechoslovakia has also adhered to the Universal Copyright Convention (UCC).[54]

There are also economic reasons for the Soviet position. Among these is a concern by officials of the U.S.S.R. that protection of international copyright and the resulting payment of royalties would further weaken their country's foreign exchange[55] due to the lack of foreign interest in Soviet works and, conversely, the great interest by the Russian people in foreign works.[56] Moreover, Soviet officials claim that they have succeeded in keeping the price of books in the U.S.S.R. extremely low, and that paying royalties to foreign authors would add considerably to the cost of foreign works, thus inhibiting the cultural growth of the Soviet people.[57] The comparatively small cost of these royalties would, of course, have no such effect.[58]

---

trayed were a real probability. Letter From Fletcher Knebel to Allan P. Cramer, March 10, 1965. See generally BARGHOORN, THE SOVIET IMAGE OF THE UNITED STATES, A STUDY IN DISTORTION (1950); BROWN, SOVIET ATTITUDES TOWARD AMERICAN WRITING (1962); De Liencourt, *The Repertoire of the Fifties,* in LITERATURE AND REVOLUTION IN SOVIET RUSSIA: 1917-1962 161 (Hayward & Lapedz eds. 1963); Dempsey, *Traveling with Charley to the U.S.S.R.,* Saturday Review, Nov. 9, 1963, p. 40; Friedberg, *Literary Output: 1956-1962,* in SOVIET LITERATURE IN THE SIXTIES 158, 160 (Hayward & Crowley eds. 1964); N.Y. Times, Oct. 27, 1964, p. 44, col. 1.

[53] U.N.E.S.C.O., COPYRIGHT LAWS AND TREATIES OF THE WORLD (1956). For a discussion of copyright law in these countries, see 2 GSOVSKI & GRZYBOWSKI, *op. cit. supra* note 28, at 1216, 1248; Böhmer, *Rights of Authors, Artists and Inventors in Czechoslovakia,* 2 FED. BAR NEWS 211 (1955); Desbois, *The Legislative Evolution in the East European States* (pts. 1 & 2), 5 BULL. CR. SOC. 1, 77 (1957); Palagyi, *Lettre de Hongrie,* 76 DROIT D'AUTEUR 129 (1963); Peterka, *Czechoslovakian Copyright Law,* 7 BULL. CR. SOC. 127 (1960); Rosengart, *Principles of Co-Authorship in American, Comparative, and International Copyright Law,* 25 SO. CAL. L. REV. 247, 267 (1952); Rudnicki, *Modification Des Lois et De la Pratique dans le Domaine Du Droit D'Auteur Après la Seconde Guerre Mondiale en Pologne,* 73 DROIT D'AUTEUR 258 (1960); Villebois, *The New Czechoslovakian Legislation,* 7 REV. INT'L DU DROIT D'AUTEUR 22 (1955); Zakár, *Les Droits Moraux Des Auteurs,* 147 INTERAUTEURS 171 (1962).

[54] Czechoslovakia's accession to the convention and to Protocol 2 and 3 became effective Jan. 6, 1960. U.N.E.S.C.O., COPYRIGHT LAWS & TREATIES OF THE WORLD (Supp. 1963). See generally BOGSCH, THE LAW OF COPYRIGHT UNDER THE UNIVERSAL CONVENTION 276-85 (1964); Peterka, *supra* note 53.

[55] In trade with the United States duriug 1962, 1963 and the first nine months of 1964, the Soviet Union exported goods worth approximately $52,000,000 and imported goods worth approximately $177,000,000. 70 COMMERCE DEPT. Q. REP. ON EXPORT CONTROL 24 (1964). On Soviet trade, see generally HARROD & HAGUE, INTERNATIONAL TRADE THEORY IN A DEVELOPING WORLD 277-96 (1963); Herman, *The Economic Content of Soviet Trade With the West,* 29 LAW & CONTEMP. PROB. 971 (1964).

[56] See Cousins, *supra* note 43, at 28; Friedberg, *supra* note 52.

[57] See Russak, *supra* note 50, at 39.

[58] See BENJAMIN, ENOCH, FRASE, LUNT, ROBINSON & WILEY, *op. cit. supra* note 7, at 109-10.

Another reason for the Soviet Union's position has been its concern that recognition of international copyright would in turn lead to demands for payments in connection with the considerable number of foreign patents that have been infringed in the U.S.S.R.[59] Recently, however, the Soviet Union announced that it intended to become the sixty-eighth nation to adhere to the Paris Convention for the Protection of Industrial Property, the international agreement protecting patents and other industrial property.[60] This action will undoubtedly serve to pacify foreign inventors and has removed a major stumbling block to recognition of international copyright by the Soviets.[61]

Soviet authors who might be sympathetic to international copyright protection have shown no great interest in achieving such protection. There are two reasons for this apathy. First, they apparently strongly resent the lack of recognition and appreciation of their works in foreign countries.[62] This, however, is largely due to the fact that foreign publishers hesitate to publish Soviet works because of their inability to gain exclusive rights with respect to such works.[63]

[59] See HOLT & TURNER, *op. cit. supra* note 8, at 123; Cousins, *supra* note 43, at 26; Iseman, *supra* note 6, at 159.

[60] N.Y. Times, March 17, 1965, p. 1, col. 4. See N.Y. Times, March 21, 1965, § 3, p. 1, col. 8; N.Y. Times, March 20, 1965, p. 31, col. 6. On Soviet patent law, see generally 1 GSOVSKI, *op. cit. supra* note 13, at 592-606; Burrus, *The Soviet Law of Inventions and Copyrights*, 30 FORDHAM L. REV. 693-710 (1962); Rand, Clesner & Herman, *U.S.S.R.: A New Factor in International Patent Relations?*, 6 PAT., T.M. & CR. J. 64 (1962); Vida, *The Law of Industrial Property in the Peoples' Democracies and the Soviet Union*, 12 INT'L & COMP. L.Q. 898 (1963); Walker, *Protection of Inventions in the U.S.S.R.*, 1964 J. BUS. L. 218; N.Y. Times, June 23, 1961, p. 2, col. 7.

[61] See N.Y. Times, March 21, 1965, § 3, p. 1, col. 7.

[62] For example, Sergei Mikhailkov, whose various works have sold 40,000,000 copies in the U.S.S.R., related to Norman Cousins that he was unknown and ignored while visiting the United States as a member of a cultural delegation. Mikhailkov especially recalled a meeting in New York with the late John D. Rockefeller. On that occasion Mikhailkov confided to Rockefeller that he was also a millionaire. Rockefeller, obviously unaware of the visitor's fame, acted amused at what he thought was a joke. Cousins, *supra* note 43, at 28. *But see* WHITNEY, THE NEW WRITING IN RUSSIA 383-412 (1964).

[63] Occasionally American publishers have released Soviet works only to find that another publisher has also been working on the same project. This happened with the contemporary Soviet novel, ONE DAY IN THE LIFE OF IVAN DENISOVICH. Two different translations of the work were released on the same day, and even though one version was claimed by its publisher to be "anthorized," while the other was not, the publisher of the "authorized" version had no legal basis for claiming infringement. N.Y. Times, Jan. 16, 1963, p. 7, col. 3. The American Textbook Publishers Institute, in an attempt to alleviate the problem somewhat, keeps a list of proposed translations of Soviet textbooks. N.Y. Times, March 21, 1965, § 3, p. 12, col. 7. Information concerning proposed translations of Soviet scientific material can also be obtained from the Clearinghouse for Federal Scientific and Technical Information of the U.S. Department of Commerce.

Soviet writers also oppose international copyright because of the fact that a portion of the profits of the state publishing houses is diverted into a general benefit fund for authors, and they fear that any royalties paid to foreigners would diminish the amounts added to their fund.[64]

Finally, Soviet works can be protected in many foreign countries even though the U.S.S.R. does not adhere to any international copyright agreement. This "backdoor protection" may be achieved through initial publication of a Soviet work in a country that adheres to one of the international copyright agreements.[65] The Soviets rarely use this device, however, probably to prevent repercussions in foreign countries which might result from abuse of the privilege.[66]

VI

PROSPECTS FOR THE FUTURE

Adherence by the Soviet Union to the UCC would obviously eliminate a major obstacle in the path of international copyright.[67] Despite some indications that the Soviet Union is considering this step,[68] it seems unlikely that such a move will be made, at least in

[64] See Cousins, *supra* note 43, at 26; Iseman, *supra* note 6, at 159.

[65] For example, Soviet author Boris Pasternak's well-known book, DR. ZHIVAGO, was protected by international copyright because of its initial publication in Italy. Russak, *supra* note 50, at 38-40. See LITERATURE AND REVOLUTION IN SOVIET RUSSIA: 1917-1962 xii (Hayward & Lapedz eds. 1963). See generally N.Y. Times, Feb. 16, 1958, § 1, p. 29, col. 1.

[66] In 1960 the Confédération Internationale des Sociétiés d'Auteurs et Compositeurs (CISAC) advised the societies associated with it to urge their respective governments to obtain from countries not belonging to the Berne Union, such as the U.S.S.R., fairer reciprocal treatment. If these efforts were unsuccessful, CISAC suggested that the societies demand the application of § 2 of the Berne Convention, which gives contracting states the option of limiting protection for nationals of countries which do not belong to the Berne Union. Masouyé, *supra* note 13, at 40.

The Soviets can also gain "backdoor protection" under art. 2 (1) of the UCC. This was pointed out to the Senate prior to United States ratification of the UCC. See Senate Committee on Foreign Relations, *Report on Exec. M.*, S. EXEC. REP. No. 5, 83d Cong., 2d Sess. 16-17 (1954). Nevertheless, the Senate ratified the UCC on June 25, 1954. 100 CONG. REC. 8945-53 (1954).

[67] The Soviet Union was not represented at the meetings which formulated the UCC. U.N.E.S.C.O., RECORDS OF THE INTERGOVERNMENTAL COPYRIGHT CONFERENCE, GENEVA, 1952 (1955). Any nation not having signed the original agreement, however, is free to accede. UCC, art. 8 (2). See BOGSCH, *op. cit. supra* note 54, at 85-88.

[68] In 1958 an unnamed Soviet spokesman told several American publishers who translate Soviet scientific journals that the U.S.S.R. intended to adhere later that year to the UCC. Those receiving the information viewed it as a mere threat to induce them to pay royalties to the Soviet government. N.Y. Times, Feb. 16, 1958, § 1, p. 29, col. 1. In 1962 the delegation of American publishers who toured the U.S.S.R. under the Cultural Exchanges Act told reporters upon their return that they were "encouraged

the near future. This conclusion is based upon the existence of the many practical reasons previously discussed for the present Soviet position. In addition, Soviet adherence to the UCC would require drastic changes in Soviet copyright law. Thus, although the UCC requires that a contracting state provide only "national treatment" to member countries,[69] Soviet adherence to the agreement would require their recognition of translation rights for the first time.[70] The UCC also states that the general minimum term of protection for works protected under it is the life of the author plus twenty-five years.[71] The Soviet Union, in order to adhere to the UCC, would have to lengthen its usual protection period of fifteen years post mortem auctoris,[72] which some Soviet commentators have claimed is too long already.[73]

At least one writer has expressed the hope that the U.S.S.R. will not adhere to the UCC, since under present conditions Soviet works can be pirated[74] and, in the case of scientific journals, frequently are.[75] This view is based on the assumption that United States

about the possibility that the Soviet Union might join the Universal Copyright Convention . . . ." N.Y. Times, Sept. 16, 1962, § 1, p. 13, col. 1.

[69] UCC, art. 2. See BOGSCH, *op. cit. supra* note 54, at 11-23; Tannenbaum, *Works Protected and the Principle of "National Treatment" under the Convention—Articles I and II*, 2 BULL. CR. SOC. 85 (1955).

[70] UCC, art. 5. See BOGSCH, *op. cit. supra* note 54, at 56-66; Castillo, *The Right of Translation in the Universal Copyright Convention*, 8 U.N.E.S.C.O. CR. BULL. 34 (1955).

[71] UCC, art. 4(2), (3). Under the Brussels Revision of the Berne Convention, a work is protected for fifty years after the death of the author. Brussels Revision of 1948, art. 7. At a 1961 meeting of the Committee of Experts of the Berne Union, a draft project was submitted which proposed that the term of protection be extended to 80 years post mortem auctoris. 74 DROIT D'AUTEUR 59 (1961). The longer protection afforded by the Berne Convention is apparently a major reason why the Soviet Union has considered adhering to the UCC instead.

[72] The present civil code, unlike previous federal law which specified a protection period of fifteen years post mortem auctoris, allows the republics to establish the duration of the protection. The amount to be paid heirs (other successors-in-law appear to be barred) cannot exceed fifty percent of the amount due to the author. Fundamental Principles of Soviet Civil Legislation, art. 105. It is doubtful that the republics will give longer protection than that afforded by previous federal law. See LEVITSKY, *op. cit. supra* note 28, at 131. See generally *id.* at 89-93.

[73] See LEVITSKY, *op. cit. supra* note 28, at 57; Levitsky, *supra* note 31, at 299; Maggs, *The Security of Individually Owned Property Under Soviet Law*, 1961 DUKE L.J. 525, 536.

[74] Warner, *The Unesco Universal Copyright Convention*, 1952 WIS. L. REV. 493. See Berman, *Rights of Foreign Authors under Soviet Law*, 7 BULL. CR. SOC. 67, 81 (1959); N.Y. Times, Feb. 16, 1958, § 1, p. 29, col. 1. *But see* Wells, *The Universal Copyright Convention: A Study of Conflict and Compromise*, 8 BULL. CR. SOC. 69, 99-101 (1957).

[75] For example, a Washington publisher, Scripta Technica, has paid no royalties to the authors of 63 Russian books which it has translated, nor to the 22 scientific journals which it translates regularly. 184 PUBLISHERS' WEEKLY 62 (1963). See N.Y.

scientists would be denied access to Soviet technical journals if the U.S.S.R. joined the UCC. This would not necessarily be the result,[76] however, and a more sensible view would seem to favor Soviet adherence to the UCC. This would afford control over Soviet editing of foreign works and give authors the remuneration which they deserve. Of course the possibility remains that the Soviet Union will protect foreign copyrights by means of bilateral treaties. This means of solving the copyright problem would undoubtedly prove less complicated for the Soviets and thus may present a better possibility for a solution to the problem.[77]

The focusing of greater publicity on the immorality of the Soviet position on international copyright apparently offers the best hope for change. Those in the best position to create such publicity are foreign government officials, persons engaged in cultural missions to the U.S.S.R. and, most important of all, authors whose works have been pirated by the Soviets. One indication that the U.S.S.R. is not anxious to change the status quo has been its efforts to appease this latter group. The main device used by the Soviets to prevent authors from waging a literary crusade on the copyright question has been sporadic token payments to foreign authors whose works have been printed by Soviet publishing houses. Among the Americans who have received such payments are Lillian Hellman,[78] John Stein-

Times, April 26, 1964, § 1, p. 14, col. 1. One United States publisher, Consultants Bureau, Inc., has signed an agreement with Mezhdunarodnaya Kniga, the Soviet government's publication export agency. Under the agreement, in return for a "reasonable royalty payment," the Soviets agreed to facilitate the prompt receipt of twenty scientific journals for translation by the publisher and also to give copies of pictures and diagrams in the journals to expedite better reproduction. N.Y. Times, Feb. 9, 1958, p. 1, col. 4. Several Soviet authors, including Mikhail Sholokhov and Ilya Ehrenberg, also have regular contractual relations with U.S. publishers. Cousins, *supra* note 43, at 26. Chekhov Publishing House, a Ford Foundation project in existence from 1951-1956 for the purpose of publishing books in the Russian language, maintained a fund out of which to pay Russian authors whose works were used, but the authors were required to appear in New York to collect the payments. Presumably because of this condition, no payments were ever made. Letter From Lilian D. Plante, former Associate Director of Chekhov Publishing House, to Allan P. Cramer, March 24, 1965.

[76] "The publication or republication by the Government... of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright...." 17 U.S.C. § 8 (1958). Thus, since the UCC provides for "national treatment," the United States government can reprint any foreign works it wishes, notwithstanding U.S. adherence to the UCC.

[77] In 1959, Mikhail Sholokov, the Soviet writer, told reporters in Washington, D.C., that his government was "considering a literary convention" with the United States. N.Y. Times, Oct. 26, 1959, p. 1, col. 6.

[78] Miss Hellman, after making numerous requests to Soviet officials, received a check for $10,000 from a Soviet publishing house in 1956. Letter From Selma Wolfman,

beck, [79] Upton Sinclair,[80] Waldo Frank,[81] John Cheever,[82] John Updike[83] and Art Buchwald.[84]

Soviet ability to maintain a position, no matter how legally or morally reprehensible, has been demonstrated in a variety of other areas.[85] It is to be hoped, however, that in the relatively insignificant field of copyright a change of position will be forthcoming.

Miss Hellman's secretary, to Allan P. Cramer, Nov. 15, 1963. Miss Hellman's plays were considerably altered by the Soviets. De Liencourt, *supra* note 52, at 161.

[79] Steinbeck, while visiting the Soviet Union in 1947, received approximately $20,000 (in rubles) as a token payment. Letter From John Steinbeck to Allan P. Cramer, Dec. 23, 1963. During a tour of the U.S.S.R. in 1963, he also received $1,435 (in rubles) from the Foreign Literature Publishing House as payment for a Russian translation of WINTER OF OUR DISCONTENT. Letter From Fred T. Teal, Assistant Legal Advisor, U.S. Department of State, to Allan P. Cramer, Dec. 16, 1963. If a foreign author is paid in rubles, he cannot transfer the money out of the Soviet Union. BOGUSLAVSKY & RUBANOV, THE LEGAL STATUS OF FOREIGNERS IN THE U.S.S.R. 82 (1961).

[80] Sinclair has received several payments in the past. A friend of his who visited Moscow recently was told that Sinclair could receive an additional $50,000 by personally appearing in Moscow and asking for the sum. Sinclair writes, however, "at age 85 I am declining." Letter From Upton Sinclair to Allan P. Cramer, Nov. 22, 1963. See generally Friedberg, *Soviet Books, Censors, and Readers,* in LITERATURE AND REVOLUTION IN SOVIET RUSSIA: 1917-1962 206 (Hayward & Lapedz eds. 1963).

[81] Frank, although he has never sought royalties, received token payments from the Soviets on an annual basis for a few years. He has not received any such payments recently. Letter From Waldo Frank to Allan P. Cramer, Dec. 22, 1963.

[82] Cheever received a payment (in rubles) while visiting the U.S.S.R. in 1964. Letter From John Cheever to Allan P. Cramer, Feb. 23, 1965.

[83] Updike was paid $1200 (in rubles) while visiting the U.S.S.R. during 1964 and was told that the rate of payment was the same as that for Soviet authors. Letter From John Updike to Allan P. Cramer, Feb. 27, 1965.

[84] Buchwald, during a visit to the U.S.S.R. in 1960, received a payment of $70 (in rubles) from the editors of a Soviet magazine that had published his work. He has also been informed that he can obtain further payment (in rubles) if he returns to the Soviet Union. Letter From Art Buchwald to Allan P. Cramer, Nov. 15, 1963.

Romain Rolland and André Gide, well-known French authors, are also known to have received rubles from Soviet publishers while visiting the U.S.S.R. DESBOIS, LE DROIT D'AUTEUR DANS LES RAPPORTS ENTRE LA FRANCE ET LES PAYS SOCIALISTES 209 (1958). See N.Y. Times, May 24, 1959, § 2, p. 3, col. 3. Several American writers whose works were pirated by the Soviets have, however, never received payments; for example, Harper Lee, whose TO KILL A MOCKINGBIRD was published by the Soviets in 1963. Letter From Harper Lee to Allan P. Cramer, Feb. 26, 1965.

[85] See, *e.g.,* Gardner, *The Soviet Union and the United Nations,* 29 LAW & CONTEMP. PROB. 845 (1964).