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The Empire Strikes Back: The Influence of the United States Motion Picture Industry on Russian Copyright Law

Introduction

The Soviet legislature conceived and implemented copyright law in the Soviet Union to advance a socialist ideology. The Soviet laws are now inconsistent with the new directions of Russia and the other former republics of the Soviet Union towards capitalism and a free-market economy. Before the collapse of the Soviet empire in late 1991, President George Bush signed, and Congress approved, a United States-Soviet Union Trade Agreement, which granted Most-Favored-Nation ("MFN") trade status to the Soviet Union.¹ The Agreement included a bilateral intellectual property provision to increase legal protection of copyrights, trademarks, and patents in the Soviet Union.² The Soviet Union's lax copyright laws, however, delayed ratification of the Trade Agreement.³

1. Most-Favored-Nation Treatment: Union of Soviet Socialist Republics, Pub. L. No. 102-197, 105 Stat. 1622 (1991). Most-Favored-Nation ("MFN") trading status ensures that the trading partner receives the lowest available tariffs on its exports to the United States, cutting the average tariff rate from 34 percent to 6.7 percent. See Doyle McManus, *Most-Favored Trading Status Due For Soviets*, L.A. TIMES, July 23, 1991, at A1.

[R]atification of the trade pact and granting of MFN status to the Soviet Union will have symbolic value . . . Tariffs would be lower—the duty of a bottle of vodka would drop by as much as \$1.25—but U.S. trade specialists are not sure what products from the Soviet manufacturing sector would be attractive to American industry and consumers. . . . Nevertheless, Soviet officials insist that MFN status will boost investor confidence in the Soviet Union, which they say will lead to the production of competitive goods for export to the West.

Stuart Auerbach, *Bush to Send Trade Accord to Congress; Anti-Piracy Laws Key to U.S.-Soviet Pact*, WASH. POST, July 26, 1991, at G1.

2. All references to the trade agreement will be to Article VIII of the United States-Soviet Union Agreement on Trade Relations, reprinted in {Developments 1987-1991 Transfer Binder} Copyright L. Rep. (CCH) ¶ 20,650 [hereinafter United States-Soviet Union Trade Agreement or Trade Agreement].

3. *U.S. Says Only Patents, Copyrights Delaying Soviet Trade Pact*, REUTER BUS. REP., July 11, 1991, available in LEXIS, Nexis Library, Wires File. According to former United States Trade Representative Carla A. Hills, "[Inadequate Soviet] intellectual property protection is the only issue holding [the trade pact] up." *Id.*

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The Motion Picture Association of America ("MPAA") was responsible for the lobbying pressure behind the delay of the agreement, most visibly by instituting an embargo on the exportation of American films to the U.S.S.R., "striking back" in response to the Soviets' rampant film pirating. As a result of the MPAA's political pressure and film embargo, the Soviet legislature recognized the need for and proposed stricter domestic and international copyright laws.⁴ The collapse of the Soviet Union precluded the Supreme Soviet from ratifying the United States-Soviet Union Trade Agreement, while the MPAA film embargo remained firmly entrenched.

Several of the former republics of the Soviet Union have subsequently ratified the Trade Agreement. Most significantly, Russia and Ukraine have signed the same MFN Trade Agreements which Mikhail Gorbachev originally signed in 1991.⁵ According to the updated United States-Russia Trade Agreement, Russian legislators were obligated to draft and enact new copyright laws by the end of 1992, which they failed to do.⁶ In the hope of enactment in the near future, however, the MPAA has lifted its embargo with the members of the Commonwealth of Independent States, but is waiting to resume trading with Russia until the Russian Parliament has enacted copyright legislation.⁷ The powerful international influence of the MPAA was evident in light of its effective lobbying which delayed the monumental United States-Soviet Trade Agreement. Consequently, the MPAA is in the unique position to play a major role in the reformation of the socialist-oriented Soviet copyright law infrastructure, which would benefit both Russia and American creative enterprises wishing to expand into a huge untapped market of consumers.

4. On behalf of the Soviets, Moscow mayor Gavrill Popov stated, "[I]n light of 'serious questions' raised recently by the Motion Picture Association of America, 'we understand the need to satisfy film distributors on [assuring copyright protection]' and vowed to 'assist in any possible way we can to help achieve a satisfactory resolution.'" James Ulmer, *Moscow Cinemas Might Multiply In UCI Ownership*, HOLLYWOOD REP., July 15, 1991, available in LEXIS, Entertainment Library, Hollywood Rep. File.

5. Carol Giacomo, *Bush, Yeltsin To Sign At Least A Dozen Agreements Envoy*, Reuters, June 13, 1992, available in LEXIS, Nexis Library, Currnt File; *The White House Office of the Press Secretary - Trade Relations Agreement Between the United States and Russia*, Federal News Service, June 17, 1992, available in *Between the United States and Russia*, Federal News Service, June 17, 1992, available in LEXIS, Nexis Library, Currnt File.

6. *Russian Law On Computer Programs Offers Copyright Protection, But Fundamental Flaws Exist*, Russia and Commonwealth Business Law Report, December 11, 1992, available in LEXIS, Nexis Library, Currnt File.

7. Don Groves and Hugh Fraser, *Hollywood Majors End Embargo On the Former Soviet Union*, Daily Variety, December 7, 1992, available in LEXIS, Nexis Library, Currnt File. "The Warner Brothers Co. is one American motion picture company whose films have been used by video pirates of the former Soviet Union to earn millions. The video pirates continue in this line of business and with impunity. Dr. Gerhard Weber, the company's Vice-President for the Middle East, Africa and Eastern Europe, pins his hopes solely on the copyright law which the Russian parliament has still been unable to pass." Vladimir Ivanidze, *Russian Piracy*, Moscow News, January 13, 1993, available in LEXIS, Nexis Library, Currnt File.

This Note will discuss the inevitable transformation of Soviet copyright law as influenced by the MPAA. Part I provides a foundation of basic principles of Soviet copyright law in order to understand the current perspective and future directions of copyright law in Russia. Part II examines Soviet copyright law in the global arena to determine which provisions are compatible with modern concepts of effective copyright protection and which provisions the new independent legislatures would have to revise to adhere to the foremost multilateral copyright agreement, the Berne Convention for the Protection of Literary and Artistic Works. Part III analyzes the intellectual property provisions of the United States-Soviet Union Trade Agreement which now comprise the United States-Russia Trade Agreement, as well as the agreements with the other former republics. These provisions represent the state of Soviet copyright legislation on the eve of the demise of the entire governmental structure. Part IV presents an illustration of the negative impact of the ineffective Soviet copyright law in the MPAA's embargo of films to the former Soviet Union. Part V expands on Part IV by analyzing the ramifications of the inadequacies of the Soviet copyright law, specifically addressing the concerns of American creative enterprises in exploring opportunities for expansion in the region. Part VI presents recommendations for the role the MPAA should play in the creation of a new copyright infrastructure in Russia and the other former republics of the U.S.S.R.

I. Domestic Soviet Copyright Law

A. Introduction

While an analysis of Soviet copyright law has more the flavor of historical background than it did before the demise of the Soviet empire, a historical perspective is necessary for two reasons. First, as the former republics' legislatures devise new intellectual property laws for their separate regimes, it is unlikely that lawmakers would ignore the precedent of generations of creators and consumers accustomed to the socialist orientation of the Soviet Union's lax intellectual property laws. Second, the independent republic legislatures might well adopt some of the more workable laws of the former Soviet Union.⁸ Identifying those laws that helped bring the Soviet Union closer to a free-market economy

8. *Ukraine Trails Russia In Legal Reforms, But Has Potential To Become Economically Strong*, 2 SOVIET BUS. LAW REP., Dec. 13, 1991, at 11.

Although the agreement on the new commonwealth says USSR laws are no longer valid on the territory of those republics signing it, individual former republics, as a practical matter, may pick up parts of Soviet laws and regulations that are not offensive to them simply to keep day-to-day operations running smoothly during the transition.

Official Kremlin Int'l News Broadcast - News/Current Events, FEDERAL NEWS SERVICE, July 21, 1992, available in LEXIS, Nexis Library, Currnt File. Furthermore, the Supreme Soviet issued a decree adopting the fundamentals of the civil legislation of the USSR for the territory of the Russian Federation. See *infra* note 172.

and promoted international trade and investment provides an appropriate legislative starting point.

Soviet copyright law was incorporated in the Fundamental Principles of Civil Legislation, Articles 96-106, the republican civil codes (for example the Russian Civil Code, articles 475-516), and in many other legislative decrees.⁹ Article 47 of the Constitution of 1977 guaranteed Soviet citizens freedom of scientific and artistic creation "in accordance with the goals of communist construction."¹⁰ Under this network of laws, copyright protected works of science, literature, music and art.¹¹

The Soviet legislature designed copyright laws to provide favorable conditions both for creating works of art, literature, and science of high ideological quality and for wide distribution of these works.¹² The laws attempted to balance the interests of both the creator and the community at large.¹³ Intellectual creation in a socialist society is a social process, designed for society and resulting from society's plan for cultural

9. Fundamental Principles of Civil Legislation of the USSR and Union Republics, 50 *Vedomosti SSSR*, art. 525 (Dec. 8, 1961), amended by 9 *Vedomosti SSSR*, art. 138 (1973), amended by 42 *Vedomosti SSSR*, art. 585 (1976), amended by 44 *Vedomosti SSSR*, art. 1184 (1981) [hereinafter Fundamental Principles (1961)]; *Grazhdanskii Kodeks RSFSR* [Civil Code of the Russian Soviet Federated Socialist Republics], 24 *Vedomosti RSFSR*, art. 406 (1964), amended by 10 *Vedomosti RSFSR*, art. 286 (1974), amended by 42 *Vedomosti RSFSR*, art. 1270 (1976) [hereinafter *GK RSFSR*]. SERGE LEVITSKY, *COPYRIGHTS AND TRADEMARKS IN SOVIET ECONOMY IN SOVIET LAW AND ECONOMY* 127, 154 (Olimpiad Ioffe et al. eds., 1986).

[T]he Principles contain the basic positions on all the most important institutions of civil law. . . . All the civil codes of the union republics are arranged on the basis of the system established by the Principles. They reproduce to the fullest extent the norms of the Principles and, at the same time, supplement and develop them.

OLEG NIKOLAEVICH SADIKOV, *SOVIET CIVIL LAW* 3, 19 (1988). See, e.g., *GK RSFSR*, art. 2, in *The Soviet Codes of Law* 1, 394, 55 (William B. Simons, ed., 1980).

10. Serge Levitsky, *Administrative Law and Copyright*, in *SOVIET ADMINISTRATIVE LAW: THEORY AND POLICY* 209, 212 (George Ginsburgs et al. eds., 1989); KONST. SSSR (1977), reprinted in *IZVESTIA*, Oct. 8, 1977, at 3-6; WILLIAM E. BUTLER, *THE SOVIET LEGAL SYSTEM* 3 (1978).

11. Art. 96 of the Fundamental Principles (1961) provided,

Copyright shall extend to works of science, literature, or art irrespective of the form, purpose or value of the work, and also of the means of reproducing it.

Copyright shall extend to works, published or unpublished, but expressed in some objective form which permits reproduction of the result of the creative activity of the author (manuscript, drawing, picture, public recital or performance, film, mechanical or magnetic recording, etc.)

BUTLER, *supra* note 10, at 420.

12. SERGE LEVITSKY, *INTRODUCTION TO SOVIET COPYRIGHT LAW* 1, 13 (Z. Szirmai ed., 1964). "[I]n as much as incentives and wide dissemination ultimately benefit both the individual writer, artist or composer, and society, the author's interests coincide in a large measure with those of the public, whether we are in the presence of a 'socialist' system of economy, or a 'capitalist' one." *Id.*

13. MARK MOISEEVICH BOGUSLAVSKY, *COPYRIGHT IN INTERNATIONAL RELATIONS: INTERNATIONAL PROTECTION OF LITERARY AND SCIENTIFIC WORKS* 1, 16 (N. Poulet trans., 1979).

growth.¹⁴ The government fashioned copyright law in harmony with this socialist precept to direct the cultural and ideological development of the populace.¹⁵ Accordingly, the government regarded the societal interest as requiring, under certain circumstances, the publication of an author's work even if it was against his will.¹⁶ An extreme example of the promotion of this socialist concept was a 1918 government decree which declared that all scientific, literary, musical, and artistic works were the property of the Government.¹⁷

B. Personal and Property Rights

Under Soviet copyright law, the author possessed two different kinds of rights, personal and property. Personal rights, also known as moral rights, arose at the moment of creation of the work. In contrast, property rights arose when the work was socially utilized (i.e., with its publication or performance).¹⁸ Personal rights consisted of several aspects:

- (1) the right to be acknowledged as the author of the work;¹⁹

14. Serge Levitsky, *On the Eve of Perestroika: The Impact of Administrative Law Upon Soviet Copyright Law*, in *SOVIET ADMINISTRATIVE LAW: THEORY AND POLICY* 209, 213 (George Ginsburgs et al. eds., 1989).

15. See LEVITSKY, *supra* note 12, at 15.

Soviet copyright legislation established a series of . . . devices designed to facilitate the access by society to socially useful [and socially harmless] works of science, music, the arts and literature. To this category belong:

[1] Establishment of a relatively short period of protection (USSR Copyright Act of May 16, 1928, (Sob. Zak., SSSR, 1928, No. 27, Art. 246), [hereinafter USSR Copyright Act (1928)], Sections 11, 12, 13, and 15; Fundamental Principles (1961), art. 105).

[2] Freedom of translation (USSR Copyright Act (1928), Section 9a; Fundamental Principles (1961), art. 102).

[3] Establishment of a long list of exceptions which do not constitute infringements of copyright (USSR Copyright Act (1928), Section 9; Fundamental Principles (1961), arts. 103 and 104).

[4] The right to reproduce and circulate 'useful' foreign works without authorization of the author, and without the payment of royalties (USSR Copyright Act (1928), Sections 2 and 9a; Fundamental Principles (1961), art. 97).

[5] Establishment of a minimum number of copies . . . for works of various literary types.

[6] The right of the government to intervene in the author's decision to publish (USSR Copyright Act (1928), Section 8), and to effect a compulsory purchase of copyright (USSR Copyright Act (1928), Section 20; Fundamental Principles (1961), art. 106).

Id.

16. JOHN N. HAZARD & ISAAC SHAPIRO, *THE SOVIET LEGAL SYSTEM* 188 (1962). See *infra* notes 30-40 and accompanying text.

17. BOGUSLAVSKY, *supra* note 13, at 24. Later Soviet legislation modified this decree by no longer defining such creations as Government property. 86 Sob. Uzak. RSFSR, item 900 (1918); HAZARD & SHAPIRO, *supra* note 16, at 187.

18. LEVITSKY, *supra* note 12, at 79. See also Serge Levitsky, *The Union of Berne at 100: What Keeps the Superpowers Away?*, in *LAW AND THE GORBACHEV ERA* 271, 289 (Donald D. Barry et al. eds., 1988).

19. Fundamental Principles (1961), *supra* note 9, at art. 98. LEVITSKY, *supra* note 12, at 80.

(2) the right to have the work protected against improper changes or adaptations by others (i.e., the right to inviolability of the work); and²⁰

(3) the right to have the work published or performed.²¹

The author's property right consisted mainly of the right to payment of royalties and remuneration.

The distinction between personal and property rights is illustrated by the treatment of "ideologically useless" works, which included all religious works.²² For these works, copyright law afforded protection of the author's personal rights only.²³

The right to authorship imported that the holder of original copyright was the creator of the legally protected work and wherever a user utilized the work, he had to make reference to the author.²⁴ The right to authorship of a work was not assignable or inheritable; heirs acquired only the rights to publication, reproduction, and dissemination of the inherited work.²⁵

The right to inviolability meant that without the author's consent, an editor could not change the style, contents, or structure of the author's work. Realistically, however, a Soviet author rarely refused to comply with requests for changes, as the government could rescind the author's publishing contract for such refusal.²⁶ The author's moral right to the inviolability of her work was also not freely assignable. Even after transfer of ownership, the creator retained an inalienable right to refuse changes in her work.²⁷

Works no longer protected under copyright laws because of the expiration of the statute of limitations were still protected by specific

20. LEVITSKY, *supra* note 12, at 83. See also Olimpiad Ioffe, *Law of Creative Activity, in SOVIET CIVIL LAW* 325, 333, (George Ginsburgs et al. eds., 1988). The right of translation had been a matter of contention for many years.

Prior to the ratification of the 1952 World Copyright Convention, protection of the right to inviolability in Soviet law did not include protection against infringement by persons translating the author's work . . . Now article 489 of the Civil Code establishes that the translation of a work into another language for purposes of publication is permitted only with the consent of the author.

Id. See also Levitsky, *supra* note 18, at 289 (in which the author lists the moral rights recognized as the rights to paternity, first disclosure ("divulgarion"), and inviolability (integrity) of the work); Fundamental Principles (1961), *supra* note 9, at art. 98; GK RSFSR, *supra* note 9, at arts. 479, 480, 481, 499, 500, 510.

21. LEVITSKY, *supra* note 12, at 81. Art. 98 of the Fundamental Principles (1961) also specifies the right of the author to receive remuneration for use of the work by other persons except for instances specified by law. BUTLER, *supra* note 10, at 421. The right to publication has also been grouped with the author's "exploitation rights," which relate to the use of the work, and include rights to publication, reproduction, dissemination, translation, and adaptation. SERGE L. LEVITSKY, *COPYRIGHT IN RUSSIA AND THE USSR* 1, 15 (1985).

22. See *infra* notes 48-51 and accompanying text.

23. LEVITSKY, *supra* note 12, at 14.

24. Ioffe, *supra* note 20, at 332.

25. GK RSFSR, *supra* note 9, at art. 496. Ioffe, *supra* note 20, at 341.

26. GK RSFSR, *supra* note 9, at art. 496; GK RSFSR, *supra* note 9, at arts. 480, 511; LEVITSKY, *supra* note 12, at 154.

27. Levitsky, *supra* note 18, at 293.

administrative agencies such as the Ministry of Culture and the Union of Writers.²⁸ Upon the death of the author, the literary executor or the author's heirs and socialist user organizations assumed the duty of protecting the author's rights. No time limit was specified for this protection, but precedent indicates that the protection was perpetual.²⁹

C. Free Uses and Compulsory Licenses

In accordance with the view of copyright as a union of the interests of both the author and society, the Soviet government reserved powers to utilize the author's work when necessary to further the interests of society as a whole. Free uses enabled the government to utilize the author's work without his consent and without payment of royalties.³⁰ In contrast, a compulsory license was a provision for the government to use the author's work without his consent but with payment of royalties.³¹

28. Ioffe, *supra* note 20, at 331.

29. GK RSFSR, *supra* note 9, at art. 481(2); Levitsky, *supra* note 18, at 301.

30. Art. 103, Fundamental Principles (1961) provided,

There shall be permitted without the consent of the author and without payment of royalties, but with the obligatory specification of the surname of the author whose work is used and the source from which it was borrowed:

(1) the use of another's published work for the creation of a new, creatively independent work, except for reworking a narrative work in dramatic or scenario form, and vice versa, and also reworking a dramatic work into a scenario and vice versa;

(2) the reproduction in scientific and critical works, textbooks, and political-enlightenment publications of individual published works of science, literature, and art of selections therefrom within the limits established by union republic legislation;

(3) information in the periodical press, film, radio, and television concerning published works of literature, science, and art;

(4) the reproduction in film, radio, and television of publicly delivered speeches, reports, and also published works of literature, science, and art;

(5) the reproduction in newspapers of publicly delivered speeches, reports, and also published works of literature, science, and art in the original or translation;

(6) the reproduction by any method, except mechanical contact copying, of works of decorative art situate in places open to the public, except for exhibitions and museums;

(7) the reproducing of printed works for scientific, textbook, and enlightenment purposes without deriving profits;

(8) the publication of published works in Braille for the blind.

BUTLER, *supra* note 10, at 422. The Russian Civil Code, in addition to listing the preceding free uses, includes the conspicuously flagrant free use, "reproduction or other use of the published works of another for the satisfaction of personal needs is permitted without consent of the author and without payment of royalties." GK RSFSR, *supra* note 9, at art. 493, reprinted in SOVIET CIVIL LEGISLATION 1, 131 (Whitmore Gray ed., 1965).

31. Art. 104, Fundamental Principles (1961) provided,

There shall be permitted without the consent of the author, but specifying his surname and payment of a royalty:

(1) the public performance of published works; however, if a payment from visitors is not recovered, an author shall have a right to remuneration only in the instances established by union republic legislation;

(2) the recording of works with a view to public reproduction or circulation of published works on film, record, magnetic tape, or other equipment except

Soviet legislators increased the number of free uses prior to adherence to the Universal Copyright Convention in 1973, as a last attempt to permit unimpeded societal access to the most lucrative uses of the author's copyright in published works: film, television, and radio rights.³² In recent years, however, the Soviets made a conscious effort not to utilize the most flagrantly offensive free uses, such as free reproduction in the media of published works of literature, science, and art in their entirety.³³ In 1973, the Soviet legislature abolished a previously exploited free use, that of freedom of translation, so that the Soviet Union could join the Universal Copyright Convention.³⁴

In the past, the Soviet government often utilized the free use of granting to broadcasting organizations the right to transmit works performed in theatres, concert halls, and other public places without payment to either the authors or the performers. The goal of this legislation was to disseminate knowledge and culture freely to the general population.³⁵ In contrast, the recording of any public performance of a published work on film or tape was permitted without the author's permission, but with a compulsory payment of royalties.³⁶ In 1990, however, the Ad Hoc Working Commission for Copyright Reform, chaired by a representative of the Ministry of Justice, required both the author's consent and payment of royalties for the use of published works in movies, on radio, and on television.³⁷

In the same fashion as free uses and compulsory licenses, the Soviet government could declare the copyright to be the property of the state under several circumstances.³⁸ The republican government could compulsorily purchase the copyright from an author or heir.³⁹ Further-

for the use of the work on film, radio, or television (article 103, point 4, of the present Fundamental Principles);

(3) the use by a composer of published literary works to create musical works with a text;

(4) the use of works of decorative art, and also photographic works, on industrial articles; in such instances specifying the author's surname is not obligatory.

BUTLER, *supra* note 10, at 420.

32. SERGE LEVITSKY, CHANGES IN THE FUNDAMENTAL PRINCIPLES OF USSR CIVIL LEGISLATION, PART IV: COPYRIGHT IN THE IMPACT OF PERESTROIKA ON SOVIET LAW 205, 230 (Albert J. Schmidt ed., 1990).

33. Fundamental Principles (1961), *supra* note 9, at art. 103(5). LEVITSKY, *supra* note 32, at 230.

34. LEVITSKY, *supra* note 32, at 228. See *infra* notes 120-33 and accompanying text.

35. Decree of CIK and SNK SSR of 1929, 26 SZ USSR, at 230 (1929); GK RSFSR, *supra* note 9, at art. 492; BOGUSLAVSKY, *supra* note 13, at 50.

36. BOGUSLAVSKY, *supra* note 13, at 133. The user did not have to pay these compulsory royalties if the recording was for a film, or broadcast on radio or television. *Id.*

37. LEVITSKY, *supra* note 32, at 243.

38. Art. 106, Fundamental Principles (1961) provided, "*Purchase of Copyright by the State*. Copyright in a publication, public performance, or other use of a work may be compulsorily purchased by the state from an author or his heirs in the procedure established by union republic legislation." BUTLER, *supra* note 10, at 423.

39. GK RSFSR, *supra* note 9, at art. 501; Ioffe, *supra* note 20, at 331. One explanation for the compulsory purchase was, "[T]he Soviet government undoubtedly

more, the copyright statutes of the union republics offered the state an opportunity to "nationalize" and to monopolize works that were already in the public domain through expiration of the copyright. Nationalization of a work restored its copyright by creating a new title which belonged to the state for an indefinite period of time, so that the state retained a perpetual original copyright.⁴⁰

D. The Socialist User Organizations

Soviet social engineers created specialized user organizations functioning as monopolistic intermediaries between an author and the public, based upon the theory that these organizations were better equipped than the individual author to assume responsibility for effective publication, production, reproduction, and distribution of the author's work.⁴¹ The organizations anticipated public demand and directed trends and tastes; they determined the purchasing power of prospective readers and audiences and calculated the price of an admission ticket, book, or television set accordingly.⁴² The organizations, with a publishing and distributing monopoly, eliminated competition with centrally controlled and planned markets. The socialist user organizations were not responsive to fluctuating market demands and did not use sound business judgment. Rather, the decrees and orders of central administrative bodies and directives of the Communist party governed the organizations.⁴³

wished to retain a means of expropriating unwelcome works which were being used 'in contradiction to the interests of socialist society.' " Another explanation offered that, "[t]he forcible purchase, in the opinion of the majority of Soviet civilists, . . . allows the government to force reluctant authors and heirs to make an unpublished work available to society." Levitsky, *supra* note 14, at 238. Yet another explanation was that "the Soviet government began to use it as a means to eliminate 'unearned incomes' of the heirs of successful authors." LEVITSKY, *supra* note 21, at 13.

40. GK RSFSR, *supra* note 9, at art. 502; Levitsky, *supra* note 14, at 238-239. See *infra* notes 59-61 and accompanying text.

41. Levitsky, *supra* note 14, at 234.

42. LEVITSKY, *supra* note 12, at 18.

43. Levitsky, *supra* note 14, at 235. Several of the most important and visible administrative bodies having a significant impact on the publication and dissemination of creative works included:

(1) Goskino: the State Committee of the USSR on Cinematography exercised all functions relating to planning, production, distribution, rental, projection, and marketing of motion pictures. *Id.* at 249.

(2) Sovinfil: the All-Union Corporation for Co-Production of Films and Special Services to Foreign Film Studios and Firms, part of Goskino, was the official Soviet organization for foreign production and co-production in the U.S.S.R. See Anthony Vagnoni, *Kononenko Signs Deal to Represent Soviets in U.S.*, INFORMATION ACCESS COMPANY, BACK STAGE PUB. INC., Aug. 12, 1988, available in LEXIS, Nexis Library, Back Stage File.

(3) U.S.S.R. Ministry of Culture: directed and organized other forms of entertainment, including all forms of music, theatre, dance, circus, and discotheques. Levitsky, *supra* note 14, at 250.

(4) Gosteleradio: responsible for the planned development of television and radio broadcasting and programming. *Id.* at 251. Ostankino, the state broadcaster to the Russian empire, has replaced President Gorbachev's Gosteleradio. Ian Hargreaves,

The Soviet economy was based on government ownership of the means of production so that the Soviet government could carry out the planned development of the Union.⁴⁴ Consequently, publishing houses, movie theatres, radio, television, theatres, and film studios were the property of the Soviet government and were under the management of the socialist user organizations.⁴⁵ For decades, this system effectively reduced the exclusive copyright of the author to a duty to secure the publication and dissemination of his works through a socialist user organization by signing an author's contract.⁴⁶ The author realized his personal rights of publication, reproduction, and distribution upon signing this contract with a publisher or other organization. Furthermore, the author only acquired his property right to remuneration in exchange for his personal rights to the work under an author's contract.⁴⁷

The appropriate social user organization linked its approval of an author's work for societal use directly to the work's ideological content or social value.⁴⁸ The user organization assessed the value or quality of a work prior to the use of the work. This decision was final and could not

A Revolution on the Russian Airwaves, The Financial Times, October 3, 1992, available in LEXIS, Nexis Library, Currnt File.

(5) Goskomizdat: the State Committee of the USSR on Publishing, Printing, and the Book Trade was the central publishing organization; with the advent of perestroika, it eliminated covert review of authors' manuscripts, which was especially detrimental for controversial works. See LEVITSKY, *supra* note 32, at 216.

(6) VAAP: the All-Union State Agency for Copyright and Related Rights, established in 1973, collected and paid royalties to authors. "The official bulletin of the U.S.S.R. Copyright Agency stated: 'The VAAP will foster copyright compliance and act as a mediator in contract-signing or sign contracts for the use of works of Soviet authors in foreign countries and works of foreign authors in the U.S.S.R.,'" Peter Elliot Braveman, *A New Dawn in International Copyright: The Soviet Adherence to the Uniform Copyright Convention*, 1975 UTAH L. REV. 451, 457 (quoting from 3 VAAP BULL. 4 (1974)). VAAP was officially disbanded in February 1992. Leonid Nikitinsky, *VAAP Dead, But Funeral Postponed*, SOVIET PRESS DIG., Mar. 3, 1992. See *infra* notes 52-54, 128-30, 251 and accompanying text.

44. LEVITSKY, *supra* note 32, at 245 (quoting from SOVETSKOE GRAZHDANSKOE PRAVO 404 (V. F. Maslov & A. A. Pushkin eds., 1983)).

45. BOGUSLAVSKY, *supra* note 13, at 131. See also Levitsky, *supra* note 10, at 244.

"[T]he basic means with the help of which publication, reproduction and dissemination of the authors' work is carried out, belong to the state (prinadlezhat gosudarstvu). More particularly . . . the network of publishing establishments and organizations, television, cinema, radio, cultural-educational and entertainment organizations are the property of the state (iavlaiut-sia sobstvennost'iu gosudarstva).

Levitsky, *supra* note 10, at 244 (quoting from SOVETSKOE GRAZHDANSKOE PRAVO 404 (V. F. Maslov & A. A. Pushkin eds., 1983)).

46. The point is that if the Soviet government goes into a great deal of effort and expense to organize the distribution or the public performance of the authors' works . . . it does so not to boost the ego of the author, and not even primarily to foster the creation of new works, but to perform an essential public service, namely, to assure a 'planned growth of culture' and to influence public opinion.

LEVITSKY, *supra* note 12, at 14.

47. GK RSFSR, *supra* note 9, at art. 503; Ioffe, *supra* note 20, at 336.

48. Levitsky, *supra* note 14, at 228.

be contested in court.⁴⁹ In assessing the value of the work, the Soviet government strongly disfavored the creation of works that were “professionally inferior, socially ‘useless,’ or ideologically indifferent or hostile.”⁵⁰ Authors of such “socially dangerous” works could be liable for administrative, social, and penal sanctions.⁵¹

The Soviet author who wished to disseminate potentially offensive literature circumvented the user organizations through the underground process of “samizdat.”⁵² Samizdat was not expressly forbidden, but articles 70 and 190-1 of the USSR Criminal Code permitted “official interference by criminal prosecutions in almost all cases of samizdat.”⁵³ Circumventing VAAP could result in expulsion from the Writer’s Union, in addition to forfeiture of all royalties and of the copyright itself.⁵⁴

The Soviet author received royalties according to the quality and

49. LEVITSKY, *supra* note 9, at 143.

50. LEVITSKY, *supra* note 12, at 14. “[I]n appraising the quality of a work” to determine the amount of royalties to be paid to an author, “the decisions and directives of the party’s Central Committee on questions of ideology have a primordial importance.” *Id.* at 11 (quoting V.I. SEREBROVSKII, *VOPROSY SOVETSKOGO AVTORSKOGO PRAVA* 9 (1956)). See also Leonard A. Radlauer, *The USSR Joins the Universal Copyright Convention*, 23 *COPYRIGHT L. SYMP.* 1, 21 (1977). “In the words of a Soviet publisher, ‘Soviet citizens have clean minds and pure souls’ such that ‘No Russian would ever want to read it [referring to Phillip Roth’s *Portnoy’s Complaint*].” *Id.* (quoting Susan Jacoby, *Russian Book Publishing: Inexorably Wedded to Censorship*, *PUBLISHERS’ WEEKLY* Sept. 27, 1971, at 169).

51. LEVITSKY, *supra* note 12, at 14 (quoting T. A. Faddeyeva, *Pravo avtorstva po soretskomu grazhdanskomu pravu*, *VESTNIK LENINGRADSKOGO UNIVERSITETA, SERIA EKONOMIKI, FILOSOFI I PRAVA*, No. 23, 1957, at 116). See Dietrich A. Loeber, *Samizdat Under Soviet Law* in *CONTEMPORARY SOVIET LAW*, 84, 119-120 (Donald D. Barry et al. eds., 1974). Criminal liability resulted from the contents of the published material in several situations: revealing state secrets (UK RSFSR art. 75 (RSFSR)); pornographic materials (UK RSFSR art. 228); “the preparation or circulation in written, printed, or any other form” of ‘fabrications known to be false, which defame the Soviet state and social system.’ (UK RSFSR arts. 190-1); and anti-Soviet agitation and propaganda,

Agitation or propaganda carried on for the purpose of subverting or weakening the Soviet regime (*vlast*) or of committing particular, especially dangerous crimes against the state, or the circulation, for the same purpose, of slanderous fabrications which defame the Soviet state and social system, or the circulation or preparation or keeping, for the same purpose, of literature of such content, shall be punished by deprivation of freedom for a term of six months to seven years, with or without additional exile for a term of two to five years, or by exile for a term of two to five years.

UK RSFSR, art. 70, Simons, *supra* note 9, at 93. Significantly, this crime fell under the rubric of “Especially Dangerous Crimes Against the State,” which also included treason (art. 64), espionage and terrorism (art. 66), and sabotage (art. 68). *Id.*

52. Alice F. Yurke, *Copyright Issues Concerning the Publication of Samizdat Literature in the United States*, 11 *COLUM.-VLA J.L. & ARTS* 449 (1987). See *infra* notes 128-30, 251, and accompanying text.

53. *Id.* at 450. “Convictions under article 70 require an intent to ‘undermine or weaken Soviet power’; article 190-1, embracing the less serious cases of production and dissemination, does not require such intent. In minor cases, the author may face dismissal from employment, police warnings, or trial by a Comrades’ Court.” *Id.* See also Braveman, *supra* note 43, at 463. A violation of Article 70 was punishable by six months to seven years imprisonment. *Id.*

54. See Braveman, *supra* note 43, at 452, 464.

quantity of work.⁵⁵ The organization determined the quality of a work according to the author's degree of adherence to party ideology resulting in socially useful works.⁵⁶ The Soviet administrative agencies interpreted literally the quantitative measurement of a work, as the size of the work affected the author's remuneration.⁵⁷ The amount of remuneration was not negotiated according to a free market but was fixed in advance by obligatory tariffs and detailed schedules provided by administrative authorities.⁵⁸

The author of a work, as the genuine creator, held an inalienable original copyright in the work.⁵⁹ Governmental agencies which produced periodical publications, or film, television, and radio organiza-

55. BOGUSLAVSKY, *supra* note 13, at 130.

56. LEVITSKY, *supra* note 12, at 203. See *supra* notes 48-51. See also Radlauer, *supra* note 50, at 17.

In 1947 categories of quality were created. Those authors most faithfully integrating Party principles in a readable work were assigned the category of 'outstanding.' Others less adept at infusing their work with ideological-artistic value receive a rating of 'good work, maintaining high ideological-artistic standards.' The bottom level is inhabited by 'satisfactory works' . . . Each category indicates a different scale of remuneration with higher ratings receiving higher payment.

Id.

57. See Radlauer, *supra* note 50, at 15.

Schedules have been written that allot a specified amount of rubles per page, or in the case of poetry, per line. The type of work is also mentioned in the schedules with varying payments for different categories of work. Fiction is accorded a higher amount than scientific treatises; textbooks receive less than theoretical works on social problems. This scheduled fee is then multiplied by the number of pages or lines to achieve the author's fee. This amount in turn may be altered by the number of copies to be published in the first edition.

Id. See also, LEVITSKY, *supra* note 21, at 20 ("Payment is effected on the basis of such units as an 'author's sheet' (40,000 printed characters); lines (poetry); minutes (music); numbers of acts (drama); etc. For each type of work, the schedules usually provide several possible rates, or a minimum-maximum range.").

58. GK RSFSR, *supra* note 9, at art. 479; LEVITSKY, *supra* note 12, at 16. Other stimulations for the creation of works besides the payment of royalties included:

- (1) the Lenin (formerly Stalin) Prizes, which were considerable cash awards, created in 1939 for outstanding achievements in the fields of science, literature and the arts
- (2) privileges established by Soviet housing and tax legislation
- (3) preferential treatment to authors suing for royalties (GPK RSFSR (1923))
- (4) various cultural funds: literary, arts, music, etc.

Levitsky, *supra* note 10, at 231.

The Funds offer social security and health insurance programs; old-age pensions; maintain their own clubs and resthomes, even sanatoria and clinics; arrange for grants-in-aid and scholarship; extend short-term loans. . . ' (Litfond) can arrange a stay at a Black Sea sanatorium, a mountain vacation, or even a custom tailor to make a sheepskin coat or fur hat . . . Members can get advances of up to 500 rubles on work in progress . . . private restaurant at union headquarters . . . theater and travel tickets, a lawyer . . .

Id. at 232 (quoting from Serge Schmemmann, *In Russia, the 'Payok' Is Mightier Than Pen*, reprinted in INT'L HERALD TRIB., May 24, 1983, at 7).

59. Ioffe, *supra* note 20, at 330.

tions which produced motion pictures, telecasts, and radio transmissions, also held an original copyright in the work produced.⁶⁰ In executing an author's contract, the author created an alienable derivative copyright in favor of the publisher or another party, while retaining an original copyright in the work. An original copyright in the possession of an individual was valid only for the life of the author, while the same original copyright in the possession of a legal entity was unlimited in duration. The death of an individual author entitled her heirs to a derivative copyright, valid for 25 years after the author's death.⁶¹

The consent of the Soviet socialist user organization was required for publishing Soviet works abroad. When the contract for use within the U.S.S.R. terminated, the organization then became the author's legal successor for foreign uses. The copyright notice, ©, required under the Universal Copyright Convention ("U.C.C."),⁶² bore the name of the Soviet user organization, so the author was no longer the copyright owner when licensing Soviet works for use abroad. The Soviet author gave a "blanket authorization" for all uses of her works abroad.⁶³

E. Remedies for Copyright Infringement

The Soviet government did not strongly enforce the copyright laws against individual violators, and civil or criminal sanctions were virtually nonexistent, partially because the government itself violated the laws.⁶⁴ The author's choice of remedies for redress of the infringement depended on whether the alleged violator infringed the author's personal or property rights.⁶⁵ The free use and compulsory license provi-

60. Ioffe, *supra* note 20, at 329. See also LEVITSKY, *supra* note 12, at 269.

The Presidium of the RSFSR Supreme Soviet has resolved: The following amendments and additions shall be introduced into the Joint Resolution 'On Copyright' of the All-Russian C.E.C. and the C.P.C. of the RSFSR of October 8, 1928: . . . 3. Copyright to motion picture films shall belong to the motion picture studio which has issued them. The author of the script shall retain the right to remuneration.

Id.

61. *Id.* at 330.

62. See *infra* note 126 and accompanying text.

63. Levitsky, *supra* note 18, at 358.

64. According to Franklin Totini, Vice President for Eastern Europe and the Soviet Union with the Motion Picture Export Association of America, "Right now, [penalties for bootlegging] amount to a slap on the wrist . . . [U]nfortunately, [piracy] is semiofficially condoned [by the Soviet state]." Greg Granden, *Soviets Stymie Studios; Bootlegging, Ruble Inhibit Cashing in on U.S. Film Craze*, L.A. TIMES, June 15, 1991, at F1. The International Intellectual Property Alliance released a study in which it found "substantial shortcomings" in copyright legislation and enforcement in Eastern Europe and the Soviet Union, denying U.S. companies potentially important market opportunities . . . Realistic enforcement of laws against piracy is practically non-existent in the region and, as a result, piracy flourishes." See *IIPA Finds Inadequate Copyright Protection, Seeks Improvements*, BNA INT'L BUS. DAILY, Jan. 30, 1991.

65. LEVITSKY, *supra* note 12, at 216. See *supra* notes 18-29 and accompanying text. The Russian Civil Code set forth applicable remedies for infringement:

Article 499. Protection of the private non-property rights of an author. In case a person uses the work of another without a contract with the author or his heirs (Article 488), or fails to observe the conditions for using a work without con-

sions, as well as the overriding general socialist belief in the public utilization of a work, created insurmountable barriers to an author's claim of copyright infringement.⁶⁶ It was generally acknowledged that an author seeking redress of copyright infringements would not find the Soviet court system very sympathetic.⁶⁷

A 1928 ruling by the Plenum of the RSFSR Supreme Court effectively ensured that criminal liability would almost never attach to a copyright violation. The Court stated:

Penal responsibility . . . is incurred only in those cases of violations of copyright which . . . consist of a deliberate alteration of someone else's work, an intentional distortion, or an intentional misuse of someone else's work. All other cases of infringement of copyright, i.e., when material advantages are derived from someone else's work without the consent of the [actual] author, are subject to civil jurisdiction, provided that there is no fraud or other element constituting a criminal infraction.⁶⁸

Because of the Court's mandate that a claimant had to prove the infringer's criminal intent and because of the Court's vague definition of what constituted criminal copyright infringement,⁶⁹ the disincentive of penal sanctions was nonexistent to the pirater of copyrighted works.⁷⁰ The Russian Criminal Code, however, provided for both monetary and penal sanctions against plagiarists.⁷¹

Civil law was also far from effective in protecting the author's rights. The copyright sections of the Fundamental Principles of Civil Legislation (1961) did not even address what actions would create civil liability for infringement, nor did they set forth any civil enforcement mecha-

sent of the author (Articles 492 and 495), or violates the integrity of a work (Article 480) or other personal non-property rights of an author, the author, or after his death his heirs or such other persons as are indicated in Article 481 of this Code, may demand the reestablishment of the violated right (the making of appropriate corrections, an announcement in the press or by some other means concerning the violation which had been committed), or the prohibition of publication of the work or the termination of its distribution.

Article 500. Protection of the property rights of an author in the event of a violation of his copyright. If an author has sustained damages through a violation of his copyright (Article 219), he may, independently of the rights indicated in Article 499 of this Code, claim compensation for the damages.

GK RSFSR, *supra* note 9, at arts. 499-500, reprinted in Gray, *supra* note 30, at 132.

66. LEVITSKY, *supra* note 12, at 224, 226. See *supra* notes 12-17, 30-40 and accompanying text.

67. *Id.* at 217.

68. *Id.* at 217. Plenum of the RSFSR Supreme Court, Nov. 19, 1928.

69. *Id.*

70. Nevertheless, the same authority asserts in a different source that the defendant's fault need not be established in a claim for infringement of an author's personal rights. LEVITSKY, *supra* note 21, at 22.

71. Ugolovnyi Kodeks RSFSR [RSFSR Criminal Code], art. 141 [hereinafter UK RSFSR], provides, "The issuance under one's own name of another's scientific, literary, musical, or artistic work, or any other appropriation of the authorship of such a work, or the illegal reproduction or distribution of such a work, or the compelling of someone to be a co-author, shall be punished by deprivation of freedom for a term not exceeding one year or a fine not exceeding 500 rubles." Simons, *supra* note 9, at 111.

nisms.⁷² Republic legislation provided more guidance in determining the author's right to redress for infringement of his work. Section 11 of the RSFSR Copyright Act of 1928 protected the author's personal rights to the work by providing that, "[T]he copyright shall also be protected from infringement in cases where infringement involves no definite property interests."⁷³ As Soviet law did not provide for monetary relief for "moral" damages for the violation of the author's personal rights, section 11 provided that the author was entitled only "to claim performance of such acts as are necessary for the satisfaction of the legitimate interests of the author which have been violated."⁷⁴

Where an author's work was published without indicating the author's name, the Russian legislature contemplated as adequate redress for infringement, inserting a page displaying the author's name in the unsold copies of the work or publishing the fact in a newspaper.⁷⁵ Additional remedies for infringement of the author's personal rights included removing unauthorized changes to the work and withdrawal of the work from circulation.⁷⁶ Remedies for infringement of the author's property rights consisted of compensation for loss of royalties to the extent provided under the royalty schedules, and other compensation for losses the author could substantiate.⁷⁷ As the nature of the injury of copyright infringement was considered that of missed opportunities, the extent of injury was difficult to prove to a court's satisfaction.⁷⁸ The author was more likely to receive payment of royalties resulting from the use of the work.⁷⁹ Significantly, courts could not award punitive damages for such infringement.⁸⁰

Finally, the Soviet creator could attempt to secure redress under administrative law. One option was to file a grievance with the governmental agency which directed the publishing house or theater which allegedly infringed the author's copyright.⁸¹ A more socially-oriented option was for the author to resort to "the pressure of public opinion" as a remedy for violation of his personal rights.⁸² A third administrative avenue for the author's protection was to rely on his membership in a government-controlled professional organization to protect his personal rights, such as the Union of Soviet Writers, the Union of Soviet Composers, or the Union of Soviet Artists.⁸³ All of these avenues seem highly unlikely to provide any disincentive for copyright infringement. The author's only recourse was to a complex bureaucracy that would,

72. LEVITSKY, *supra* note 12, at 218.

73. *See* LEVITSKY, *supra* note 12, at 78.

74. *Id.* at 219.

75. *Id.*

76. LEVITSKY, *supra* note 21, at 22.

77. *Id.*

78. LEVITSKY, *supra* note 12, at 221.

79. *Id.* at 222.

80. LEVITSKY, *supra* note 21, at 22.

81. LEVITSKY, *supra* note 12, at 228.

82. *Id.* at 229.

83. *Id.*

more likely than not, ignore the author's complaint and, in the best of scenarios, would only protect his non-monetary personal rights.

F. Conclusion

Soviet copyright law, before the demise of the Union, served to protect governmental and public interests at the expense of the creator's rights. The legal regime furthered the socialist goals of ideologically-correct works and the wide dissemination thereof, as evidenced by exploitative provisions such as free uses, compulsory licenses, and nationalization. The author's work was worthless without a contract with a socialist user organization which appropriated the work in order to make changes and dispersed the work according to overarching socialist goals. The author who entered into a contract with an organization was fortunate, however, compared to the author of a work deemed socially inferior, useless, or dangerous. Penal, civil, and administrative sanctions for copyright violations were at best, inadequate, and at worst, laughable.⁸⁴ This unworkable and antiquated regime of laws invited piracy while it concomitantly discouraged creativity.

II. Soviet Copyright Law in the International Arena

The 1991 United States-Soviet Union Trade Agreement mentioned two international copyright conventions, the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention")⁸⁵ and the Universal Copyright Convention of 1952 ("U.C.C.")⁸⁶. The Trade Agreement reaffirmed the two nations' obligations under the U.C.C., to which both belonged before the demise of the Soviet empire. The United States joined the Berne Convention in 1989,⁸⁷ and according to the Trade Agreement, the Soviet Union was obliged similarly to adhere,⁸⁸ although the U.S.S.R. had announced its intention to do so for some time.⁸⁹ In order to join the Berne Convention, the Soviet

84. See *supra* note 82 and accompanying text.

85. All references are to the Berne Convention For the Protection of Literary and Artistic Works, as revised at Paris, France, July 24, 1971, *reprinted in* 1 Copyright L. Rep. (CCH) ¶ 11,400 [hereinafter Berne Convention].

86. All references are to the Universal Copyright Convention, revised at Geneva, Switzerland, Sept. 6, 1952, *reprinted in* 1 Copyright L. Rep. (CCH) ¶ 11,250 [hereinafter U.C.C.].

87. Berne Convention Implementation Act of 1988, Pub.L. No. 100-568, 102 Stat. 2853 (1988).

88. United States-Soviet Union Trade Agreement, § 2(a), *supra* note 2. "[T]he Parties will enhance their copyright relations through adherence to the Berne Convention . . ."

89. See *The USSR To Join Berne Convention, Agency Chief Say*, TASS, Aug. 30, 1989 available in LEXIS, Nexis Library, Omni File.

The Soviet Union prepares to join the Berne Convention . . . This document in a generalised form seals the highest level of the protection of copyright in civilised world as of today. . . . It is meant in particular to cancel free utilisation (without the author's consent and without the payment of royalties) of published works in television and radio broadcasts, in films and newspapers.

Union would have had to revise several important areas of its existing copyright laws. While an extensive discussion of the Berne Convention and the U.C.C. is beyond the scope of this Note, a brief examination of the two major conventions is helpful as an indication of the direction in which Russian copyright law should proceed.

A. The Berne Convention for the Protection of Literary and Artistic Works

The Berne Convention, negotiated in 1886, secures the highest level of multilateral copyright protection for its members and is administered by the World Intellectual Property Organization (WIPO) in Geneva, Switzerland.⁹⁰ Adhering countries span a range of stages of industrial development, from highly industrialized nations such as Japan, Canada, France, and the United Kingdom, to industrializing countries such as India, Brazil, and Mexico, to developing countries such as Benin and Sri Lanka.⁹¹ The Berne Convention requires national treatment of its members, so that each member state is required to provide to nationals of other member states the same level of copyright protection accorded to its own citizens.⁹² The Berne Convention's provision of minimum rights, guaranteed under the laws of member states to works originating in other member states, establishes the Convention's high level of protection.⁹³ Furthermore, the Berne Convention does not require the formalities necessary for copyright registration under the U.C.C.⁹⁴ Although much of Soviet copyright law necessitates revision in order to conform to the Berne Convention, several provisions of Soviet law existing before the collapse of the Soviet Union were compatible with those in the Berne Convention.

Article 6*bis* of the Berne Convention provides that the author's copyright entitles him to two series of rights, moral and economic. This provision is roughly equivalent to the Soviet copyright law's division of rights into personal and property rights.⁹⁵ Encompassed in the moral right in Article 6*bis* is the "right of authorship," which was also pro-

90. Berne Convention Implementation Act of 1988, H.R. REP. NO. 69, 100th Cong., 2d Sess. 12 (1988).

91. *Id.*

92. See 3 MELVILLE NIMMER ET AL., THE LAW OF COPYRIGHT § 17.04[B] (1991).

Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

Berne Convention, art. 5(1), *supra* note 85, at ¶ 11,406.

Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

Id., art. 5(3), at ¶ 11,406. See also *id.*, art. 3, at ¶ 11,404.

93. Berne Convention, art. 4, *supra* note 85, at ¶ 11,405.

94. See, e.g., Berne Convention, *supra* note 85, at arts. 7(1), 8, 9, and 11 ¶11,409, 11,411, 11,412, 11,413.

95. Levitsky, *supra* note 18, at 286. See *supra* notes 18-29 and accompanying text.

ected under Soviet law.⁹⁶ The inviolability of an author's work is also a facet of Article 6*bis*' moral right, and is protected as well under Soviet law. In the Soviet Union, however, the socialist user organizations had the right to demand changes in the author's work and to deny acceptance based on the author's refusal to make changes. This crucial exception probably would be construed as effectively extinguishing the author's right to inviolability of the work.⁹⁷ Finally, Soviet law was generally compatible with Article 6*bis*' requirement that member countries recognize the survival of both personal and economic rights after the author's death. Either the literary executor or the heirs and administrative agencies responsible for the protection of the authors' rights were obliged to protect the inviolability of the author's work after the author's death.⁹⁸

The Berne Convention established guaranteed minimum rights resulting in an unprecedented level of copyright protection. Among the rights the Berne Convention provides for the creator are those of translation,⁹⁹ reproduction,¹⁰⁰ public performance,¹⁰¹ adaptation, and arrangement.¹⁰² Comparably, the Soviet author possessed several rights in order to be able to authorize the appropriate socialist user organization to publish, reproduce, and distribute his work, namely, the rights of translation,¹⁰³ reproduction, publication,¹⁰⁴ dissemination, and adaptation.¹⁰⁵

Although some aspects of Soviet law were compatible with the Berne Convention, others were not, creating a barrier to accession to the Berne Convention. The following areas of Soviet copyright law were incompatible with the Berne Convention:

(1) The Berne Convention extends the duration of protection for 50 years after the author's death;¹⁰⁶ the Soviet Union provided protec-

96. *Id.* at 275.

97. *Id.* at 277-78.

98. *Id.* at 300-01.

99. Berne Convention, art. 8, states, "Authors . . . shall enjoy the exclusive right of making and of authorizing the translations of their works . . ." Berne Convention, *supra* note 85, at ¶ 11,411.

100. Berne Convention, art. 9, states, "The author shall enjoy the exclusive right of authorizing the reproduction of his work." *Id.* at ¶ 11,412.

101. Berne Convention, art. 11, states, "Authors shall enjoy the exclusive right of authorizing: (i) the public performance of their works . . ." *Id.* at ¶ 11,415.

102. Berne Convention, art. 12, states, "Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alternations of their works." *Id.* at ¶ 11,418.

103. Art. 102, Fundamental Principles (1961) set forth, "The translation of a work into another language with a view to publication shall be permitted not otherwise than with the consent of the author or his legal successors." GK RSFSR, *supra* note 9, at arts. 489, 490, 491; Levitsky, *supra* note 18, at 328.

104. The Soviet right to publication encompasses the right to authorize performance of his work if being publicly performed for the first time; once publicly performed, the author no longer possesses this right. Levitsky, *supra* note 18, at 329.

105. GK RSFSR, *supra* note 9, at arts. 503, 516; Levitsky, *supra* note 18, at 328.

106. Berne Convention, art. 7, *supra* note 85, at ¶ 11,409.

tion only for 25 years.¹⁰⁷

(2) The Soviet government's free uses and compulsory licenses were antithetical to modern copyright protection and thus incompatible with the Berne Convention.¹⁰⁸ These provisions reserved to the government were essential in propagating socialist goals and thus unworkable in a free market economy. For example, the media was granted free use of broadcasting an author's work¹⁰⁹ in contradiction to the Berne Convention Article 11*bis*, which provides, "(1) Authors . . . shall enjoy the exclusive right of authorizing: (i) the broadcasting of their works . . . [and have] (2) the right to obtain equitable remuneration . . ." ¹¹⁰

(3) The conflicts of law between federal and individual republics' copyright law presented another area of tension with the Berne Convention. Concurrent jurisdiction for some matters and encroaching federal law upon areas of exclusive republican jurisdiction help explain some of the confusion and ineffectiveness of the Soviet copyright legal regime. The trend in the Soviet Union, however, was toward greater centralization of copyright legislation, as the Berne Convention requires a unified Federal Copyright Act.¹¹¹ Article 105 of the Fundamental Principles (1961) provides an example of conflicting and inconsistent law by permitting the union republics to establish shorter periods of protection than the standard 25 years.¹¹² Another example of such tension is the copyright provisions of the Kazakh Civil Code (art. 491) and the Uzbek Civil Code (art. 540-1), which established special protection for personal letters and diaries, works which were otherwise considered lacking the requisite creativity to warrant copyright law protection.¹¹³

(4) In several instances, the Soviet legislature imposed formalities which directly conflict with the Berne Convention's prohibition on such conditions for copyright protection. Formalities were required for photographic works in the form of the author's name and year of creation and place of publication on each print of a work. Furthermore, although the U.C.C. mandates use of the copyright symbol, ©, Goskomizdat (the State Committee for Publishing, Printing, and the Book Trade) also required the symbol to be affixed according to a specific procedure for works used abroad.¹¹⁴

107. Fundamental Principles (1961), *supra* note 9, at art. 105; GK RSFSR, *supra* note 9, at art. 496; Levitsky, *supra* note 18, at 321.

108. Levitsky, *supra* note 18, at 321.

109. Art. 103(4) of Fundamental Principles (1961) provided for "the reproduction in film, radio, and television of publicly delivered speeches, reports, and also published works of literature, science, and art." BUTLER, *supra* note 10, at 422.

110. Levitsky, *supra* note 18, at 329.

111. *Id.* at 322-23.

112. "Such abridged periods exist in Azerbaidzhan SSR (10 years); Georgian SSR (20 years); Kazakh SSR (10 years for individual photographs, 15 years for collections of photographs); Moldavian SSR (15 years); and Uzbek SSR (15 years). No abridged copyright exists in the RSFSR." LEVITSKY, *supra* note 21, at 17.

113. *Id.* at 9.

114. *Id.* at 10.

(5) As mentioned above, the socialist user organization's power to demand changes in an author's work and to prevent performance and dissemination of the work for noncompliance violated the Berne Convention's rights to authorship, public performance, and other guaranteed minimum rights.¹¹⁵

In the past, opponents in the Soviet Union lambasted the Berne Convention as "a bastion of bourgeois legal concepts established for a more perfect protection by the capitalist monopolies of their own intellectual property."'¹¹⁶ As of 1973, the date of Soviet accession to the Universal Copyright Convention,¹¹⁷ the Soviet legislature did not significantly upgrade copyright protection. Thus, the Soviet Union failed to provide protection necessary for compliance with the Berne Convention.¹¹⁸ Hard-line rules including free uses, forcible purchase of copyright, and nationalization remained on the books. Although the Soviet Union generally abstained from invoking these laws, the option to do so remained inconsistent with international practice.¹¹⁹

B. The Universal Copyright Convention

The United States-Soviet Union Trade Agreement specified that the parties would uphold their copyright commitments as members of the U.C.C. The U.C.C. was designed to serve as a "bridge convention" that would lead to a single system of international copyright protection for the entire world.¹²⁰ The Soviet Union joined the U.C.C. in 1973 but did not adopt the more stringent 1971 Paris Revision.¹²¹

The basic rule of the U.C.C. is in Article II which provides national treatment for foreign works.¹²² Thus, in the Soviet Union, under the

115. See *supra* notes 96-97.

116. LEVITSKY, *supra* note 32, at 237, (quoting IV. G. MATVEEV, MEZHDUNARODNAIA OKHRANA AVTORSKIKH PRAV, 185, 186 (1987)).

117. See *infra* notes 120-33 and accompanying text.

118. Levitsky, *supra* note 18, at 329.

119. *Id.* at 359.

120. BOGUSLAVSKY, *supra* note 13, at 58.

121. The Soviets refrained from joining the 1971 U.C.C. "because of the substantially higher protection it would have had to grant to foreign works in various areas under that draft." Yurke, *supra* note 52, at 453.

122. MARK MOISSEVICH BOGUSLAVSKII, PRIVATE INTERNATIONAL LAW: THE SOVIET APPROACH 1, 172 (Law in Eastern Europe No. 35, F.J.M. Feldbrugge ed., David Winter et al. trans., 1988). The text of Article II is as follows:

(1) Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory, as well as the protection specially granted by this Convention.

(2) Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals, as well as the protection specially granted by this Convention.

(3) For the purpose of this Convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State.

U.C.C., as under the Berne Convention, a foreign author received the same copyright protection as that accorded to a Soviet citizen.¹²³ The scope and corresponding lack of domestic protection was therefore of tremendous importance to the foreign author. According to the terms of the U.C.C., if domestic law was inadequate and ineffective, domestic and foreign authors suffered equally. This problem does not exist under the Berne Convention as the Convention establishes a detailed structure of minimum international rights.¹²⁴

The U.C.C. regulates only one prerogative of the author, the right to translation; the copyright owner possesses the exclusive right to translate or republish his own work.¹²⁵ The U.C.C. also provides for special formalities; protected works must bear the copyright symbol, ©, and indicate the year published.¹²⁶ Analysts consider the U.C.C. as an intermediate stepping-stone to the Berne Convention as it contains considerably fewer minimum requirements than does the Berne Convention.¹²⁷

The Soviet legislature significantly altered its copyright laws in order to join the U.C.C., including the following changes:

(1) Most importantly, in 1973, the Soviet legislature created VAAP.¹²⁸ Although the ostensible purpose of VAAP was to represent the unions of writers, artists, composers, and journalists, and the Ministry of Trade, the real purpose and effect of VAAP was to prevent publication of works by Soviet dissidents.¹²⁹ Because only VAAP had the authority to make contracts between a Soviet author and a foreign publisher, the government effectively blockaded dissident works.¹³⁰

123. See *supra* note 92 and accompanying text.

124. See *supra* notes 99-105 and accompanying text.

125. "1. The rights referred to in Article I shall include the basic rights ensuring the author's economic interests, including the exclusive right to authorize reproduction by any means, public performance and broadcasting." See U.C.C., art. IVbis, *supra* note 86, at ¶ 11,264.

126. U.C.C., art. III(1), *supra* note 86, at ¶ 11,253.

127. Levitsky, *supra* note 18, at 369; see also Doriane Lambelet, Note, *Internationalizing the Copyright Code: An Analysis of Legislative Proposals Seeking Adherence to the Berne Convention*, 76 GEORGETOWN L.J. 467, 473 (1987). "Berne provides superior, more comprehensive protections, moving beyond the national treatment obligation and requiring signatories to enforce prescribed minima for the protection of works of foreign authorship." *Id.*

128. Yurke, *supra* note 52, at 453.

129. Radlauer, *supra* note 50, at 24. "The primary catalyst for American criticism was the expulsion and vilification of Solzhenitzen in 1974. Immediately after the widely publicized event, the chairman of VAAP made it clear that any future publication of Soviet dissidents would be blocked by use of the UCC." *Id.*

130. Yurke, *supra* note 52, at 454; UK RSFSR arts. 70, 190-191, *supra* note 71. Soviet authors bitterly criticized VAAP on the following grounds: it delayed and often failed altogether to transfer royalties earned abroad to Soviet authors; it censored works to be published abroad; it failed to protect the integrity of the authors' works abroad; it charged exorbitant commissions and fees which add up to 90% of the total sum earned. LEVITSKY, *supra* note 32, at 247.

In contrast, however, is the opinion of Nikolai Chetverikov, Chairman of the Board of VAAP and high-ranking KGB official,

(2) The U.C.C. set a standard in Article V for the author's exclusive right to make, publish, and permit translations.¹³¹ The Soviet legislature adopted a similar standard in Art. 102 of the Fundamental Principles (1961).

(3) The U.C.C. provided that a copyright was valid for a minimum of 25 years after the author's death.¹³² Prior to adherence, under Soviet law, copyright belonged to the author throughout his life plus only 15 years after his death, while some of the Soviet republics set even shorter terms of copyright for certain types of works. In adhering to the U.C.C., the Soviet legislature extended protection to the required 25 years after the author's death.¹³³

C. The Effects of Soviet Copyright Law in the International Arena

In determining the scope of a foreign author's copyright, the deciding factor in Soviet legislation was where the work was first produced in a tangible form.¹³⁴ Accordingly, Soviet law addressed the following three situations:¹³⁵

(1) the foreign author had a recognized copyright under applicable Soviet law if the work was published originally within the territories of the U.S.S.R.;¹³⁶

(2) the Soviet author had a recognized copyright if he created the work and it was published for the first time abroad;¹³⁷

(3) the foreign author had a recognized copyright in the U.S.S.R. for a work published for the first time abroad in accordance with international agreements to which the Soviet Union was a party.¹³⁸

For works by foreign authors that were copyrightable in accordance with international agreements to which the U.S.S.R. adhered, the following protections applied: the work could not be translated and published in the Soviet Union without the consent of the copyright owner;¹³⁹ no changes or abridgement of the work could be made without the consent

[W]e have acquired enormous experience in dealing with Western businessmen Even if new agencies similar to ours are established in the Soviet Union, it will take them many years to become thoroughly familiar with Western markets and to gain the trust of their partners Moreover, VAAP's commission fees for its services as an agent are lower in most cases than those of foreign agents. . . . In addition, we provide free legal assistance to authors in defending their copyrights abroad. . . . One should also remember that we do an enormous amount of work collecting royalties for the use of works within the country.

F. Ivanov, [*VAAP Loses Its Monopoly - Who Will Gain From This?*], *ISVESTIYA*, Nov. 29, 1990, at 3.

131. U.C.C., art. V(1), *supra* note 86, at ¶ 11,266.

132. U.C.C., art. IV(2)(a), *supra* note 86, at ¶ 11,259.

133. BOGUSLAVSKY, *supra* note 13, at 147-48.

134. *Id.* at 133.

135. *Id.*

136. GK RSFSR, art. 477. Simons, *supra* note 9, at 512.

137. GK RSFSR, art. 478. *Id.*

138. *Id.*

139. BOGUSLAVSKY, *supra* note 13, at 143.

of the copyright holder;¹⁴⁰ various uses of the work, including performance of a dramatic work, transmission by radio and television, and translation of a work published in the U.S.S.R., were possible with the consent of the copyright holder.¹⁴¹ Where agreements existed with other countries, the rules of the agreement applied, rather than those of Soviet law.¹⁴²

The consequences of this legislation were severe for foreign authors. In the absence of an international or bilateral agreement to which both the Soviet Union and the author's country of citizenship belonged, the work of the foreign author had no copyright protection.¹⁴³ Furthermore, neither the foreign author nor his heirs had the right to demand payment for the dissemination of his work in the territory of the Soviet Union if the work was originally published in the territory of a foreign country.¹⁴⁴

In order to enjoy the same privileges as the Soviet author, the foreign author had to sign a publishing agreement with VAAP.¹⁴⁵ VAAP could then block the importation of any materials which it considered to have an anti-Soviet tone. Critics concluded VAAP's monopolistic control over foreign literature distributed in the U.S.S.R. and over Soviet literature distributed abroad was incompatible with the U.C.C.¹⁴⁶

An infamous 1958 decision of a People's Court of Moscow illustrates the practical effect of Soviet international copyright law.¹⁴⁷ The heirs of Sir Arthur Conan-Doyle, through Harold Berman, a Harvard law professor, brought suit in the U.S.S.R. against four Soviet publishing organizations, demanding payment of 2,033,047 rubles for publication in Russian of more than seventy volumes of Conan-Doyle's famous Sherlock Holmes works.¹⁴⁸ After ten minutes, the court returned a decision for the defendant. The court refused the petition, finding that the lack of a bilateral copyright agreement between the Soviet Union and Great Britain precluded Conan-Doyle's heirs from applying to the court for redress.¹⁴⁹ On appeal to the Supreme Court of the RSFSR, Professor Berman emphasized the immense and profitable popularity of Sherlock Holmes in the U.S.S.R. and the Marxist theory of surplus value and exploitation of foreign authors, along with his own interpretation of

140. *Id.*

141. *Id.*

142. Art. 129 of Fundamental Principles (1961) states, "[I]f different rules are set by an international convention or international agreement in which the USSR takes part, . . . then the rules of the international agreements will be applied." *Id.* at 144.

143. *Id.* at 141.

144. *Id.* at 139.

145. *Id.* at 143-44.

146. Braveman, *supra* note 43, at 458.

147. LEVITSKY, *supra* note 12, at 77.

148. Radlauer, *supra* note 50, at 4.

149. The court based its November 15, 1958, decision on Art. 2, GK RSFSR and Art. 2 of the Fundamentals of Copyright, 1928 (SZ USSR, 1928, No. 27, p. 246). BOGUSLAVSKY, *supra* note 13, at 140. See also LEVITSKY, *supra* note 12, at 77.

the relevant Soviet statutes.¹⁵⁰ Although the government offered no defense against these arguments, the Court denied the plea for recovery with no judicial opinion on the merits of the case.¹⁵¹

Consequently, in the absence of an international agreement between the Soviet Union and the author's country, a work published abroad could be freely translated in the U.S.S.R. without the consent or knowledge of the author and without payment of royalties.¹⁵² Furthermore, the government could declare a monopoly for the translation of a work published abroad into the languages of the republics of the U.S.S.R. Nevertheless, even for unprotected works, the Soviet system still claimed to observe the rights to authorship and to the inviolability of the work.¹⁵³

III. The United States-Soviet Union Intellectual Property Pact

One might well ask why the United States and Soviet Union negotiated a bilateral intellectual property agreement when both nations were members of the U.C.C., and when, according to Soviet law, the presence of an international copyright agreement protected the copyright of works by U.S. authors.¹⁵⁴ The fact that under the terms of the U.C.C., American authors' copyrights in the Soviet Union merited the same protection as Soviet authors' copyrights necessitated an evaluation of Soviet protection.¹⁵⁵ The presence of a bilateral agreement in addition to joint membership in a multilateral convention is preferred as an effective mechanism for protecting U.S. interests because the bilateral agreement can be tailored to perceived problems between the two countries. The U.S. Copyright Office identified several problems with existing Soviet copyright law protection: "the failure to protect computer programs and databases adequately under copyright law; the failure to protect sound recordings adequately; incomplete public performance rights; overly broad fair use and personal use exemptions; and inadequate enforcement mechanisms generally."¹⁵⁶

150. Radlauer, *supra* note 50, at 5.

151. *Id.* Estate of Sir Arthur Conan Doyle v. Ministry of Culture, Supt. Ct., R.S.F.S.R., Case No. 5-573d 9, [1959].

152. BOGUSLAVSKY, *supra* note 13, at 141.

153. BOGUSLAVSKII, *supra* note 122, at 61. In essence, however, the government could legally appropriate the work, disseminate it at will and keep all profits. The original author only had a right against anybody else claiming the work as his own, and for the work to remain in its original conception (unless the Soviet government perceived any anti-communist nuances in the work). *Id.*

154. BOGUSLAVSKY, *supra* note 13, at 139.

155. "The Universal Copyright Convention . . . requires that foreign works not be discriminated against under a nation's domestic laws If a member country provides few copyright protections to its own authors, it will not be required to provide more for foreign authors." Lambelet, *supra* note 127, at 473.

156. See House Judiciary Subcommittee on Intellectual Property and Judicial Administration, May 16, 1991 (statement of Ralph Oman, Register of Copyrights and Associate Librarian of Congress), reprinted in [Developments 1987-1991 Transfer Binder] Copyright L. Rep. (CCH) ¶ 20,638. See also UNITED STATES TRADE REPRESENTATIVE, PIRACY OF U.S. COPYRIGHTED WORKS IN TEN SELECTED COUNTRIES: A REPORT BY THE

As a result of these findings, the Trade Agreement provided protection for several new areas of intellectual property: computer programs and data bases, both previously protected as literary works,¹⁵⁷ and sound recordings.¹⁵⁸ The Trade Agreement also provided protection for the producers of sound recordings by guaranteeing the rights of reproduction, public distribution, and importation.¹⁵⁹ The Trade Agreement addressed the problem of inadequate enforcement mechanisms by obliging the respective legislatures to use "best efforts" to enact and implement the necessary laws.¹⁶⁰ In sideletters to the Trade Agreement, the Soviet Union assented to limitations similar to those in U.S. copyright law on the uses of computer programs¹⁶¹ and agreed to examine the possibility of joining the Geneva Phonograms Convention. Without a bilateral agreement or Soviet accession to the Geneva Convention, Soviet laws did not protect U.S. sound recordings.¹⁶² The Trade Agreement also reaffirmed commitments to the Paris Convention for Industrial Property and the U.C.C.¹⁶³

Most importantly, the pact obliged the Soviet Union to adhere to the Berne Convention as the United States-Russia Trade Agreement now similarly mandates. The membership of the United States and the Soviet Union in the U.C.C. did not adequately protect American interests, as evidenced by the Soviet citizens' and government's rampant pirating of U.S. works in the face of Soviet adherence to the U.C.C. Furthermore, Soviet accession to the Berne Convention would significantly enhance protection of both Soviet citizens' and foreigners' works on the territory of the U.S.S.R. The U.C.C. was inadequate in terms of preventing piracy and eliminating formalities, as compared to the Berne

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE TO THE UNITED STATES TRADE REPRESENTATIVE 3-4 (Aug. 1985), *quoted in* Jan D'Alessandro, *A Trade-Based Response to Intellectual Property Piracy: A Comprehensive Plan to Aid the Motion Picture Industry*, 76 GEO. L.J. 417, 425 (1987). The major elements of inadequate intellectual property protection outside the United States include failure to protect new technology, and correlatively, failure to grant novel exclusive rights; inadequate terms of protection; formalities hindering the effective exercise and enforcement of copyright laws; lack of deterrence provisions for violators; and lack of remedies for victims. *Id.*

157. United States-Soviet Union Trade Agreement, § 2(b), *supra* note 2.

158. *Id.*, § (c)(1). *See also* *Russia Will Adhere to the Berne Convention*, White House Fact Sheet, Office of the Press Secretary, 1 Copyright L. Rep. (CCH) ¶ 20,593 (June 1, 1990).

159. United States-Soviet Union Trade Agreement, § (c)(2), *supra* note 2.

160. *Id.* § 2.

161. The Soviet Union's anachronistic copyright laws could not serve to protect cutting-edge technologies and products. *See* V. Gorlenko, [*Copyright Chief Defends His Agency*], PRAVDA, Jan. 4, 1990, at 4 (interview with Nikolai Chetverikov, the then-Chairman of the Board of VAAP and KGB Lieutenant-General). Chetverikov declared, "Existing copyright laws in the USSR need to be updated and brought into line with contemporary means for the reproduction and dissemination of creative works (for example, video recording, reprography, computer programs, satellite or cable television), and with generally accepted world standards." *Id.*

162. *New Copyright Law Enacted, But U.S. Groups Are Skeptical*, BNA INT'L BUS. DAILY, Aug. 20, 1991, [hereinafter *New Copyright Law Enacted*].

163. *See* *Russia Will Adhere to the Berne Convention*, *supra* note 158.

Convention, which provides greater recognition of an author's rights.¹⁶⁴

A bilateral agreement protecting intellectual property, together with Most-Favored-Nation trading status for the Soviet Union and agreements by the Soviets to implement and enforce more rigorous copyright laws, would have provided far more effective protection of creative works in the U.S.S.R. than any previous legislation. The new United States-Russia Trade Agreement now presents the opportunity to encourage and protect corporate trade and investment in Russia.¹⁶⁵

The leaders of both the United States and the Soviet Union clearly supported ratification of the Trade Agreement.¹⁶⁶ Both President Bush and Soviet President Mikhail Gorbachev signed the United States-Soviet Union Trade Agreement in June of 1990, and President Bush forwarded the Trade Agreement to Congress on August 2, 1991.¹⁶⁷ President Bush first refused to send the pact to Congress for ratification until Moscow agreed to enact less restrictive emigration laws.¹⁶⁸ Consequently,

164. Herbert Mitgang, *The Law: Old Copyright Treaty: New Shield for U.S. Artists*, N.Y. TIMES, Mar. 10, 1989, at B7. See also *Copyright is Everybody's Business*, UNESCO COURIER (France), June 1991, at 48.

The Berne Convention seeks more extensive and stronger protection. To take one example, it requires recognition of moral rights and a fifty-year term of protection following the author's death. The UCC is more sensitive to the needs of developing countries, many of which are net 'copyright importers' and seek easier access to copyright materials for educational purposes. The UCC is less extensive in its recognition of rights, allows more exceptions from protection, and the term of protection is twenty-five years after the author's death.

Id. See also D'Alessandro, *supra* note 156, at 448.

Berne offers more comprehensive protection and higher standards of compliance. Berne protects the copyright authors' rights, whereas the Universal Copyright Convention merely prohibits the unauthorized use of copyrighted works and reserves to the author only the right to authorize or reject reproductions of his work. In addition, the [U.C.C.] provisions are less specific than those of Berne and thus are more difficult to enforce.

Id.

165. See 1 Copyright L. Rep. (CCH) ¶ 6200 (1989), "Bilateral treaties are important regardless of convention membership since the status of works published prior to adherence to a convention may be involved, and since conventions do not necessarily abrogate other agreements."

166. "Concluding the three-year-old trade pact has been a longtime objective for Gorbachev - tangible evidence of the end of the commercial cold war that has existed between the two superpowers for 40 years and the beginning of increased sales of Soviet products to the U.S. markets." Auerbach, *supra* note 1 at G1.

167. Implementation of this Agreement will strengthen political relations between the United States and the Soviet Union and produce economic benefits for both countries. It will also give further impetus to the progress we have made in our overall diplomatic relations over the last several years, and help to reinforce political and economic reform in the Soviet Union.

Letter to Congressional Leaders Transmitting a Proclamation on Soviet-United States Trade Relations, 27 WEEKLY COMP. PRES. DOC. 1098 (Aug. 2, 1991). President Bush resubmitted the agreement to Congress on October 9, 1991, with a "corrected" proclamation providing that only the Soviet Union, not the Baltic states, would receive Most-Favored-Nation trading status by the trade agreement. 8 Int'l Trade Rep. (BNA) No. 47 at 1719 (Nov. 27, 1991).

168. President Bush delayed until the Soviet parliament approved legislation allowing free emigration of its citizens, especially for Soviet Jews. Most-Favored-

in May of 1991, the Supreme Soviet approved legislation allowing free emigration.¹⁶⁹ President Bush then held up Congressional action until Soviet officials agreed to enact stricter intellectual property legislation, in large part because of the pressure exerted by the Motion Picture Association of America ("MPAA").¹⁷⁰ Jack Valenti, MPAA's president and chief executive officer, used the MPAA's considerable political clout with the White House, former Secretary of State James A. Baker III, and former U.S. Trade Representative Carla A. Hills, in order to delay submitting the pact for ratification until the Soviets addressed the movie industry's concerns.¹⁷¹

In response to United States pressure to restructure the copyright laws, on May 31, 1991, the Soviet Union enacted a new copyright law, published as Section IV of the Fundamentals of Civil Legislation, to become effective on January 1, 1992. Although the demise of the Soviet empire precluded the effectuation of this new legislation, the Supreme Soviet of the Russian Federation issued a decree on July 14, 1992 extending the new legislation to the territory of the Russian Federation.¹⁷² Analysts view this most recent copyright law generally as incompatible with both the Berne Convention and with the 1990 United States-Soviet Union Trade Agreement. The law, however, did provide the following, all of which are compatible with the provisions of the Berne Convention: copyright protection requires neither registration nor other formalities, copyright protection extends to the author's life plus 50 years, and authors have exclusive rights to their works, including the rights to authorship, integrity of the work, publication, the use of work, and remuneration.¹⁷³ The law also provides producers with rights to reproduction, importation, and public performance. There remains unaddressed significant areas of concern so that experts gener-

Nation status had been denied since 1974 because of restrictions on the rights of Jews and other Soviet citizens to leave the country freely. *International Section*, UPI, July 30, 1991, available in LEXIS, Nexis Library, UPI File. See also Auerbach, *supra* note 1, at G1.

169. Paul Bedard, *Bush Offers Soviets Top Trade Status; Hails Summit As End of 'Era of Mistrust'*, WASH. TIMES, July 31, 1991, at A1.

170. Boian, [*Bush Wants Special Trade Status for Moscow, Experts Unsure*], AGENCE FRANCE PRESSE, July 30, 1991.

171. Auerbach, *supra* note 1, at G1. See also David Kelly, *Soviets Vow to Hunt Down Pirates*, HOLLYWOOD REP., July 29, 1991, available in LEXIS, Entertainment Library, Hollywood Reporter File.

The fact that Valenti could move top administration officials to hold up the MFN treaty is testimony to his and the MPAA's considerable clout in the White House . . . [about which] Valenti remarked, '(The administration) saw that a prized trade asset was being plundered. We are a great trade producer. Ours is a \$3 1/2 billion a year industry at a time when most industries have trade deficits.'

Id.

172. *Press Conference By Russian Intellectual Property Agency*, Official Kremlin International News Broadcast, July 21, 1992, available on LEXIS, Nexis Library, Currnt File.

173. See *New Copyright Law Enacted*, *supra* note 162.

ally regard the law as deeply flawed.¹⁷⁴

With the Soviet Union's assurances to restructure the copyright law, the United States House of Representatives and the Senate approved the Trade Agreement on November 20 and November 25 of 1991, respectively. The House vote was a decisive 350-78; in the Senate, approval was by voice vote.¹⁷⁵ President Bush signed the measure into law on December 9, 1991.¹⁷⁶ The Supreme Soviet's approval of the Agreement, the final step needed, was expected in early 1992. After fulfilling American demands to secure approval of the Agreement, the collapse of the political structure of the Soviet Union in 1991 precluded the Supreme Soviet from ratifying the Agreement.

The efforts of President Bush and President Gorbachev in negotiating the United States-Soviet Union Trade Agreement were not wasted, however, as several of the former republics of the Soviet Union, including Russia and the Ukraine, have individually signed bilateral trade agreements identical to the 1991 U.S.-Soviet Agreement. The individual legislatures must now devise, enact, and enforce entirely new intellectual property structures.¹⁷⁷ In accordance with its obligations under

174. *IFPI Survey of Copyright Protection for Recordings Finds News Is Bad*, BNA PATENT, TRADEMARK & COPYRIGHT LAW DAILY, Oct. 21, 1991. The International Intellectual Property Alliance criticized the laws as inadequate, citing among its complaints:

(1) Computer programs were not fully protected as literary works, as they are in the U.S.-U.S.S.R. Trade Agreement, and the Soviet law provided a loophole for widespread infringement of U.S. software products. *New Copyright Law Enacted*, *supra* note 162.

(2) The law allowed the Soviet government to control copyright contractual activity of Soviet citizens and foreigners, which would discourage investment and trade. *Id.*

(3) From interpreting a gap in the law, computer software and sound recordings created before the effective date of this new law would not be protected at all; other works would not be protected unless created or published after 1973. *Id.*

(4) The law did not provide for any deterrent criminal penalties or civil remedies for piracy in the Soviet Union. *Id.*

175. Representative Dan Rostenkowski, Chairman of the House Ways and Means Committee, said that even with the murky political situation in the U.S.S.R., granting MFN status is, "[A] relatively cost-free way to help the Soviet people in the . . . transition to a market economy." Charles J. Abbott, *Washington News*, UPI, Nov. 20, 1991, available in LEXIS, Nexis Library, Wires File. Senator Lloyd Bentsen praised the ratification, "For the Soviets, MFN will be the first step in normalizing our commercial relations It won't be a panacea . . . but it should help that country get back on a growth track by boosting their export earnings." *News Highlights*, 8 Int'l Trade Reporter (BNA), No. 47, at 1719 (Nov. 27, 1991).

176. Most-Favored-Nation Treatment: Union of Soviet Socialist Republics, *supra* note 1. "(The agreement) envisages the normalisation of trade and economic relations, and will promote their development on an equitable basis from now on." Igor Barsukov, *The Telegraph Agency of the Soviet Union*, TASS, Dec. 11, 1991, available in LEXIS, Nexis Library, Wires File.

177. The United States arguably could have devised a more beneficial agreement for each individual republic than the original 1991 Trade Agreement. See Agreement Between the United States and the Union of Soviet Socialist Republics: *Hearings Before the Trade Subcomm. of the House Ways and Means Comm.*, 102d Cong., 1st Sess. 91 (Sept. 23, 1991).

I believe that the United States is today in a very strong position to work out far more attractive and constructive trade agreements with the emerging

the United States-Russia Trade Agreement, Russian legislators are in the process of devising a new copyright law infrastructure, but failed to meet the 1992 deadline. The goal of the comprehensive law is to meet the requirements of the Berne Convention. If the conforming law is passed, Russia will join the Berne Convention.¹⁷⁸

IV. The Practical Effects of Soviet Copyright: Hollywood Strikes Back

The Motion Picture Association of America ("MPAA") delayed ratification of the United States-Soviet Union Trade Agreement in protest over the lack of adequate Soviet copyright law. Jack Valenti, president and chief spokesman of the MPAA, through highly visible and high-pressure trade tactics, brought the problem of the inadequate Soviet copyright law sharply into focus. Valenti sent a letter to Deputy Foreign Minister Vladimir Petrovsky, in which he strongly stated, "[None] of our companies will engage in sales of films to the Soviet Union or any of its Republics until adequate copyright legislation is approved by the Supreme Soviet of the USSR and the Soviet Union adheres to the Berne Treaty on Copyright [Protection]."¹⁷⁹ In another letter written in response to the Soviet Foreign Ministry's appeal to the American film companies to send films to the 17th Moscow International Film Festival, Valenti affirmed, "We won't send our pictures to any country where thieves are in control of the marketplace."¹⁸⁰

reformist independent republics of the former Soviet Union. I believe, therefore, that the present accord should be returned to the President with a request that negotiations be immediately initiated with those former Soviet republics engaged in urgent democratic and free market institution building.

Id. at 95 (statement of Frank J. Gaffney Jr., Director, Center for Security Policy).

178. *Russian Law On Computer Programs Offers Copyright Protection, But Fundamental Flaws Exist*, Russia and Commonwealth Business Law Report, December 11, 1992, available in LEXIS, Nexis Library, Currnt File.

179. Letter from Jack Valenti, President, Motion Picture Association of America, to Vladimir Petrovsky, Soviet Deputy Foreign Affairs Minister (June 4, 1991) (on file with the *Cornell Int'l L.J.*). Studios supporting the boycott include Columbia, MGM, Orion, Paramount, Walt Disney, Warner Brothers, Universal, and Twentieth Century Fox. See [*Film Industry Announces Conditions For Lifting Embargo Against Soviet Union*], AGENCE FRANCE PRESSE, June 26, 1991.

The Soviet press interpreted the boycott as, "[o]f course, . . . mostly symbolic, as the studios' income from licensing films for the Soviet market is paltry—less than \$800,000 last year, for example." V. Gan, [*No Way to Do Business*], PRAVDA, June 18, at 5, quoted in THE NEWS OF THE WEEK, July 17, 1991, at 18. The author of the article failed to make a leap in logic, according to the following,

[P]rivately owned kiosk[s] [sell] pirate videos of foreign, mainly American films . . . of which there are about 270 in Moscow, together earn estimated annual revenues of about . . . \$20 million in the Soviet capital alone. There are probably hundreds, if not several thousand, more in the rest of the country. And not a kopek of their earnings goes to the U.S. producers or distributors.

Gransden, *supra* note 64.

180. Aleene MacMinn, *Morning Report: Movies*, L.A. TIMES, June 26, 1991, at F2. As Jack Valenti colorfully phrased,

In what may be . . . called—the former Soviet Union, it's Dodge City *deja vu*, with no signs saying guns must be checked at the door. Piracy is 100 percent

The United States film industry is an immensely valuable trade asset, measuring a foreign trade surplus of almost \$4 billion dollars annually.¹⁸¹ Nevertheless, the MPAA estimates that its members, which include the largest movie studios in the country, lose \$1.2 billion a year to foreign pirates. The import of this huge loss led Jack Valenti to remark, "The most precious possession we have is copyright If we can't protect what we own, we don't own anything."¹⁸² The people of the former Soviet Union are huge fans of American films.¹⁸³ As in the past few American movie companies have distributed their films in the Soviet Union, the Soviets have had a long history of pirating American films.¹⁸⁴

The MPAA film embargo was partially in reaction to years of Soviet inaction regarding a 1988 agreement Valenti signed with the U.S.S.R.'s Minister of Cinematography and the country's Deputy Prime Minister (the 1988 United States-Soviet Union Film Panel Agreement).¹⁸⁵ According to that agreement, American studios would have been able to

rampant, which is why I announced some months ago that the MPAA companies aren't going to send any more films there until copyright laws are in place and enforced.

Hearing of the International Trade Subcommittee of the Senate Finance Committee, FEDERAL NEWS SERVICE, available in LEXIS, Nexis Library, Omni File.

181. As Jack Valenti proclaimed,

What American product other than Boeing aircraft captures 40 percent of the Japanese marketplace? And what American product is usually number one whenever it is available, not only in Western Europe but in Asia and in Latin America? And the answer, of course, is the American movie and television program, which returns to this country about \$3.5 billion in surplus balance of trade, when the word 'surplus' balance of trade is seldom heard in the corridors of this building. Then no wonder, it seems to me, that that trade asset, a glittering trade prize, ought to be protected as strongly, as firmly, and as unambiguously by the Congress and this administration as any product I know

Remarks at a Hearing of the International Trade Subcommittee of the Senate Finance Committee, FEDERAL NEWS SERVICE, Mar. 6, 1992, available in LEXIS, Nexis Library, Omni File.

182. Andrea Adelson, *The Media Business; Entertainment Industry Adds Anti-Piracy Tricks*, N.Y. TIMES, Nov. 21, 1988, at D8.

183. Correspondent Charles Krause reported from Moscow, "At the other end of Pushkin Square, Moscow's premier movie theater, the Lucia, shows American films. Even at noon on a weekday there's not an empty seat in the House. That's not so surprising because Hollywood films and Hollywood stars consistently rank No. 1 in the Soviet Union." *MacNeil/Lehrer NewsHour* (PBS, television broadcast, July 19, 1991) (transcript #4120) (on file with the *Cornell Int'l L.J.*).

184. In the 1950's and 1960's, when Hollywood refused to sell films to the U.S.S.R., Soviet video pirates stole prints of American movies shown in Europe, and presented them in the Soviet Union. In general, these films were critical of the social and economic conditions in the United States. When pirates showed "Grapes of Wrath," as supposedly indicative of the omnipresent poverty and misery in the United States, the plan backfired because the number of cars in the poverty-stricken Oklahoma dust bowl impressed Soviet audiences. Fred Hift, *Soviet Video Pirates Run Amok*, CHRISTIAN SCI. MONITOR, Aug. 8, 1991, at 12. See also Geraldine Fabrikant, *Sticky Problems in Bringing Films to Soviet Screens*, N.Y. TIMES, June 16, 1991, sec. 3 at 7.

185. *U.S. and USSR Conclude Fourth Round of Information Talks; AFMA and MPEAA Stress Need for Currency Conversion and Elimination of Piracy*, BUS. WIRE, Nov. 5, 1990, available in LEXIS, Nexis Library, Wires File.

market their films in the Soviet Union in keeping with practice in other countries by sharing box office proceeds and through the construction and leasing of theaters.¹⁸⁶ The Soviets, including officials from Goskino, the state-run film distributor, largely ignored the agreement.¹⁸⁷

Franklin Tonini, vice-president of Eastern Europe and Soviet Union affairs for MPAA, discovered on a trip to the Soviet Union that private groups were showing pirated video cassettes of American films in officially sanctioned "video salons."¹⁸⁸ Far from abiding by the 1988 Film Agreement, according to Tonini, the Soviet government itself engaged in piracy with showings of American feature films never sold to the Soviet Union, including "Predator," "Commando," and "Die Hard II," all broadcast illegally on the state Goskino network.¹⁸⁹ Valenti cited a Moscow theater showing videotapes of "Gone with the Wind" and

186. *Id.*

187. Valenti wrote, "Much to my dismay, after two years not only had nothing been done on the Soviet side to implement this agreement, it was even publicly belittled by a ranking official of Sovexportfilm." Letter from Jack Valenti, President, Motion Picture Association of America, to Vladimir Petrovsky, Soviet Deputy Foreign Affairs Minister (June 4, 1991) (on file with the *Cornell Int'l L.J.*). See also James Ulmer & Ron Holloway, *Majors Call USSR Out Of Bounds*, HOLLYWOOD REP., June 6, 1991. See also *Hollywood Pans Soviet Film Piracy*, NEWSDAY, July 11, 1991, pt. II at 85.

188. "Video salons" are "simply rooms with chairs and a VCR where pirated American films are shown." David Kelly, *Valenti Opens Door On Soviet Boycott*, HOLLYWOOD REP., June 26, 1991, available in LEXIS, Entertainment Library, Hollywood Reporter File.

The Soviet press supported Valenti's allegations, "Movie theaters under the jurisdiction of local authorities are also engaging in this activity, showing films that are essentially stolen." *Id.*

189. Laurence Earle, THE INDEPENDENT, June 21, 1991, at 18. See also Oleg Rudnev, *The Movie Business and the Law*, SOVDATA DIALINE - SOVIET PRESS DIGEST, June 24, 1991. Letter from Jack Valenti, President, Motion Picture Association of America, to Vladimir Petrovsky, Soviet Deputy Foreign Affairs Minister, (June 4, 1991) (on file with the *Cornell Int'l L.J.*). See also Henry David Rosso, *Valenti: Soviets Pirating American Films*, UPI, June 13, 1991, available in LEXIS, Nexis Library, Wires File. "[T]here existed widespread video piracy throughout the U.S.S.R. and this piracy was officially condoned insofar as Goskino, Sovexportfilm, labor unions, the Komsomol and even perhaps the Ministry of Culture were involved in operating so-called video salons where pirated video cassettes are shown." *Id.*

The newspaper Komsomol'skaya Pravda asserted further allegations of government-sanctioned piracy, "State-run business is actively involved with piracy's prosperity; bootleg LP's are pressed at staterun [sic] factories and retailed and distributed through state-owned outlets. In general, the state is mainly interested in piracy flourishing [because] the pirates punctually pay their taxes to the treasury.'" Vadim Yurchenkov, *Private Enterprise Widens Doors to Pirates in Russia*, BILLBOARD, June 6, 1992, available in LEXIS, Nexis Library, Currnt File. Furthermore,

When Melodiya was set up by the Ministry of Culture in 1964, a new stage of state-sanctioned piracy began. The company was completely uncontrollable in its use of Western material for huge-volume releases. Licenses and permissions meant nothing to Melodiya until May 1973 [when the Soviet Union acceded to the U.C.C.]. . . . Nonetheless, the issuance of effectively pirated material was still standard practice for Melodiya in the '70s and '80s, during which time it released uncounted numbers of EPs and flexi-singles of Beatles materials. . . . That has led [some] to believe that illicit units outnumbered legitimate copies by two or three to one during that period.

Id.

"Rain Man" to paying audiences, when the Soviets had never purchased either of the movies.¹⁹⁰ The newspaper *Izvestiia* reported that the Soviet Ministry of Finance demanded a share of the revenue from the pirated viewings.¹⁹¹ Valenti responded that if the report was true, the Soviet Ministry of Finance was engaging in piracy as well.¹⁹²

Vladimir Petrovsky, Soviet Deputy Foreign Minister, conceded that some Soviet organizations engaged in piracy. He asserted, however, that such violations were strictly counter to the Ministry of Foreign Affairs' position.¹⁹³ Petrovsky also criticized the MPAA's boycott of the 17th International Moscow Film Festival as punishing not the video pirates, but the Soviet audience and festival organizers instead.¹⁹⁴

190. Stuart Auerbach, *Piracy on the Big Screens; U.S. Filmmakers Accuse Soviets of Violating Copyrights*, WASH. POST, June 25, 1991, at C1. The showings of "Gone with the Wind" and "Rain Man" compelled Jack Valenti to allege, "unprecedented . . . state participation in audio-visual piracy" by the Soviet government. *Id.* Furthermore, Piracy of U.S. products from entertainment items like films, tapes and books to products as diverse as pharmaceuticals and Levi jeans is a major problem for American companies, but the case of the Moscow movies is one of the few occasions in which government organizations participated directly in the piracy.

Id. The Soviet-British Creative Association, a joint venture between Britain's Central Television and three Soviet partners (Ogonyok, a liberal magazine, Goskino, the official State Committee of the Cinema, and a musical organization called Contemporary Opera), said "'Gone with the Wind' had been illicitly shown both in cinemas and on regional television." *British Joint Venture Loses Soviet Court Case on Film Piracy*, REUTERS, Nov. 1, 1991, available in LEXIS, Nexis Library, Wires File. See *infra* note 203 and accompanying text.

See also *East-West Co-Productions Mean Work for Middlemen*, FIN. TIMES, May 15, 1991. In the summer of 1992, a pirated copy of the film "Ghost" played in the Moscow Russia Theater, which seats an audience of 2,000. According to Myron Karlin, president of the Motion Picture Export Association of America, "'We've written (to complain) and no one seems to know what can be done to get the print out of the theater. . . . This is the reason why our member companies have decided to boycott Russia until there is a copyright law.'" James Ulmer, *Boycott Raises Russians' Ire*, HOLLYWOOD REP., Mar. 5, 1992, available in LEXIS, Entertainment Library, Hollywood Reporter File.

191. See Letter from Jack Valenti, President, Motion Picture Association of America, to Vladimir Petrovsky, Soviet Deputy Foreign Affairs Minister (Apr. 4, 1991) (on file with the *Cornell Int'l L.J.*). According to Valenti, quoting from an April 4, 1991, *Izvestiia* article entitled, "The End of Video Piracy in the USSR?", "'State organizations gained a complete monopoly of video piracy and started making a surprisingly easy and copious living.'" *Id.* Furthermore, "'Goskino and Gosteleradio, the USSR Ministries of Trade and the Electronics Ministry have wangled for themselves the exclusive rights to copy, sell, and lease video cassettes.'" *Id.*

192. Letter from Jack Valenti, President, Motion Picture Association of America, to Vladimir Petrovsky, Soviet Deputy Foreign Affairs Minister (June 4, 1991) (on file with the *Cornell Int'l L.J.*). See also Rosso, *supra* note 189.

Since it was a matter of 10-15 million rubles a year from video showings, (the U.S.S.R. Ministry of Finance was) not slow in answering. A resolution was handed down from the Planning, Budget & Finance Commission of the Union Parliament - 70 percent of the proceeds was to go to revenue.

Id.

193. Letter from Vladimir Petrovsky, Soviet Deputy Foreign Affairs Minister, to Jack Valenti, President, Motion Pictures Association of America, (June 17, 1991) (unofficial translation) (on file with the *Cornell Int'l L.J.*).

194. *Id.*

Vladimir Dostal, the president of Mosfilm Studios, the largest production and distribution facility in the U.S.S.R., and also the deputy chairman of Goskino, the Soviet Union's State Committee on Cinematography, supported the adoption of more restrictive copyright legislation in the Soviet Union. Dostal claimed that the lax copyright laws and resulting bootlegging of movies and video tapes hurt Soviet film revenues as well.¹⁹⁵ Referring to Goskino, Dostal also claimed that the government participated in pirating films, stating, "Repeatedly, films are shown on video theatre and TV screens without having the necessary licensed copyrights for distribution."¹⁹⁶ As the Soviet-government controlled the theatres and television stations as vehicles of dissemination of creative works, the government condoned the pirating of films by presenting the pirated works under the auspices of the government.¹⁹⁷ The Soviet authorities' excuse was that exhibitors presented only excerpts from the film, when in actuality, only the opening and closing credits were cut.¹⁹⁸

Jack Valenti set forth prerequisites to the lifting of the American movie embargo in a strongly worded letter to Vladimir Petrovsky on June 20, 1991:

We need a guarantee from you and others high in the Soviet government that new copyright laws are now being drafted, laws that meet world standards for effective copyright protection, and that those new laws will be speedily adopted by the Supreme Soviet, and swiftly enforced by the police and courts of the U.S.S.R.¹⁹⁹

Furthermore, Valenti specified another condition to lifting the film embargo, that the state immediately shut down the video salons where proprietors show pirated American films.²⁰⁰ In a letter to Anatoly Lukyanov, Chairman of the Supreme Soviet, on July 29, 1991, Valenti wrote, "Once the U.S.S.R. has copyright laws in place that meet international standards, and the means to enforce those laws, investment in your

195. See *Mosfilm Studios President Vladimir Dostal Gives His Early Support to MPAA President Jack Valenti Regarding U.S.S.R. Film Piracy*, BUS. WIRE, June 27, 1991, available in LEXIS, Nexis Library, Wires File. Dostal claimed, "We suffer as much as anyone else from this prevalent and ever-expanding movie and video piracy." *Id.*

196. *Id.*

197. See *supra* notes 45-46 and accompanying text. "Until recently, the Russian government's policy on piracy has been, to put it charitably, ambivalent. Officially, it disapproved, but it allowed pirated videos to be sold openly in its own Gastronom food stores and permitted the cable stations to continue broadcasting illegally." Benjamin Woolley, *Opportunity Knocks in Russian TV*, THE INDEPENDENT, January 26, 1993, available in LEXIS, Nexis Library, Curtnt File.

198. Rudnev, *supra* note 189. See also Mary Dejevsky, *Film Pirates Sink Soviet Festival*, LONDON TIMES, July 8, 1991, at 9. "A few weeks ago late-night television viewers in Moscow were able to see choice clips from 'A Fish Called Wanda', ostensibly shown as part of a film review programme. But there were no critics and the 'clips' amounted to pretty much the whole film." *Id.*

199. Letter from Jack Valenti, President, Motion Picture Association of America, to Vladimir Petrovsky, Soviet Deputy Foreign Affairs Minister, June 20, 1991 (on file with the *Cornell Int'l L.J.*).

200. *Id.*

country, and trade between our two countries, will flourish to the benefit of both our peoples."²⁰¹ The demise of the Soviet empire late in 1991 precluded the enactment of new copyright legislation.²⁰²

A Moscow court decision provided the most recent indication of the orientation of Soviet copyright law before the crumbling of the Union. The court rejected the Soviet-British Creative Association's ("SBCA") claim for damages over bootleg showings of "Gone With the Wind," for which SBCA had purchased exclusive screening rights in the Soviet Union, on the grounds that there was no law protecting the right to distribute films in the Soviet Union.²⁰³

As of July 1991, Goskino was supposedly preparing a draft law that would have brought Soviet copyright laws up to international standards and enable the Soviet Union to join the Berne Convention. The law provided for the first time strong disincentives against pirating. These deterrents ranged from sizable fines for illegal public film screenings to two months' earnings for an illegal video salon. In addition, the law created a national film and video register, in which all films had to be recorded for legal showing.²⁰⁴ This proposed law is an auspicious signal of the direction of Russian copyright law.

The MPAA's embargo of films to the Soviet Union, when it was instituted in June of 1991, was a bold and appropriate response to the rampant pirating by both Soviet citizens and government agencies. With a central government and supporting legal infrastructure in place, the embargo by a powerful lobbying force sent a strong message to the Soviet bureaucracy that immediate legislative action was needed. The current political structure presents a completely different situation than when the MPAA implemented the embargo. The ousting of the communist regime presents a far brighter future for the MPAA in the region than did the empty promises and half-hearted legislative efforts of the former government. Accordingly, the MPAA lifted its embargo of films to the former Soviet Union in expectation of Russia and Ukraine enact-

201. Letter from Jack Valenti, President, M.P.A.A., to Anatoly Lukyanov, Soviet Deputy Foreign Affairs Minister, July 29, 1991 (on file with the *Cornell Int'l L.J.*).

202. "Mr. Valenti thought he had a deal with Soviet authorities for reform based on strict adherence to copyright and property laws. The agreement died when the bureaucrat he was negotiating with ended up in jail following the abortive August coup." Gary Arnold, *Valenti Lauds One Industry That Give Japanese Reel Competition*, WASH. TIMES, Mar. 1, 1992, at D1.

203. See *British Joint Venture Loses Soviet Court Case on Film Piracy*, REUTERS, BC Cycle, Nov. 1, 1991.

[Soviet-British Creative Association] Managing Director John Raymond said the case had been closely watched by Hollywood film studios 'The film industry in the West has taken this very seriously, and I think it is disappointing that the lawsuit has been thrown out Certainly Hollywood was looking at this lawsuit to see what would happen.'

Id.

204. Greg Gransden, *Boycott Has Top Billing at Moscow Festival*, L.A. TIMES, July 9, 1991, at F1.

ing effective copyright laws in the near future.²⁰⁵ In utilizing the MPAA's considerable international clout, a more interactive approach regarding the legislators of the individual republics will result in the enactment of preferable copyright legislation more quickly and efficiently than a passive isolationist approach.²⁰⁶

The original reason for the MPAA embargo, that of hopelessly inadequate copyright laws affording unlimited opportunities for pirates to appropriate American films for their own profit, is still present.²⁰⁷ The companies of the MPAA are not infallible, however, and could not refuse for long to penetrate a market consisting of hundreds of millions of consumers.²⁰⁸ The demise of Orion Pictures substantiates the MPAA's need for an expanding viewing audience. Orion Pictures, one of the supporters of the MPAA embargo, filed for Chapter 11 bankruptcy in December 1991, facing debts of \$1 billion.²⁰⁹ Although the MPAA has technically lifted the embargo, the MPAA members are waiting to see the new Russian copyright law promised in early 1993.²¹⁰ As

205. Don Groves and Hugh Fraser, *Hollywood Majors End Embargo On the Former Soviet Union*, Daily Variety, December 7, 1992, available in LEXIS, Nexis Library, Currnt File.

206. The MPAA is working with the Russian legislature to develop a new copyright regime. As Jack Valenti described,

We're starting all over again, . . . trying to hammer out a similar deal with the Russian Republic as a model for all the former Soviet republics. . . . It's just one of the frustrations associated with the job. . . . We're helping draft a copyright law for the Russian parliament, but as of now, the boycott is still in place.

Arnold, *supra* note 202, at D1.

207. As Myron Karlin, president of the Motion Picture Export Association of America affirmed, "[U]ntil the problem of copyright law is settled, there is no way anyone can go in there (to the Russian market) with any confidence." Ulmer & Holloway, *supra* note 187.

208. William Neikirk, *Hollywood Dances with Woes As Recession Invades Fantasy*, CHI. TRIB., Jan. 22, 1992, at C1.

[H]ard times are beginning to peel away the tinsel from a \$13 billion industry that was not considered to be sensitive to the economy's ups and downs . . . There is also anxiety about the possibility of trade restrictions being placed on American movies in an economically integrated Europe, a move that would cut into profits and drive production and jobs overseas. Keeping up a bustling foreign market is critical for U.S. filmmakers, since foreign sales have risen to more than 40 percent of their revenue and can rescue films that lose money at home.

Id.

209. David Willman, *How Could Orion Win Oscars and Lose Its Shirt?*, L.A. TIMES, Apr. 1, 1992, at A1.

210. Don Groves and Hugh Fraser, *Hollywood Majors End Embargo On the Former Soviet Union*, Daily Variety, December 7, 1992, available in LEXIS, Nexis Library, Currnt File.

Dr. Gerhard Weber, Vice-President of the Warner Brothers company for Eastern Europe, commented,

[The Russian experts] understand that neither the Russian film industry nor film business as a whole will be able to survive in Russia without an adequate law on copyright. But the Russian parliament and government are still faced with a large amount of painstaking work in the field of law making. It has taken them a long time just to compile a bill on copyright which comes close

will be discussed in Part V, other creative enterprises which also depend on adequate copyright laws face the same concerns as the MPAA in the former Soviet Union. The MPAA, because of its wide sphere of influence, has a duty to reevaluate its approach regarding the former Soviet Union, and to resume trade with the region in the near future.

V. American Creative Enterprises in Russia

While the political outlook of Russia and the other former republics of the Soviet Union is hazy and their respective legal infrastructures are in upheaval, the immediate economic outlook for the region is relatively clear. According to Jacques Attali, president of the European Bank for Reconstruction and Development, which was founded to stimulate economic development in the former East Bloc, the Soviet Union is "facing a recession worse than the Western world faced in the 1930s." Attali emphasized the importance of trade in stimulating market activity in the region.²¹¹

The members of the MPAA, like other American businesses, are wary of pouring money into a chaotic system.²¹² While some believe that American businesses are motivated solely by the thought of short-term profit return, hence the delay to tap the huge Soviet market,²¹³ sound business judgment demands prudence before sinking millions into a legal and economic nightmare.²¹⁴ Even if the Russian legislature enacts a modern and comprehensive copyright law in the near future, an adequate enforcement and deterrent mechanism will not necessarily follow. "[I]t will take time to build a viable infrastructure - time to build a commercial court system experienced in handling intellectual property cases, time to train judges and attorneys, and time to establish case his-

to the world standard. As far as we are concerned, we can, regrettably, only hope that sufficient protection of copyright will soon appear in Russia.

Vladimir Ivanidze, *Russian Piracy*, Moscow News, January 13, 1993, available in LEXIS, Nexis Library, Currnt File.

211. Erik Ipsen, *Bleak Picture Painted of East Europe*, INT'L HERALD TRIB., Dec. 20, 1991, at 11.

212. See Robert Trautman, *U.S. Aid, On Track Again, Seen Vital For Soviets*, REUTERS, Aug. 23, 1991, available in LEXIS, Nexis Library, Wires File.

213. See William Pfaff, *Western Investors Must Lead the Way to a New East*, CHI. TRIB., July 21, 1991, at C3. "American business culture currently is hostile to decisions accountable to any reasoning other than profitable return—usually short-term return. That could seriously handicap the United States in a future marketplace of some 450 million people, most of them with sophisticated consumer longings." *Id.*

214. According to Jim Fifield, President and CEO of EMI Music Worldwide, The business will be there but it won't be easy. They want to go into free market, but they don't understand basic capitalistic principles such as marketing, margins, depreciation, customer service. They need to understand that the free market is consumer, not manufacturer-driven. They need a new orientation and the learning curve is incredible. It's not going to happen overnight.

Jeffrey Jolson-Colburn, *Diskeries Warily Invade East Bloc*, HOLLYWOOD REP., Jan. 2, 1991 available in LEXIS, Entertainment Library, Hollywood Reporter File.

tories.”²¹⁵ American companies should exercise caution and be prepared to swallow losses for the present.²¹⁶ Nevertheless, choice opportunities should not be handed over to industries of countries willing to accept the risk.

Analysts believe that Americans have an advantage over the Japanese and the Germans because of the former Soviet citizens' desire for American goods, such as Levi's²¹⁷ and Big Macs.²¹⁸ Many American enterprises have already taken the plunge in conducting business in the former Soviet Union, but the dissolution of the Union demands a reevaluation of the advisability of trade and investment.²¹⁹ If American inves-

215. *Russia's New Intellectual Property Laws Begin Long Process of Building Effective Regime*, Russia and Commonwealth Business Law Report, November 27, 1992, available in LEXIS, Nexis Library, Currrt File.

216. See Jack Dolan, *U.S. Firms At Conference Still Eyeing Soviet Market*, EASTERN EUROPE REP., June 3, 1991, at 3.

Experts . . . [agree] that small and medium sized companies should not consider the Soviet market today unless they have resources to deal with many practical and costly barriers to investment like poor communications, lack of appropriate accounting systems, and difficulty in finding an appropriate buyer of their goods. Investors must have a five to 10 year strategic plan” *Id.*

217. “Soviet products, from clothing to electronics, are so poorly constructed that consumers gladly pay quadruple the cost or more for foreign goods—when they can be found. Levi's 501 jeans sell for 250 rubles (\$400) on the black market, for instance.” Edna Gundersen, *Levi 501's Are Hot, Miniskirts Are Not*, USA TODAY, Aug. 15, 1989, at 4D. In the same vein as the inflated Levi's prices, before the dissolution of the Soviet Union, illegal video salons would charge exorbitant admission prices. “Admission prices began at 20 rubles, 10 times the normal price of a movie ticket, and reached as high as 50 rubles for illegal porno films.” See Ulmer & Holloway, *supra* note 187. Government regulation clamping down on illegal screenings of films and the advent of a free market will result in economic forces ensuring more competitive prices for movie tickets.

218. See Edward Epstein, *From Russia With Love*, S.F. CHRONICLE, July 31, 1991, at A7.

The preference for things American could be turned into trade and profits for both sides as the Soviet Union reforms its economy U.S. businesses must find a way to build on Russians' ingrown desire to get closer to the United States. This would help American business get a solid toehold in the Soviet market.

Id.

See also Schoenberger, *Taking a Chance On Russia; Japanese Entrepreneurs See Financial Opportunities in the Russian Far East*, L.A. TIMES, Jan. 3, 1992, at A1. Former U.S. Ambassador to Moscow Robert Strauss warned that, “Japanese and German firms are rushing in to seek opportunities while Americans sit on the sidelines.” *Id.*

Russia offers “. . . conditions unavailable anywhere else in the world - an almost complete absence of regulation; a vast, educated audience that hungers for Western culture but is still innocent of Western marketing's persuasive powers; a long-standing enthusiasm for cinema-going . . . all at a bargain price.” Benjamin Woolley, *Opportunity Knocks in Russian TV*, THE INDEPENDENT, January 26, 1993, available in LEXIS, Nexis Library, Currrt File.

219. See Louis Uchitelle, *After the Soviet Union: Capitalism's New Frontier - A Special Report; Hunting for Riches in Ex-Soviet Lands*, N.Y. TIMES, Dec. 27, 1991, at A1.

American companies are treating the territories of the now-defunct Soviet Union as wild, unpredictable places, without reliable laws, but good for trying to strike it rich Even Fortune 500 companies are signing deals that have a frontier quality. In fact, the upheaval seems to be stimulating imagina-

tors wait until they believe the situation has calmed down enough to permit beneficial trade, or worse yet, if they take their cue from other countries as to the proper time to invest, they will certainly and inexcusably lose the lead in the race.²²⁰

Russia and the other former republics of the U.S.S.R. consist of a huge population in the process of transition to a free-market economy, which translates into a tempting new market for American goods and services.²²¹ Nevertheless, United States economic activity in the region has been minimal because of the disincentives of a weak structure of laws and turbulent political activity.²²² Given the obvious short-term (in actuality perhaps extending for many years²²³) hazards accompanying trade and investment, potential American investors and traders should utilize a long-term approach. There are several major areas of concern to American creative enterprises considering the viability of exploring the former Soviet market:

tive deal-making, not inhibiting it . . . The guiding principle appears to be this: Gamble as little as possible in a risky investment that might very well return a jackpot profit, if the money is not lost altogether in the chaos.

Id.

220. See Alex Alexiev, *What the East Europeans and Soviets Need Now Is Trade Not Billions in Aid*, L.A. TIMES, Nov. 10, 1991, at M2.

Therein lies the opportunity for the United States to help stimulate economic development in the East, while promoting its own economic and political interests. What Washington could—and should—do is leapfrog the Europeans and Japanese by negotiating free-trade pacts with . . . Russia and any of the ex-Soviet republics that have embarked on radical reforms. . . . [M]ost of the peoples of . . . the former Soviet Union retain remarkably strong sympathies for America and its ideals. Given the opportunity, many of them may prefer to do business with us rather than with the Germans and the Japanese.

Id.

See James Flanigan, *Open Trade Is A Boon; U.S. Mustn't Become Isolationist*, L.A. TIMES, Mar. 15, 1992, at D1. "If the United States isn't active in Russia and the republics—and in the world at large—new markets may lie fallow, Japan's investments may be seen as sinister, and growth in world trade and development may slow further."

221. "These countries represent potential markets of huge dimensions, although when those markets will be realized cannot be forecast with confidence. . . . [C]reating and sustaining popular U.S. support for measures of longer-range significance require the development of a sense of future economic payoff for current efforts." Robert E. Hunter, *Starting at Zero: U.S. Foreign Policy for the 1990's*, 15 WASH. Q. 1, 24 (1992).

222. W. Henson Moore, Deputy Energy Secretary, commented on the former Soviet Union, " 'Until there is greater certainty regarding the relative authority of different organizations, most investors are reluctant to enter into commercial transactions [Furthermore, the] lack of a legal framework for trade and investment remains 'a significant concern.' " See *U.S. Officials Increasingly Frustrated By Instability in Soviet Energy Sector*, INT'L TRADE REP. (BNA) No. 50, at 1851 (Dec. 18, 1991).

223. Ultimately, [the 15 new states'] transformation to free market systems holds out the promise of new markets and new growth, replacing a union that World Bank chief economist Lawrence Summers called 'an economic underachiever on a grand scale' But changing the Soviet system will take at least three years, and perhaps as much as an entire generation, according to most economists.

Steven Mufson, *Globally, A World of Difference; Breakup of Soviet Union Holds Out Promise of New Markets*, WASH. POST, Jan. 12, 1992, at H1.

(1) Creative works in need of intellectual property legal protection, e.g., the MPAA's films, arguably present a more difficult case for current infiltration of Russia's market. Once a bootlegger makes an illegal copy of a film or sound recording, the market for the original work is destroyed because of the ready availability of inexpensive pirated copies.²²⁴ Creative works in their tangible forms are more vulnerable to rampant pirating than a can of Coca-Cola or a pair of Levi's jeans because of the relatively uncomplicated and inexpensive copying process necessary for audio and video tapes or computer programs.²²⁵

(2) The severe economic crisis confronting the people of the newly independent states precludes expenditures for luxuries such as audio tapes and movie tickets.²²⁶ Accordingly, this bleak climate would deter the creators and distributors of such products from considering the former Soviet market at present.

(3) A major disincentive to doing business in Russia is the present inconvertibility of the ruble. Although a full discussion of this concern is beyond the scope of this Note, inconvertibility complicates American companies' ability to derive any financial recompense from business ventures in the region.²²⁷

224. "Anyone who buys a Western computer program for the usual [100 pounds] to [300 pounds] here is crazy, because it can be bought on a Warsaw street market for between [60 pence] and [2 pounds]." Patricia Clough, *Copyright Lawyers Aim To Put Poland's Pirates Out of the Picture; The West's Promotion of Capitalism in Eastern Europe Has Had an Unwanted Side-Effect*, THE INDEPENDENT, Jan. 20, 1992, at 10.

225. See *Deadlines Approach for Two GATT Airbus Complaints, Boeing Official Tells ABA*, BNA INT'L TRADE DAILY, Nov. 8, 1991 ("[I]n the Soviet Union, it has been estimated that the rate of unauthorized copies (of computer software) may exceed 95 percent. Piracy is so prevalent, in part, because it is so easy . . ."). "In Russia, about 32 million copies of Agatha Christie books have been published illegally in the last five years alone." Elizabeth Mehren, *From Russia with Larceny*, L.A. TIMES, October 9, 1992, at E1.

"'Scarlett' by Alexandra Ripley, became the victim of an unprecedented piracy attack from numerous newly-born Russian commercial publishers. Ten publishing houses issued a Russian translation of the sequel to 'Gone With the Wind,' without obtaining a license from the original publisher. The state-owned 'Khudozhestvennaya Literatur' (Belle Lettre) Publishers, the only company which legally procured the rights to publish a Russian translation, estimates a loss of over 100 million roubles as a result of the pirated copies. . . . The company cancelled plans to distribute its translation of 'Scarlett.' According to [the publisher's director Georgy] Andzhaparidze, his office filed a complaint with the Russian court of arbitration, but it will be difficult to pursue the suit as Russian law does not envisage punishment for such offences." Alexander Lyakin, *Scarlett: Pirate Copies Cost State Publishers 100 Million*, TASS, September 11, 1992, available on LEXIS, Nexis Library Currnt File.

226. According to Russ Solomon, head of California-based Tower Records, "You have to face international realities . . . If a record costs a week's salary, you aren't going to sell very many." Jolson-Colburn, *supra* note 214.

227. The inconvertibility of the ruble is another disincentive to doing business in the Commonwealth. "[T]he banking system is new, hard currency is scarce, and the ruble is volatile, with various rates of exchange for various transactions." Fabrikant, *supra* note 184. See also *East-West Co-Productions Mean Work for Middlemen*, SCREEN FINANCE, May 15, 1991.

Currently a three-tier official system governs the price at which the ruble may be exchanged for hard currency, but black market rates are very differ-

(4) The enactment of a new system of laws protecting copyrighted works is useless without a corresponding system of appropriate deterrents and sanctions for violations. Without incorporating significant deterrents in conjunction with a new copyright structure, creative products remain as vulnerable as they were before the enactment of new laws.²²⁸

ent. Thus the pound sterling can be exchanged for anywhere between one rouble (the top of the three-tier scale) and 60 roubles on the black market, so that [6 million roubles] could theoretically be worth anything between 6 million [pounds] and a mere 100,000 [pounds].

Id.

"A key risk element behind any Soviet investment, though, is the uncertainty over when Moscow will allow convertibility of the rouble. Some say it could take five years before Westerners are allowed to convert roubles to dollars and take them out of the Soviet Union." Dolan, *supra* note 216.

See also Schoenberger, *Taking a Chance On Russia; Japanese Entrepreneurs See Financial Opportunities in the Russian Far East*, L.A. TIMES, Jan. 3, 1992, at A1. John H. G. Wigand, who heads the Anchorage-based consultancy Soviet Economic Development Co., admonished, "The Japanese aren't whining about the convertibility of the rouble the way American businessmen are . . . The funny thing is that the Russians would prefer to deal with the Americans, not Japanese . . . [b]ut they'll go with whoever gives them economic help." *Id.*

See also Tom Brown, *RAIMA Corp. - Potential For Growth in Russia Promises Challenge, Rewards*, SEATTLE TIMES, Jan. 22, 1990, at D2.

Since the Russian rouble is a 'soft' currency that is nonconvertible in the international market, most business deals with the Soviets involve barter arrangements in which the Western company swaps its products for Soviet goods that it then must sell elsewhere to earn money. These deals are time-consuming to research and clumsy to implement.

Id.

See also Jenny Byrne, *Television: Movie Moguls Start to See Red; Jenny Byrne On a Soviet-British Venture That Is Making the Most of Cultural Glasnost*, THE INDEPENDENT, June 17, 1990, at 27. John Raymond, the Soviet/British Creative Association's finance expert, devised a workable strategy to deal with the rouble problem. "We give the Soviets a programme in return for three minutes of air-time for advertisements. Ad agencies pay us for that time, and then approach large brand names such as Levi or Shell and sell that time to them. They are paid in hard currency." *Id.* Other interested companies in the venture include Fiat, Renault, Allied-Lyons, and Pepsi. *Id.*

228. "Peter F. Allgeier, Assistant U.S. Trade Representative for Europe and the Mediterranean, said that 'only about 25 percent' of the work necessary to improve economic relations has been accomplished in negotiating and signing the various accords. 'The rest is making sure they're enforced.'" *U.S. Expects Major Problems Enforcing Trade Pacts With Ex-Communist States*, 9 INT'L TRADE REP. (BNA) No. 21 at 884 (May 20, 1992), available in LEXIS, Nexis Library, Currnt File.

"The next step will be to assist Russian authorities with enforcement of intellectual property rights . . . The IIPA [International Intellectual Property Alliance] has offered to conduct seminars on enforcement, through the Russian Ministry of Justice, for police, court officials, and others who would be enforcing intellectual property law. . . . Officials must press their first major case and obtain a harsh penalty to get people's attention. 'If the public knows the government is politically committed to enforcement of intellectual property rights, then [the matter] will be self-enforcing . . . [p]eople won't want to take the risk.'" *Russian Law On Computer Programs Offers Copyright Protection, But Fundamental Flaws Exist*, Russia and Commonwealth Business Law Report, December 11, 1992, available in LEXIS, Nexis Library, Currnt File, quoting Eric Smith, executive director and general counsel of the International Intellectual Property Alliance.

Notwithstanding these arguments, creators and distributors should not be deterred entirely from viewing Russia as a prospectively viable market.²²⁹ For the present, careful yet innovative forays into the region will provide a secure foundation for future marketing and distribution schemes. For instance, Michael J. Solomon, president of Warner Brothers International Television Distribution, is apparently undaunted by disincentives to trade and investment in the region. Solomon announced plans to present dubbed prime-time American television shows and movies on the state-run Ostankino channel for three hours a day for a period of one week. Russian broadcasting officials selected from the Warner library of videotapes television shows including "Murphy Brown" and seven Bugs Bunny cartoons, and movies including "Superman," "Being There," and "The Postman Always Rings Twice." The cost of the venture will be \$50,000 to cover the costs of the dubbing and shipping of cassettes. Solomon had hoped to generate a profit through paid advertising from such companies as Coca-Cola, Pepsi-Cola, McDonald's, Estee Lauder and Benetton, but the advertisers pulled out from the deal in fear of generating bad will in the bleak economic climate of the former Soviet Union.²³⁰

As a further illustration, film studios not participating in the MPAA embargo took advantage of the boycott by the major U.S. studios. Carolco is one such enterprising studio; it screened nine films in the Soviet Union during the summer of 1991, including Arnold Schwarzenegger's "Total Recall," Steve Martin's "L.A. Story," and Oliver Stone's "The Doors." Even with the lax protection accorded to U.S. films, Carolco's venture was successful.²³¹

Another example of a copyright-based business deal in the planning stages is the opening of six multi-screen movie theaters in Moscow, which United Cinemas International, jointly owned by MCA and Para-

229. See William Mahoney, *Dragging Soviet TV Into the '90's: Selling TV Programs to the Soviets Is Easy; The Hard Part Will Be Selling Advertising Time*, VANCOUVER SUN, Dec. 7, 1991, at D5. According to Bert Cohen, head of Worldvision Enterprises, the distributor that put the well-known U.S. television show "Dallas" on Soviet television in 1990, "Companies will now move into the Soviet Union at a much faster pace We are looking at, in this decade, perhaps one of the strongest television outlets in the world." *Id.* The article's author counters by warning, "But international TV executives say significant hurdles have to be overcome before the Soviet market really opens up," including that the former Soviets must, "[c]ounter widespread piracy and neglect of copyright protection." *Id.* Nevertheless, "Some say they believe that the mere existence of the Western programming from the major international distributors will spur advertiser interest. But all this work isn't likely to return much to the bottom line for several years." *Id.*

230. Solomon commented, "This is a market that is not yet a consumer society, but it will be This is an investment for the future I truly believe there will be good business to be done with the Soviet Union in the next few years." Bernard Weinraub, *The Media Business; Ready for Prime Time in Moscow*, N.Y. TIMES, Jan. 22, 1992, at D1.

231. Gransden, *supra* note 64. "The director of the 2,500-seat Oktyabr movie theater, where the Carolco films are being shown, said 40% of the shows were already sold out by noon on the opening day of the [Moscow International Film] Festival." *Id.*

mount Communications, announced. The construction project was contingent, however, upon improved copyright protection.²³²

There are several key factors to consider in maintaining a presence in the former Soviet Union which will ensure a solid share in the future free markets of the former republics.²³³

(1) An embargo of American creative works would probably not cause Russia to enact copyright legislation any sooner. The black marketers in Russia will undoubtedly find ways, as they have in the past, to supply the Soviet people with bootleg American creative works.²³⁴ Given the status quo, the new systems of government, with many other pressing needs to consider, may not see the necessity of quickly enacting copyright laws that will, in the long run, be more beneficial for both the former republics and the United States.²³⁵

232. MCA Chairman Lew Wasserman and Martin S. Davis, chairman of Paramount, issued a joint statement,

UCI has taken the long-range view that the Soviet Union is heading for a full and free market economy and will present excellent opportunities for cinema operations and related activities. The current uncertainties surrounding the Soviet economy are not deterring UCI from this important move, and we congratulate them.

Dave McNary, *Hollywood Ponders Moscow Multiplexes*, UPI, July 12, 1991, available in LEXIS, Nexis Library, UPI File. See also *Entertainment Briefs*, HOLLYWOOD REP., July 16, 1992 available in LEXIS, Nexis Library, Hollywood Reporter file.

233. Glenn Rifkin, *Selling Software, Soviet-Style*, N.Y. TIMES, Nov. 3, 1991, at C11. The Los Angeles-based Nantucket Corporation, despite the lack of intellectual property laws, has operated to the tune of a five million ruble profit in the Soviet Union for almost a year. *Id.* "Instead of earnings that can be brought back to the West, Nantucket's immediate goal is market share." *Id.* Esther Dyson, a consultant and publisher of the Release 1.0 newsletter, "believes all the key software makers will seek a formal presence in the Soviet Union. 'It's a huge untapped market. . . . It's extremely difficult to do anything there but if you do, people really want what you sell.'" *Id.*

234. Oleg Rudnev, director-general of the Sovexportfilm Association, said, "Thousands of unpaid and legally unprotected programs, mostly American ones, were being shown throughout the country, bringing in fabulous profits to dealers of the 'shadow economy'." Rudnev, *supra* note 189. "The resulting shortage of Western material, combined with a complete lack of legal protection, created the perfect conditions for Russia's new generation of entrepreneurs. They wasted no time in saturating the streets with VHS copies of mainstream Hollywood movies. . . . The source of this material is the network of markets that are to be found on the outskirts of most big Russian cities. . . . Just about any film to be found in a good Western video store is there - plus a few still confined to theatrical distribution in Europe. And it is cheap: a full set of Lethal Weapon movies copied off a laser disc might cost less than 20,000 roubles, or \$50 (hard currency welcome). Films copied off other cassettes or off TV sets in Western hotels are even cheaper." Benjamin Woolley, *Opportunity Knocks in Russian TV*, THE INDEPENDENT, January 26, 1993, available in LEXIS, Nexis Library, Currnt File.

235. "[I]t is no secret . . . that a number of representatives of the legislative and executive branches are openly against the adoption of a copyright law. This logic is as follows: What point is there in turning off a spigot through which technology and works of art make their way here on their own and almost free of charge at a time when we don't have the money to buy them in the needed quantities on a legal basis? The counterarguments of the American experts . . . are based on both an appeal to meet the international obligations that Russia has assumed and on economic expediency. . . . The American reminded the Russians that they had granted Russia most-

(2) A friendly presence consisting of American creative enterprises in the Soviet market would be beneficial for future economic and political interests, especially during the presently dismal economic period. Conversely, an embargo at this juncture is not a sympathetic gesture towards a fledgling free-market system. The new policy of "cultural credit" encourages wary foreign creative enterprises to help establish the market in Russia for creative works.²³⁶

(3) American creative enterprises can educate the former Soviet people as to the illegality and undesirability of copyright violations. Many people of the former Soviet Union are unaware of the illegality of using pirated computer software or viewing stolen films.²³⁷

(4) American businesses could more effectively help shape the new market and relevant legislation by being part of the market rather than operating as outsiders. Protecting American names and products through current usage and through immediate policing of violations would be easier and more effective with a presence in the former republics. Entrepreneurs would be able to determine first-hand the needs of the people and to view the effects of new copyright legislation.²³⁸

(5) The present objectives of creative enterprises regarding the for-

favored-nation trade status and that in return they expect a halt to the predatory practice of 'illegal copying.' " Vladimir Mikheyev, *Russian Market Should Have No Place for 'Pirates' - But There Should Be Ample Room for Those Who Create Intellectual Property*, Current Digest of the Post-Soviet Press, December 23, 1992, available in LEXIS, Nexis Library, Currnt File.

236. President Boris Yeltsin appointed Judge Mikhail Fedotov at the end of 1992 as Russia's minister for press and information. "His hope is that by showing his determination to rehabilitate his country's record, he will create the conditions for attracting what has been dubbed, 'cultural credit.' This is the media equivalent of the Marshall Plan; in return for providing high-grade material cheaply, foreign companies are allowed to establish a strong position in Russia's developing media market. 'The idea of cultural credit is similar to the idea of financial credit,' Mr. Fedotov said. Copyright owners would offer the rights to show their programmes at a moderate price to build up the market." Benjamin Woolley, *Opportunity Knocks In Russian TV*, THE INDEPENDENT, January 26, 1993, available in LEXIS, Nexis Library, Currnt File.

237. See Catherine Arnst, *Go to East Europe for Lowest Software Prices*, REUTERS, Nov. 14, 1991, available in LEXIS, Nexis Library, Reuters Financial Report file. "The problem [of purchasing and using pirated computer software] can often be solved through education. 'Nine times out of ten the customer doesn't even know what they are doing is illegal. Once you tell them, they stop,' said Nantucket [Corporation's] Soviet business manager Robert Clough." *Id.*

238. In the computer software field, some executives believe there are ways to minimize the effects of piracy and a lack of copyright protection. In reaching this conclusion, companies took an active role in determining what demand their products could fill. "To combat piracy . . . they must keep prices low, sell in local currency, offer more support and service than they might in the West, and come out with new, improved local language versions every six to eight months." *Id.* See also U.S. Business Organizes to Lobby Russia on Reforms, REUTER LIBRARY REP., July 1, 1992, available in LEXIS, Nexis Library, Currnt File. V. Zhigulin, the Vice Chairman of the council of the Russian parliament commented, "Taking into account foreign experience, support and assistance on the part of American business would significantly facilitate and accelerate the transition of Russia to market-based relations." *Id.*

mer Soviet market should be to promote brand-name recognition,²³⁹ to generate good will among the former Soviet people towards the United States,²⁴⁰ and to conduct basic market research in order to develop marketing strategies.²⁴¹

While certainly not ensuring an immediate return, moving cautiously into the former Soviet market is an investment for the future. Even without copyright protection, American creative enterprises can presently lay a valuable foundation for the future. It is clearly advisable for the independent republics to enact intellectual property laws for both domestic and foreign works within a reasonably short period of time.

VI. Creating a Copyright Infrastructure in Russia

Formulating a modern intellectual property regime of laws in Russia with adequate enforcement and strict penalties for violations, in addition to the immediate cessation of government condonation of pirating of foreign works, should be a priority in both Russia and in the United States. The passage of effective intellectual property laws is a strategic move to spark foreign trade and investment in the former Soviet Union. Improved intellectual property protection is an essential step in the transformation to a market economy.²⁴² In turn, with a more

239. See Duncan Robinson, *Soviets Seek To Curb Brand-Name Piracy*, CHI. TRIB., Nov. 24, 1991, at 9A. "Our name is flagrantly abused here, but we're about to launch a massive advertisement campaign on buses, radio and billboards," to combat it, said Robert Agee, general manager of Rank Xerox Ltd., Xerox Corp.'s Soviet venture." *Id.*

240. See Dolan, *supra* note 216. "Western companies like McDonalds and Pizza Hut, which are both operating [in the Soviet Union], are engendering good will with the Soviets during of time of economic crisis. This could develop lasting consumer loyalty and, in turn, bring big profits when stability returns . . ." *Id.*

241. Regarding Eastern Europe, MCA Records International Vice-President Stuart Watson commented, "MCA doesn't believe it's going to happen overnight. However, we are investing our artists' time to do promotion in those territories in order to break the artists now for sales later." Jolson-Colburn, *supra* note 214. Along the same lines, Tony Salter, the Eastern Europe development director for EMI Music affirmed,

'The market [in the former Soviet Union] is totally unviable in a commercial sense in the short term. There is no certainty that it will be ready for a company like EMI in the medium term.' . . . The company is eager, though, to assist the growth of the C.I.S. [Commonwealth of Independent States] by encouraging the formation of effective distribution and retail channels. One way of kickstarting Russian business systems, Salter says, would be to agree with an artist to release a record on a nonprofit basis for both the artist and the company.

Jeff Clark-Meads, *Labels Gauging Nebulous Market In Former U.S.S.R.*, BILLBOARD, Mar. 7, 1992, at 1.

242. ICI East European chairman John Mitchell listed key ideas needed to stimulate investment: "legal infrastructure guaranteeing ownership of property, intellectual property protection, and a reliable framework that offers Western-style banking, accounting, and insurance facilities; free movement of currency, incorporating some sort of external convertibility." Natasha Alperowicz, *Western Investment Is No Stampede; Companies Look—Hard—Before They Leap*, CHEMICAL WEEK, July 3, 10, 1991, at 25.

secure market in Russia and the other former republics established over several years, the United States will have a new outlet of 450 million consumers eager for American goods and services. As the United States has a strong interest in the formulation of these laws, experts in this country should take an active role in aiding Russia in enacting appropriate legislation.

Both United States legislators and independent organizations such as the MPAA have exerted pressure on the former Soviet Union to revamp its intellectual property laws to their satisfaction. The original United States-Soviet Union Trade Agreement extended Most-Favored-Nation trading status as an impetus to pass effective intellectual property legislation.²⁴³ The MPAA's film embargo also compelled the Soviets to revise their antiquated concept of copyright. Theoretically speaking, the legislators of the independent republics should devise a system that encourages creativity, free enterprise, and a free market.²⁴⁴ To that end, the individual former republics have agreed ultimately to adhere to the Berne Convention by devising compatible domestic and foreign intellectual property laws.²⁴⁵

Both the United States and the newly independent states would greatly benefit by the latter's adherence to the Berne Convention. Compliance with the strict provisions would be ideal for the MPAA, as the

243. William D. Eggers, *A Five-Plank Program For Trade and Investment With Eastern Europe and the Former Soviet Republics*, HERITAGE FOUNDATION REP., No. 862, Oct. 23, 1991 available in LEXIS, Nexis Library, Heritage Foundation Reports File.

[Free trade agreements] would increase trade with the region by encouraging increased American investment and offering Eastern countries secure access to the giant American market. . . . Increased investment will bring private capital to the region, and along with it the advanced technology and managerial expertise required for economic expansion. Reducing Western trade barriers will open markets for East European goods, thereby encouraging the growth of agriculture, private industry, and services. This in turn will lead to economic expansion and integration into the world economy.

Id. See also Bruce Fein, *Beyond The Commonwealth: The Soviet States as Sales Territories*, THE RECORDER, Dec. 24, 1991, at 8. "The United States should negotiate the preferential free-trade pact with any independent republic whose constitution enshrines democratic and free-enterprise values Such preferences would spur foreign and domestic investment in the republics and would help revive their corpse-like economies, a major source of political instability." *Id.*

244. See *The Moscow Summit: President Bush, President Gorbachev Building a Relationship on Universal Human Values*, 2 STATE DEP'T DISPATCH 591 (1991). In his speech at a meeting of Soviet and American Businessmen, Moscow, July 31, 1991, President Bush stated,

Government does have legitimate responsibilities such as . . . providing the boundaries of acceptable business behavior. Government must establish rules of fair play - what we call a 'level playing field,' that builds trust and stability. Once established in the Soviet Union, the rule of law will further attract foreign know-how and investment. There is no question about that.

Id.

245. According to Oleg Rudnev, director-general of the Sovexportfilm Association, "It is vital that appropriate copyright laws be adopted to cover audiovisual communications and that USSR join the Berne Convention and introduce stiff penal, administrative and economic sanctions against every form of film and video piracy in the USSR." Rudnev, *supra* note 189.

Berne Convention more than adequately protects foreigners' rights.²⁴⁶ Enacting strong copyright laws that would permit accession would also create and strengthen a free market economy, which is mutually advantageous for the two nations. Joining the Convention would help Russia and the other independent republics attain a credible presence in the global marketplace.²⁴⁷ Furthermore, the action would substantiate the former Soviet Union's commitment to protection of foreign creative works.²⁴⁸ Finally, as the Berne Convention could potentially serve as the basis for copyright provisions in the General Agreement on Tariffs and Trade,²⁴⁹ joining would be a strategic move in Russia's long-range trade plan.²⁵⁰

The formation of a new intellectual property infrastructure is clearly an important objective of the Russian Federation. On February 24, 1992, President Yeltsin issued a decree forming a Russian Agency for Intellectual Property under the president of the Russian Federation (Rossiyskoye Agentstvo Intellektualnoy Sobstvennosti, hereinafter "RAIS"). President Yeltsin appointed Professor Mikhail A. Fedotov, previously Deputy Media Minister, as director of RAIS. RAIS explicitly replaced the notorious copyright agency VAAP, which was abolished on the date of the establishment of RAIS. According to Fedotov, " 'RAIS, under no circumstances, intends to copy the structure or adopt the methods of VAAP.' "²⁵¹ This step evidences an intent to reform entirely the orientation and structure of socialist copyright law. From the recent efforts of the Russian Federation to create a new copyright infrastructure, as well as the fact that all Soviet copyright expertise is centered in

246. See *supra* notes 90-119 and accompanying text.

247. S. Rep. No. 352, 100th Cong., 2d sess. (1988).

248. H.R. Rep. No. 609, 100th Cong., 2d sess. (1988).

249. The GATT is currently the most important international trade arrangement and includes over 90 countries participating in multilateral trade negotiations to encourage global trade. The latest round of GATT negotiations—the Uruguay Round, has placed intellectual property protection at a premium for negotiation. Marshall A. Leaffer, *Protecting United States Intellectual Property Abroad - Toward a New Multilateralism*, 76 IOWA L. REV. 273, 276 (1991). The outlook for the Uruguay Round is bleak, as negotiations continually stall. A recent breakdown occurred in talks in a Montreal meeting of the Uruguay Round, in a dispute over whether the GATT should establish its own norms for protecting intellectual property, or whether it should adopt the norms and standards already established by UNESCO and WIPO. *Id.* at 305. Senator Max Baucus advocated that the United States use its influence to propel the GATT talks further, citing the \$200 billion in new U.S. exports at stake and \$1.1 trillion in new growth over the last ten years. Even with these huge amounts at stake, however, he warned that the U.S. should continue to be firm regarding improved protection of U.S. intellectual property, because of the loss of billions of dollars lost to pirates each year. Elisa Williams, *Baucus Seeks Resumption of Uruguay Round Talks*, 1 NORTH AMERICAN REP. ON FREE TRADE 1 (Oct. 28, 1991).

250. See Summary of Testimony before the Senate Committee on the Judicial Subcommittee on Patents, Copyrights and Trademarks Hearing, February 18, 1987, reprinted in [Developments 1987-1991 Transfer Binder] Copyright L. Rep. (CCH), ¶ 20,476.

251. Summary of World Broadcasts (The British Broadcasting Corporation, radio broadcast, Feb. 25, 1992). Leonid Nikitinsky, *VAAP Dead, But Funeral Postponed*, SOVIET PRESS DIG., Mar. 3, 1992.

Moscow, it would appear that American or MPAA efforts to influence the direction of the new laws would be most effective in the Russian Republic.²⁵² By focusing its legislative efforts on Russia, the MPAA is calculating that the rest of the republics will similarly enact effective copyright legislation.²⁵³

A promising indication of the future direction of Russian copyright law is the Russian Parliament's passage of the Computer Program and Database Protection Law on May 14, 1992. The law provides that copying of software is illegal and specifies how damages should be awarded. The new law conforms to the European Commission Directive on Legal Protection of Computer Programs, adopted by the European Community in 1991.²⁵⁴ The computer industry is advocating for the new computer software law to be included in the draft Russian copyright law. Such inclusion in a comprehensive law would give the software law more weight than if it were contained in a separate provision, allowing for manipulation and lowering gradations of protection.²⁵⁵

The American legislature and influential organizations such as the MPAA should not be content that the republics have agreed to accede to the Berne Convention. Such assurances from struggling new governmental entities mean very little in a practical sense, particularly in consideration of what the republics stood to gain in signing the original United States-Soviet Trade Agreement, namely, Most-Favored-Nation trade status. Although the procedure to accession is ultimately in the hands of the new legislatures, advisably, American governmental and corporate entities should take a more active role in the formation of a new copyright infrastructure in Russia to ensure its adherence to the Berne Convention.²⁵⁶ The reality of the republics' promises to accede

252. RAIS drafted a law "On Copyright and Related Rights" for Parliament's consideration in the fall of 1992. SOVDATA DIALINE - BIZEKON NEWS, July 27, 1992, available in LEXIS, Nexis Library, Currnt File.

253. Arnold, *supra* note 202. See also, *The Russians are Coming—To Talk Copyright Issues*, BILLBOARD, July 18, 1992, available in LEXIS, Nexis Library, Entert File.

Currently, the United States Trade Representative is negotiating with 12 separate independent nations that had formerly been part of the U.S.S.R. Of the 12 countries, top priority is given to Russia and Ukraine. Each of these two countries has already undertaken a trade agreement with the U.S. that obligates it to enact sweeping copyright reforms by a certain date—Dec. 31 of this year for Russia; and Dec. 31, 1993, in the case of Ukraine.

Id. See *supra* note 206.

254. *Russian Parliament Finally Passes Software Copyright Protection Measure Into Law*, COMPUTER GRAM INT'L, June 1, 1992, available in LEXIS, Nexis Library, Currnt File. Leonid Zolotarevsky, Gostelradio's director of foreign relations commented, "There already are 'a lot of Western ads' in Soviet media . . . many from companies interested in creating image in [the] country in advance of introducing products." *U.S. Joint Venture; Gostelradio Planning Worldwide TV Network In 1993*, 11 COMMUNICATIONS DAILY No. 227, Nov. 25, 1991, available in LEXIS, Nexis Library, Currnt File.

255. *Russian Law On Computer Programs Offers Copyright Protection, But Fundamental Flaws Exist*, Russia and Commonwealth Business Law Report, December 11, 1992, available in LEXIS, Nexis Library, Currnt File.

256. "A representative delegation of American businessmen recently arrived in Moscow to pursue a two-part mission - to strengthen cooperation, which has now

and even their enactment of appropriate laws may fall short of American expectations.

Revising former Soviet copyright law entails transforming copyright law from a socialist orientation to one consistent with the new directions of the individual republics. The focus of Soviet copyright law was to disseminate creative works that primarily furthered the ideals of communism to a wide sector of the population. The Soviet government subordinated the rights of the creator in favor of promoting an ideology and directing public opinion and tastes. The socialist user organizations that shaped the tastes of the public for generations are relics of the past, as are state-run movie theaters, concert houses, and publishing operations. Accession to the Berne Convention most notably necessitates the abrogation of the Soviet provisions for exploitative free uses of, and compulsory licenses for, an author's work, which concomitantly destroyed the author's rights and his incentives to create. The government must also stop condoning the pirating of intellectual works, and instead, must educate the public as to the goals and benefits of copyright protection in a free market system.²⁵⁷ Generally, stricter enforcement policies and stronger penalties for violations in keeping with the precepts of a free market economy, are essential in conforming with international standards of copyright law.²⁵⁸ The republics must also take into account modern international technology by considering copyright protection for works created with the aid of scientific and techno-

been under way for at least two years, with Russian supporters of 'strict copyright legislation,' and to directly lobby Deputies of the Russian Federation Supreme Soviet. . . . [T]he high level of illegal copying in Russia, a joint statement says, not only has 'a negative effect on the development process,' but also weakens 'creative power and technological achievements' and undermines 'the country's reputation in the international arena.' Bringing this unchecked pirating under control would promote the attraction of foreign investments and the development of trade, as well as 'legal access' to the best products of scientific-technical and creative thought in the distant foreign countries." Vladimir Mikheyev, *Russian Market Should Have No Place for 'Pirates' - But There Should Be Ample Room for Those Who Create Intellectual Property*, CURRENT DIGEST OF THE POST-SOVIET PRESS, December 23, 1992, available in LEXIS, Nexis Library, Currnt File.

"MPEAA [Motion Picture Export Association of America] officials are working closely with Russian authorities on framing the copyright law. A final draft has been completed and although the MPEAA believes it needs some fine-tuning, officials say that 'it's heading in the right direction.' Once the laws are on the statute books, the MPEAA has offered to send high-level teams to Moscow and Kiev to help develop anti-piracy programs." Don Groves and Hugh Fraser, *Hollywood Majors End Embargo On the Former Soviet Union*, DAILY VARIETY, December 7, 1992, available in LEXIS, Nexis Library, Currnt File.

257. See *supra* notes 188-192, 234 and accompanying text.

258. See Robinson, *supra* note 239.

Limited enforcement of trademarks [in the Soviet Union] leaves any company's brand name ripe for the taking. . . . The Soviet court system is not prepared to handle intellectual property suits What's more, legal sources here say the scant few who have protected their trademarks in court don't really win, because the maximum penalty for infringement in the Soviet Union is 300 rubles - less than \$10 at current tourist rates - or six months in prison.

Id.

logical progress, including computer programs, satellite and cable television productions and video recordings.²⁵⁹

Nevertheless, when the newly independent states actually join the Berne Convention, this significant step will notify American businesses and creators that the former Soviet Union is serious about protecting intellectual property which will, over time, attract foreign investment.²⁶⁰ Even with the signing of the original 1990 Trade Relations Pact, most authorities agree that trade, investment and an economic upswing would be slow in coming to the region,²⁶¹ and without specific bilateral agreements protecting intellectual property, the prediction's accuracy is guaranteed.

The MPAA is partially assuming the responsibility of providing expert advice in copyright law to help the independent states devise a workable new copyright structure, as Jack Valenti suggested before the dissolution of the Soviet Union.²⁶² The Soviets, before the dissolution of the Union, were amenable to the United States' aid in this respect.²⁶³ The socialist orientation of the former Soviet people renders the Russian legislators inexperienced in devising laws compatible with capitalist theory. Consequently, the United States, through the MPAA, has an obligation to offer guidance to Russian legislators on this matter, as the

259. *USSR Prepares To Join Berne Convention*, (The British Broadcasting Corporation, radio broadcast Sept. 1, 1989).

260. "Open markets mean open season for U.S. and Japanese capital goods exporters." Peter Fuhrman, *Welcome to the Dollar Bloc*, *FORBES*, Oct. 14, 1991, at 100.

261. The trade agreement "offers little hope of an immediate windfall, [but] the Soviets want and need the improved condition it would create for foreign investment and the benefit it would bestow in leading to most-favored-nation trade status." UPI, July 30, 1991, available in LEXIS, Nexis Library, Wires File.

262. Valenti . . . had asked a delegation of executives from U.S. copyright industries representing film, television, home video, books, recording and computer software to meet with [Anatoly] Lukyanov [chairman of the Supreme Soviet of the U.S.S.R.] . . . [in order to] 'offer . . . advice and counsel on how to design copyright laws that are similar to those in effect in Europe, Asia and Latin America, as well as the United States.'

David Kelly, *U.S. Execs Asked to Help Soviets Write Law*, *HOLLYWOOD REP.*, Aug. 13, 1991, available in LEXIS, Nexis Library, Entertainment File. According to Valenti, once the Supreme Soviet passed the improved intellectual property protection, he would, "send to the Soviet Union a team of anti-piracy enforcement experts to offer whatever guidance and instruction on the most up-to-date methods in successfully combating pirates of copyrighted material." *Id.* See also *U.S. and U.S.S.R. Concluded Fourth Round of Information Talks; AFMA and MPEAA Stress Need for Currency Conversion and Elimination of Piracy*, *BUSINESS WIRE*, Nov. 5, 1990, available in LEXIS, Nexis Library, Wires File.

As a follow-up to the 1988 U.S.-U.S.S.R. Film Panel Agreement, the MPEAA has offered to help organize a visit of American anti-piracy experts to the U.S.S.R. in early 1991 to meet with officials of Goskino, the Union of Cinematographers, the Ministry of Internal Affairs and other interested groups to discuss ways to combat audiovisual piracy.

Id.

263. Valerian Nesperov, a Moscow International Film Festival Organizer and the head of external relations at Goskino, suggested that the United States could provide advice regarding, "enforcement and policing of copyright laws, an area in which he says the Soviet authorities are inexperienced." Gransden, *supra* note 64.

members of the MPAA are demanding a massive reconstruction of the laws.

Conclusion

Copyright law in Russia and in the other independent former Soviet republics is certain to be starkly different than the system of unfair and unworkable laws designed by the ousted totalitarian government. Laws in the Soviet past which effectively discouraged creativity, allowed government usurpation of creators' rights, and condoned stealing by individuals and officials alike are antithetical to ideals of democracy and a free market economy. Enacting strong copyright laws now would encourage the creative output of the citizens of the former Soviet Union while providing for increased dissemination of foreign creative works. Russian legislators must think in terms of protecting the creative and property rights of foreigners in its territory, as well as those of its citizens. In doing so, the government will pave the way for increased Western trade and investment, which the region desperately needs to spark its torpid economy.

The former Soviets should look to the provisions of the Berne Convention in formulating new intellectual property laws, as the superior and most comprehensive convention protecting intellectual property, and should strive to reform its legislation in order to accede as quickly as possible. The Motion Picture Association of America should take an active role in advising the new Russian legislature in the formulation of effective copyright legislation, including adequate and effective remedies for infringement. These steps would provide tangible proof to wary investors of the intent of Russia and the other former republics to lay the necessary foundation for helping to establish modern free markets through stringent copyright laws.

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