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# THE SOVIET PRESS AND COPYRIGHT LEGISLATION: SOME LEGAL CONCEPTS

SERGE L. LEVITSKY\*

**T**HIS article is devoted to some aspects of the legal concept of "freedom of the press" in the Soviet Union and the penal protection of its exercise, as well as a discussion of some legal problems arising in connection with the application of Soviet copyright legislation.<sup>1</sup>

## I. LEGAL CONCEPT OF "FREEDOM OF PRESS"

Chapter X of the Soviet Constitution of 1936 devotes sixteen articles to "fundamental rights and duties of citizens."<sup>2</sup> Article 125 covers freedom of the press. It is worded as follows:

"In conformity with the interests of the working people and in order to strengthen the socialist system, citizens of the USSR are guaranteed by law:

- a) freedom of speech;
- b) *freedom of press*;
- c) freedom of assembly, including the holding of mass meetings;
- d) freedom of street processions and demonstrations.

These civil rights are ensured by placing at the disposal of the working people and their organizations printing presses, stocks of paper, public buildings, the streets, communication facilities, and other material requisites for the exercise of these rights."<sup>3</sup>

The text of this article itself contains the limits to the exercise of these rights: they may be exercised only "in conformity with the interests of the working people" and it is the Party which determines what these interests are, in its capacity as the "leading core" of the workers.<sup>4</sup> On the other hand, the clause concerning the "strengthening of the socialist system" implies that freedom of the press may not be used against the Soviet State and the government which are the embodiments of the socialist regime, nor against the Communist Party which is its guardian. Thus, according to the direct meaning of the Constitution, the population is merely granted the right to uphold the established system, not to criticize it. The nature of the Soviet freedom of the press was best expressed by Andrei Vyshinsky, in his textbook *The Law of the Soviet State*:

"In our state, naturally, there is and can be no place for freedom of speech, press, and so on for the foes of socialism. Every sort of attempt on their part to utilize to

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1. The material contained in this article is based upon a chapter in the author's forthcoming book, *The Soviet Press*.

2. *Konstitutsiya (Osnovnoy Zakon) USSR arts. 118-33 (1947)*.

3. *Id.* art. 125. (Emphasis added.)

4. *Id.* art. 126.

the detriment of the state—that is to the detriment of all the toilers—these freedoms granted to the toilers, must be classified as a counter-revolutionary crime to which [the provisions of the Criminal Code are] applicable.”<sup>5</sup>

Vyshinsky himself cited article 58, paragraph 10, “or one of the corresponding articles of the Criminal Code,” as the texts applicable to the “foes of socialism” who try to use freedom of the press in their own interests. However, apart from the articles applicable to “counter-revolutionary crimes” the RSFSR (the Russian Soviet Federative Socialist Republic) Criminal Code also contains several articles punishing traditional abuses of the freedom of the press.

The following articles may be considered as the most important in this domain: 58(6), 58(10), 59(7), 96, 121, 160, 161, 177, 182(1), 185, 190, and 193(24-25). The bulk of these articles may be grouped into several sections.

#### *State or Military Secrets*

Articles 58(6) and 193(24-25) concern the publication of State, or military secrets. The transmission of such information is punishable by deprivation of liberty for a period of up to three years, if the material was classified as confidential without in itself constituting a State secret, and not less than three years, and up to the “highest measure of social defense” (death), with partial or total confiscation of property, if the information was expressly declared to be a State secret.<sup>6</sup> In the event of the transmission of declared military secrets, the punishment consists in the deprivation of liberty for not less than five years, and up to and including the death penalty.<sup>7</sup> If the material was classified as confidential without having been declared a military secret, the deprivation of liberty is up to one year.<sup>8</sup>

Material transmitted is regarded as a State or military secret if it appears on the list compiled by the Council of Ministers of the USSR on June 8, 1947. This list made inoperative a previous list, published by the Council of the People’s Commissars, on April 27, 1926. On June 9, 1947, the Presidium of the Supreme Soviet of the USSR published an edict on the *Responsibility for the Disclosure of State Secrets* which established norms of punishment for all cases specifically mentioned in the list of the

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5. Vyshinsky, *The Law of the Soviet State* 617 (1948).

6. RSFSR Criminal Code art. 58(6). (The Code of the Russian Soviet Federative Socialist Republic. There is no federal criminal code, but this code is the model for the criminal codes of the other republics. There is a federal criminal code in preparation which has not yet been promulgated.)

7. *Id.* art. 193(24).

8. *Id.* art. 193(25).

Council of Ministers.<sup>9</sup> All cases enumerated in the list, whether of a military or governmental nature, are tried by military tribunals and punished by confinement to a forced labor camp, for periods of from eight to twelve years unless they constitute more serious crimes, e.g., treason or espionage.

### *Economic Secrets*

State secrets include secrets of an economic nature, information concerning discoveries, inventions, improvements of a non-military nature, or information of "other kinds" specified in the list.

More specifically, information on the following subjects constitutes economic secrets: industry as a whole and its various branches, agriculture, trade and means of communications, monetary reserves, balances of payments and plans for financial operation, location and method of storing and transporting precious metals belonging to the State reserve, foreign currency and banknotes, plans relating to imports and exports of different types of goods, and numerous others.

Of course, cases of disclosure of State secrets by way of the press constitute a mere hypothesis devoid of practical interest, since printing presses are the property of the State, and newspapers themselves are subjected to a rigorous pre and post publication censorship. One of the functions of the Chief Administration for Literature and Publication, established by a law of June 6, 1931, is precisely ". . . to prohibit the issuance, publication, and circulation of productions. . . (b) disclosing State secrets. . ."<sup>10</sup> The only literature containing such material would be that smuggled from abroad or printed secretly.

### *Propaganda*

This same observation applies to the crime of counter-revolutionary propaganda by way of the press. Article 58(10) of the Criminal Code provides as follows:

"Propaganda and agitation involving appeals to overthrow, subvert or weaken the Soviet authority, or to commit any counter revolutionary crime, . . . as well as the circulation, preparation, or storage of literature with such contents, is punishable by deprivation of freedom for a period of not less than six months. The same acts if committed at the time of mass disturbances, or through the abuse of religious or national superstitions of the masses, or in the state of war, or in localities placed under martial law, are punishable by the measures of social defense defined in Article 58(2) of the present code."

9. The punishments established by articles 58(6) and 193(24-25) apply to situations not specifically mentioned in the list prepared by the Council of Ministers. The norms stated in the above articles are merely the minimum and the maximum penalties.

10. Text of the statute is found in: Foglevich, *Osnovnye Direktivy I Zakonodatel'stvo O Pechati* 110-11 (5th ed. 1935).

This means that all punishments up to and including death may be applied in such cases.<sup>11</sup> The text quoted singles out "religious and national superstitions." Whenever written "propaganda and agitation" opposes the official Soviet policy on religion and on the Soviet nationalities, it automatically becomes a "counter-revolutionary act." This type of crime is punished with particular severity. However, if no counter-revolutionary intent can be established, article 58(10) will not be applicable; instead, article 59(7) is preferred and provides as follows:

"Propaganda and agitation aiming at the instigation of national or religious hostility or discord, as well as the circulation, preparation or storage of literature of this kind, is punishable by deprivation of liberty for a period of up to two years. The same acts, if committed in a state of war or at a time of mass disturbances, are punished by deprivation of liberty, for not less than two years with total or partial confiscation of property; in the case of particularly aggravating circumstances, the penalty may be raised to include the supreme measure of social defense—death by shooting with confiscation of property."

Thus, the offender is not better off if he is just an ardent believer than if he pursues a counter-revolutionary goal. Moreover, those who disseminate propaganda for their church violate article 124 of the Constitution which permits anti-religious propaganda, while allowing merely the celebration of religious cults without religious propaganda.<sup>12</sup>

The articles quoted do not apply to "Soviet nationalism" which is not only allowed, but encouraged by various means as the expression of "Soviet patriotism," particularly since the beginning of World War II.

According to Soviet penalists<sup>13</sup> the crime involving counter-revolutionary propaganda includes the technical production (for instance, printing) of counter-revolutionary literature as well as its authorship. For the existence of the crime it is enough to show that counter-revolutionary propaganda is expressed, verbally or in writing, in hopes of circulation.

11. "Hier ist zu beachten, dass nicht nur die Propagierung eines gewaltsamen Sturzes des Sowjetsystems, sondern überhaupt jeder Systemänderung als verbotene Agitation gilt." Maurach, *Handbuch der Sowjetverfassung* 361 (1955).

12. It is true that the Soviet government allows exceptions to this rule. However, the publication of religious literature is confined almost entirely to books used in worship. According to information published in *The New York Times*, Soviet authorities allowed Protestants to print bibles, from plates sent to the Soviet Union by the British and Foreign Bible Society. *N.Y. Times*, May 3, 1956, p. 3, col. 1. On the other hand, the *Journal of the Moscow Patriarchate* appears in the Soviet Union. It is a monthly publication which contains very little information about religious life in present day Russia. The usual fare consists of telegrams sent and received by the Patriarch, a column about the share taken by the Russian Orthodox Church in the Peace Campaigns, an essay on some past event in the life of the Russian Orthodox Church, an occasional book review, etc. See Bissonnette, *Moscow Was My Parish* 245-48 (1956). See also 8 *Unitas: International Quarterly Review* No. 1 (1956).

13. Gertsenzon, Menshagin, Osherovich, and Piontkovsky, *Ugolovnoye Pravo; Osobenaya Chast'*: *Gosudarstvennye Prestupleniya* 78-79 (1938).

Criminal intent may be implied, or "veiled," to use the terminology of Soviet penalists. It is not required that persons assisting in the preparation of such propaganda have a particular counter-revolutionary aim in mind. For the existence of the crime in the case of storage, it is enough if the person concerned realizes that the stored literature is counter-revolutionary, and that storage itself is of assistance in the agitation and propaganda.

It may be added that even when criminal intent to overthrow the regime is expressly required by law, Soviet courts often content themselves with the potential danger of the article, or speech. On the other hand, Soviet courts often consider the parentage, social origin and economic circumstances of the accused person before reaching a conclusion of guilt. The "class-enemy" will be presumed guilty.<sup>14</sup>

Until Stalin's death, in addition to penal legislation, the Soviet government also possessed means of repressing crimes against the regime in an action with a view to communication, by an official of the administration, in an extra-judicial manner. The organs of the MVD could impose sentences up to and including death without formal trial of the accused, as a purely administrative measure. Regular courts had no control over the conduct of these proceedings, which could take place even in absentia. These "special powers" of the MVD were gradually vacated, according to Soviet sources, after the death of the dictator.

#### *Pornography*

Soviet legislation also punishes publication of material having a pornographic character. The relevant text in the Criminal Code in this case is article 182(1) which provides:

"The fabrication, circulation, and advertising of writings of a pornographic character, printed editions, illustrations and other articles, as well as commerce with these objects, or their storage in hopes of selling or circulation, entails deprivation of liberty for a period of up to five years with obligatory confiscation of the pornographic objects and the instruments of their fabrication."

#### *Police and Administrative Information*

Articles 96 and 121 concern the disclosure and publication of information concerning pre-trial investigations, police examinations and circulars, and data intended for the internal use of government administrations. The publication of data on pre-trial investigations and police examinations (*doznanie*),<sup>15</sup> without the express permission of the magistrate or

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14. See Hazard, *Law and Social Change in the USSR* 80, 98 (1953).

15. In the Soviet criminal procedure there is no difference between the police examination and pre-trial investigation, although both these concepts are mentioned in the Code of Criminal Procedure. Both have equal judicial significance, and materials obtained through both processes may be used as evidence in court.

official, is punishable by imprisonment for a period of up to six months, or a fine of up to 500 rubles.<sup>16</sup> The divulging of data classified as confidential or intended for internal use only, or its communication or collection, is punishable by deprivation of liberty for up to three years, or by measures of social defense as defined in article 112 (correctional labor, dismissal, etc.)<sup>17</sup>

The Supreme Court of the USSR has ruled that the disclosure of the names of non-staff correspondents of local papers (*rabsel'kory*), by local officials to whom the editorial board of the paper have submitted the letters or the communications of such non-staff correspondents, for appropriate action is to be regarded as falling under the category of crimes defined by articles 96 and 121 of the Criminal Code.<sup>18</sup> These non-professional correspondents, who are recruited among Party and *Komsomol* members, or who are at least "Party sympathisers" or "activists," and whose function it is to pass on to the press reports about the achievements made in their place of work in setting higher production records, obtaining better labor discipline, increasing the rationalization of labor, or otherwise improving production,<sup>19</sup> were often, in the past, subjected to physical violence on the part of those whose acts or performances were criticized by them. Therefore, as a measure of protection, these amateur journalists were permitted to remain anonymous, unknown even to their fellow-workers. The prohibition against local Soviet or public officials revealing the names of the *rabsel'kory*, or the nature of their correspondence, was another step in this direction. This material was thus equated to police examination and pre-trial investigations, or at least to confidential data for exclusive term use of the administration in question.

### *Copyright*

Article 177 of the Criminal Code punishes violations of the Soviet legislation on copyright. The penalty consists in correctional labor for a period of up to three months, or a fine of up to one thousand rubles. If no criminal intent can be proved, the offense is punishable by other means which will be discussed in the latter portion of this article.

### *Criminal Insults and Slander*

Articles 160 and 161 establish penalties for insults by way of the

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16. RSFSR Criminal Code art. 96. By analogy, the provision of article 96 are extended to material concerning the proceedings of trials which are not open to the public.

17. *Id.* art. 121. This data must be classified confidential by the chief of the given administration, or by a statute. The court will in each case evaluate the nature of such data.

18. Ruling of June 14, 1935. See *Ugolovny Kodeks RSFSR* 103 (1953).

19. See Inkeles, *Public Opinion in Soviet Russia*, Part III, C.14, at 204, 206 (1951). See also Finn, *Experiences of a Soviet Journalist* 9-15 (1954).

press<sup>20</sup> and slander.<sup>21</sup> Slander is defined as making public a circumstance known to be false to the author and dishonoring another.<sup>22</sup> In the first case the penalty consists in correctional labor for a period of up to six months or a fine of up to three hundred rubles; in the second, the punishment is somewhat more stringent: correctional labor for up to six months or a fine of up to one thousand rubles. Available information is too fragmentary to permit illustration of these articles by examples from the practice of Soviet jurisprudence. There is, however, a ruling of the Supreme Court of the RSFSR, dated November 16, 1931,<sup>23</sup> which explains that if a person is merely criticized in a wall newspaper, and this person tears down the incriminating wall newspaper, the action is to be judged by analogy with article 74 of the Criminal Code, i.e., as an act of hooliganism, punishable by imprisonment for one year.<sup>24</sup> To constitute slander, the published information must be both false *and* dishonoring. If it is merely false, but does not attack the reputation of the person involved, article 161 is not applicable, for instance, the erroneous statement that someone was suffering from tuberculosis. Similarly, if the information dishonors a person, but no specific fact, known to be false was cited, the offender may at worst be prosecuted for insults, but not for slander. For instance, to call somebody a thief, is an insult, but to accuse the same person of having stolen a silver spoon may be slander.

Slander and insults must be distinguished from the so-called "criticism and self-criticism" cases in which a person, group of persons, or an institution is explicitly called to account for not carrying out their jobs properly. Such criticism is among the most important functions of Soviet newspapers, and is encouraged by the authorities in every possible way.<sup>25</sup> The persons thus criticized cannot bring actions before the courts even if the accusations are entirely devoid of truth,<sup>26</sup> since criminal intent must exist in order to prosecute, and Party zealots who criticize their fellow workers and citizens or superiors, are presumed to have furnished the information in good faith even if it be false. Soviet newspapers complain that the exercise of "Socialist criticism" is often turned into slander, purely and simply.<sup>27</sup> Soviet law does not recognize the concept libel con-

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20. RSFSR Criminal Code art. 160.

21. *Id.* art. 161

22. According to N. S. Timasheff, this definition was taken over by the Soviet Criminal Code from the practice of the pre-revolutionary Russian Senate. Cf. *Russian Penal Law: Imperial and Soviet*, 12, *The American Slavic and East European Review* 457-58 (1953).

23. RSFSR Supreme Court, Ruling of November 16, 1931.

24. See Fogelevich, *op. cit. supra* note 10, at 258.

25. See Gruliow, *How the Soviet Newspaper Operates*, 5 *Problems of Communism* 10-11 (1956).

26. Soviet legislation does not know the "right of reply."

27. See 30 *Kommunist* 22 (1953); 32 *Krokodil* 1 (1953). However, Soviet newspapers usually do some checking up before they publish the information.

sisting in the publication or circulation of defamatory information based on truthful facts. In some continental systems, as well as in the common law jurisdictions, the truth may not be involved as a defense in a prosecution for criminal defamation. For Soviet authors, the collection, publication and circulation of such information amounts to the rendering of a service to society.<sup>28</sup> It is in the collection of such material that the *rabsel'kory* finds their natural utilization.<sup>29</sup>

Court action for insults is not precluded if the person insulted counters insult with insult, except in Azerbaidjan and the Uzbek Republic, where mutual insult is not liable to criminal prosecution.<sup>30</sup>

In the case of insult and slander, only the person offended may bring an action before the court, and the action may be extinguished by reconciliation.<sup>31</sup>

### *Right to Print and Publish*

Finally, articles 185 and 190 deal with violations of the rules concerning the multiplication and circulation of products of the press, the censorship of photographs,<sup>32</sup> and rules established for the opening and exploitation of printing plants, lithographic presses, and similar establishments.<sup>33</sup> Both violations entail correctional labor for a period of up to three months, or a fine of up to three hundred rubles.<sup>34</sup>

The rules thus protected by article 190 completely neutralize the provisions of article 125 of the Constitution. The last paragraph of that article, as we have seen, regarded the ". . . placing at the disposal of the toilers and their organizations of presses, stocks of paper . . . and other material requisites. . . ." as the best guarantee of freedom of the press. Yet, do Soviet workers really have free access to printing presses, stocks of paper and "other material requisites" enabling them to make full use of their freedom of the press? A law of 1932 provides the answer.<sup>35</sup> It

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28. See *Sovetskoye Ugolovnoye Pravo. Chast' Osobennaya* 235 (1951).

29. There are very strict limitations on the scope and nature of criticism allowed. Party line and government policy may never be challenged; only the implementation of these policies by lesser bureaucrats may be criticized. In this way the Soviet government is able to control the loyalty of the lower echelons of the administration and at the same time give the citizens the impression that they have a voice in the conduct of public affairs. Personal grievances can thus be aired, and accumulated tensions lifted without harm to the regime.

30. Piontkovsky, *Ugolovnoye Pravo: Osobennaya Chast': Prestupleniya Protiv Lichnosti* 132 (1938).

31. *Ibid.*

32. RSFSR Criminal Code art. 185.

33. *Id.* art. 190. The rules are contained in a law of 1932. See note 34 *infra*.

34. Provided the offender is not guilty of a more serious crime, e.g., a counter-revolutionary act.

35. RSFSR Laws 1932, text 288; Evtikhiev and Vlasov, *Sovetskoye Administrativnoye Pravo* 229 (1946). See also Fogelevich, *op. cit. supra* note 10, at 164-71.

states explicitly that printing offices of any kind, including those using duplicating machines such as hectographs, as well as commerce in printing equipment may be opened only by government agencies, cooperatives, and public organizations.<sup>36</sup> These are completely under the control of the government. They alone are provided with stocks of paper. However, even government agencies require a special permit for the acquisition of printing equipment or the operation of a printing office, and they exercise their printing activities under strict supervision and are bound to a periodic accounting and reporting of the paper and lead used.<sup>37</sup>

This then, is the Soviet concept of the "freedom of press," guaranteed to the citizens by the Soviet Constitution.

## II. SOME PROBLEMS OF SOVIET COPYRIGHT LEGISLATION

The Soviet author's ". . . exclusive right to publish his work . . . and to reproduce or circulate it" established by the federal Copyright Act of May 16, 1928, was dealt a mortal blow by the promulgation of the law of 1932<sup>38</sup> which does not permit him to publish his work himself, or to use the services of a private printer or publisher.<sup>39</sup> All he is entitled to, by the terms of the Soviet textbook on Civil Law,<sup>40</sup> is ". . . to receive remuneration in accordance with the quality and quantity of his labor, if the product of his labor is used by society."

Remuneration has thus become a vital element of Soviet copyright legislation, and for us it is important to know the basic principles by which remuneration is calculated. The examination of these principles will conclude with an indication of the means open to Soviet authors for the recovery of damages based upon infringement of copyright privileges.

### *Remuneration of Authors of Literary Works*

Soviet jurists readily admit that Soviet copyright legislation has been established to stimulate the creation of "ideologically superior" works which would help the Soviet people move forward on the path from Socialism to Communism. The value of a book, therefore, depends upon the degree of its usefulness to Socialist society as well as upon the amount of creative labor spent in the production of the work. Soviet law<sup>41</sup> estab-

36. See 1 Gsovski, Soviet Civil Law 64-65 (1948).

37. Id. at 65-66.

38. See note 35 supra.

39. In the present section, no attempt has been made to present a systematic survey of Soviet copyright legislation. The reader will find general information on Soviet copyright law in Gsovski's indispensable two-volume Soviet Civil Law. The subjects dealt with under the present section are not covered by Gsovski.

40. 2 Sovetskoye Grazhdanskoye Pravo 226 (1944).

41. Decree of the Council of the People's Commissars of the RSFSR of July 12, 1944, text 540; Decree of the Council of Ministers of the RSFSR of July 15, 1947, text 521; Decree of the Council of Ministers of the RSFSR of December 18, 1948, text 1261. The

lished a scale of rates for authors of literary works with gradations to allow for these elements. However, in the determination of the amount, other elements are also taken into account.

In general, we can say that the amount of royalties received by an author depends upon the four following considerations: (1) the *genre* of the literary work; (2) the volume of the work; (3) the "category" to which the publishing house assigned the work; and (4) the number of copies published (*tirage*).

The *genre*, or literary type of the work, is most important. The volume of sales will differ considerably, for example, depending upon whether the work is fiction or literary analysis. As a result, authors of the latter *genre* will be paid less per page, even if the quality of both books is the same. Thus the capitalist law of supply and demand is supplanted by the principle enunciated in article 12 of the Soviet Constitution: "From each according to his ability, to each according to his work."

The *genre* of the book must be expressly specified in the publishing contract, and the remuneration is calculated accordingly. The contract may not modify the official scale, and any attempt to do so would be automatically void with regard to the excess portion.<sup>42</sup> Similarly, when the contract provides for payment according to a lower rate, the author may sue the publishing house and receive additional payment.<sup>43</sup> But the courts have ruled that remuneration must correspond to the *genre* actually produced, even if it does not correspond to that specified in the publishing contract.<sup>44</sup> In one case tried in the Soviet Union, an author sued the publishing house which had paid him only sixty per cent of the remuneration stipulated by the contract. The court upheld the decision of the publishers and ruled that the sixty per cent constituted full payment according to the official scale, since the work was a technical treatise, and the contract provided for payment according to the rate established for fiction. The court of appeals upheld the verdict of the lower court.<sup>45</sup>

In cases when several *genres* are present in one book, for example a novel with an introduction containing literary criticism or a historical survey, Soviet jurisprudence is not unanimous. However, in the majority of cases, payment is calculated according to the basic *genre*, plus addi-

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text of these Statutes may be found in: Azov and Shatzillo, *Avtorskoye Pravo Na Literaturnye Proizvedeniya* 82-89 (1953).

42. USSR Supreme Court, Civil Division. Ruling of October 22, 1952. Text in Azov and Shatzillo, *op. cit. supra* note 41, at 89-90.

43. RSFSR Copyright Act of October 8, 1928 art. 20. (RSFSR Laws 1928, text 861). English text in 2 Gsovski *op. cit. supra* note 36, at 419.

44. USSR Supreme Court, Civil Division. Ruling of March 20, 1942. Text in Azov and Shatzillo, *op. cit. supra* note 41, at 94.

45. The case is commented on by Torkanovsky, 7 *Sovetskoye Gosudarstovo I Pravo*, 127, col. 2 (1955).

tional royalties for the author of the introduction depending upon the number of copies published of the work.<sup>46</sup> The reason for the supplement is that the *tirage* limit is smaller for belles-lettres than for fiction, if the former is published separately.<sup>47</sup>

The *tirage* limits for various literary *genres* are defined by legislation in the various union republics, and are not always uniform. In the RSFSR, the limit for one edition of fictional literature is fifteen thousand copies.<sup>48</sup> The reason for the discrepancy between the legislation in the different republics is the number of prospective readers. There will be more readers buying a Russian book than a book written in the Georgian or Mongol languages. It would have been more equitable to provide for a federal *tirage* limit with variations according to the language of the work rather than according to the place of publication. Under the present system, a book published in Kazakhstan, in Russian, is nevertheless subject to the *tirage* limits established by Kazakh legislation. There are further inequalities resulting from a difference of rates in different republics, for the same number of copies published.<sup>49</sup>

Each overstepping of the *tirage* limit is considered as constituting a new edition, and requires an additional payment of royalties.<sup>50</sup> However, there is considerable disagreement among Soviet jurists concerning the calculation of remuneration for new editions. Three schools of thought exist. Some jurists recommend that no additional payments be made to authors whose works have reached a second edition,<sup>51</sup> since such payments would contradict the principle of compensation "according to the quality and quantity of creative labor spent." Sometimes, they argue, the topic of the work calls for mass consumption and the work may easily reach several editions without additional labor on the part of the author. However, such reasoning found few supporters, and was not sanctioned by law, which stands on the point of view that the number of editions is intimately connected with the quality of the labor spent.<sup>52</sup> This quality, in turn, is determined not only by the value of the work for a Socialist society, but equally by the popularity of the book among readers. This is a completely un-Marxian approach. Soviet propagandists also maintain that books which are the most useful for a Socialist society, i.e., "ideologically superior" books, are also the most popular.<sup>53</sup> This is, of course, wishful

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46. Id. at 128, col. 1.

47. Cf. Decree of the Council of Ministers of the RSFSR of July 15, 1947 art. 1.

48. Azov and Shatzillo, op. cit. supra note 41, at 86.

49. Cf. Torkanovsky, op. cit. supra note 45, at 128, col. 2-129 col. 1.

50. Decree of the Council of Ministers of the RSFSR of July 15, 1947, art. 5.

51. See; Reichel, *Voprosy Avtorskogo I Lzobretatelskogo Prava I Proekt GK SSSR*, No. 12 *Sotsialisticheskaya Zakonnost'* 54 (1939).

52. See Torkanovsky, op. cit. supra note 45, at 129, col. 2.

53. Ibid.

thinking. It is the government which, in most cases, determines the number of editions to be published in accordance with an over-all plan.

The second school advocates the establishment of an over-all maximum for any remuneration irrespective of the number of editions reached by the work.<sup>54</sup> Jurists of this school proceed by analogy from the solution adopted by Soviet legislation on inventions and projects for mechanical improvements. However, opponents of such an extension reply that while inventors usually have a profession which gives them a steady income, receiving the compensation for inventions as an extra, authors of literary works are usually professional writers, and the money received in the form of royalties is their only source of income. Consequently they argue that there is no real basis for an analogy.

The majority of Soviet jurists are in agreement with the third school, namely that it is necessary to establish a progressive reduction of remuneration for each new edition.<sup>55</sup> This is also the solution adopted by official Soviet legislation.<sup>56</sup> This tax on "super-remuneration" is different for scientific and technical works on the one hand, and fictional literature on the other.

The amount of the compensation also depends upon the "category" to which the work is assigned by the publisher. This, in turn, depends upon the value of the work for the Socialist society. The publishing house has the discretionary power to refuse or accept a work, depending upon whether it considers the work to be a positive contribution to the building of Communism, or not.<sup>57</sup> The book will then be classified into one of three categories established by a decree of the Council of Ministers of the RSFSR on July 15, 1947. Similar decrees were issued in other union republics. Each category calls for a different scale.<sup>58</sup> The highest category comprises only works characterized as "outstanding"; the second category is made up of "good" works, maintaining a high ideological level; and the third category consists of "satisfactory" works and productions of new authors.<sup>59</sup>

The assignment of new authors to the third category is rather arbitrary, and many Soviet jurists have criticized it, advocating a remuneration based on the actual merits of the work.<sup>60</sup> In some union republics, a reform of this kind has already been carried out.<sup>61</sup>

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54. See Wachsberg, *Nekotorye Voprosy Sovetskogo Avtorskogo Prava*, No. 8 *Sovetskoye Gosudarstvo I Pravo* 39 (1954).

55. See Torkanovsky, *op. cit. supra* note 45, at 130, col. 1.

56. Decree of the Council of Ministers of the RSFSR of July 15, 1947 art. 5; Azov and Shatzillo, *op. cit. supra* note 41, at 87-88.

57. *Id.* art. 1; Azov and Shatzillo, *op. cit. supra* at 85.

58. *Ibid.* Azov and Shatzillo, *op. cit. supra* at 86.

59. *Ibid.* Azov and Shatzillo, *op. cit. supra* at 85.

60. See Torkanovsky, *op. cit. supra* note 45, at 128, col. 2.

61. *Ibid.*

Finally, the amount of remuneration depends upon the volume of the work.<sup>62</sup> The publishing contract must mention the volume by establishing a minimum and a maximum, based upon official norms, depending upon the *genre* of the work. The corresponding gradation in payment is regulated by legislation in the various union republics.

A special provision exists for translations. Legislation of the RSFSR established a scale for compensation of translators, based upon the volume and *tirage* of the work.<sup>63</sup> This solution is usually criticized by Soviet jurists, who propose to reduce the amount of royalties for each new edition, since the multiplication of editions depends upon the quality of the original work, not upon the labor of the translator.<sup>64</sup>

A law of 1947 gave authors belonging to any of the numerous small nationalities of the USSR sixty per cent of the regular rate for each translation of their works into Russian.<sup>65</sup> The reason is that translations do not constitute an infringement of copyright in the USSR, and confer an independent copyright upon the translator. However authors who write in a language of a minority are at an obvious disadvantage, since Russian translations would sell more copies than the original work, and the remuneration of the translator would exceed that of the original writer.

Some union republics have introduced special higher rates per page for translations of the "classics of Communism."<sup>66</sup>

#### *Recovery of Damages for the Infringements of Copyright*

We have seen that a special provision exists in the RSFSR Criminal Code punishing violations of copyright legislation.<sup>67</sup> If no criminal intent can be proved, article 19 of the USSR Copyright Act of 1928 provides that damages caused by an infringement of copyright shall be compensated for in accordance with the legislation of the union republics. The corresponding Copyright Act of the RSFSR explains in article 10 that: "damages caused by infringement of copyright shall be recovered under the provisions of chapter XIII of the Civil Code of the RSFSR (obligations arising from injury caused to another)."<sup>68</sup> However, article 10 con-

62. Decree of the Council of Ministers of the RSFSR of July 15, 1947, art. 1; Azov and Shatzillo, *op. cit.* supra note 41 at 86.

63. USSR Copyright Act of May 16, 1928, art. 4. (English text in 2 Gsovski, *op. cit.* supra note 36, at 400 (1949)).

64. See Torkanovsky, *op. cit.* supra note 45, at 130, col. 2.

65. Decree of the Council of Ministers of the RSFSR of July 15, 1947 art. 7, Azov and Shatzillo, *op. cit.* supra note 41, at 88.

66. Decree of the Council of Ministers of the RSFSR of December 18, 1948, text 1261, Azov and Shatzillo, *op. cit.* supra, at 89.

67. RSFSR Criminal Code art. 177.

68. English text in 2 Gsovski, *op. cit.* supra note 36, at 207-17.

tinues, the author shall be entitled to claim, instead of recovery of damages sustained, the payment of royalties according to the scale established in a procedure specified in article 4 of the Copyright Act.

Article 11 says that: "The copyright shall also be protected from infringement in cases where infringement involves no definite property interests. Regardless of the recovery of damages, the author shall have the right to claim performance of such acts as are necessary for the satisfaction of the legitimate interests of the author which have been violated."

Article 4, referred to by article 10, simply states that the amount of royalties due to the author, as well as the manner of payment of royalties in such cases, shall be determined by the RSFSR Minister of Education and by the ministers of education of the autonomous republics within their respective jurisdictions. A corresponding decree was promulgated by the People's Commissar for Education of the RSFSR, on June 8, 1930.<sup>69</sup> According to this text, the author will receive 150 per cent of royalties due according to the scale, for the publication of a literary work without his previous consent. In the case of plagiarism of works requiring the permission of the author, the author will collect 175 per cent of royalties due, calculated in accordance with the extent of "borrowing." If the "borrowed" material was "re-arranged" without in itself constituting a "new" work, the author will receive 50 per cent of the remuneration, due. The public performance of an unpublished dramatic work, musical score, pantomime, choreographic or cinematographic work, without the author's consent, entails damages to the extent of double the remuneration due. If the re-arranged "borrowed" material appeared in a textbook or another publication destined for mass education, the author is entitled to ten per cent of the remuneration calculated according to the scale and extent of the "borrowing". The damages are paid by the publishing house which published the material "borrowed", and, if the violation of copyright consisted in the adaptation of a prose work into a play or film, fifty per cent of the remuneration due the "re-arranger" will be paid to the author by the theater, or the film producer.

It should be noted, however, that article 9 of the USSR Copyright Act establishes a long list of exceptions which do not constitute infringements of copyright. The most important of these exceptions is the inserting of short separate fragments in scientific or politico-scientific symposia or scholarly anthologies, or even reprinting therein short literary and other works in full, provided that author and source are indicated. In the RSFSR selections may be published without payment of royalties to the extent of forty lines of poetry or 40,000 printed characters of other ma-

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69. Fogelovich, *op. cit. supra* note 10 at 74-76, Azov and Shatzillo, *op. cit. supra*, at 41-43.

terial.<sup>70</sup> Speeches, newspaper articles, etc., may also be quoted and, in most cases reproduced freely.

In 1944, a Soviet court upheld the royalties claim of an author who depicted in his book the construction and operation of a Soviet tractor with the aid of charts, although experts had testified that the diagrams reproduced were merely copies of the blueprints of factory models, and the text only the specifications for the blueprints, slightly re-written.<sup>71</sup> The court explained that such copying would prevent the granting of a patent, but would not constitute an infringement of the copyright.<sup>72</sup>

In general we can say that Soviet jurisprudence on "borrowings" is much more liberal than in other countries; it prohibits only "excessive" borrowings. Just what is "excessive" will be determined by the court in each case whenever the author sues the "borrower". However, the tendency is to "socialize" the product of the labor of Soviet writers to the widest possible extent. In the words of the Soviet textbook on Civil Law:

"... the author in the USSR does not have a monopoly in his work and he does not need it; if the work deserves wide circulation, the Socialist society will also have an interest in the matter."<sup>73</sup>

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70. RSFSR Copyright Act art. 5.

71. State Scientific-Technical Publishing House Mashgiz v. Morosov [1944] Sbornik Post. Pl. i Opr. Koll. Verkh. Suda SSSR; p. 333.

72. Hazard, *op. cit.* supra note 14, at 196.

73. 2 Sovetskoye Grazhdanskoye Pravo 226 (1944).