The Soviet Law of Inventions and Copyright

Bernie R. Burrus

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AMONG the great variety of personal rights recognized by Western jurisprudence is the “exclusive use” accorded to inventors in the exploitation of their inventions. Upon a demonstration of “novelty” to the proper governmental authorities, the inventor acquires a “patent” which secures to him a monopoly in the fabrication and distribution of his invention for a fixed statutory duration. By means of such acknowledgment and the legal incidents flowing therefrom, Western governments seek to stimulate inventiveness and effectuate prompt implementation of scientific-technical ideas into the economic interstices of the nation. Social purposes are thus achieved by the creation of individual “interests,” the theory being the familiar laissez faire principle that “by serving ourselves we serve all.”

Soviet law, on the other hand, rejects the fundamental egocentricity which makes up the philosophical base of the Western view. The pursuit of the social interest directly, not its indirect accomplishment by multitudinous pursuits of private profit, is thought to epitomize the “new Soviet man.” Nevertheless, to a society dedicated to materialistic achievement, and in particular to outstripping economically its great individual-centered adversary, the United States, the inventiveness of individual citizens, as well as speedy implementation of the resulting inventions into the national economy, constitute to the U.S.S.R., no less than to the United States, singularly crucial goals of national life. The

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5. See Potts v. Coe, 145 F.2d 27 (D.C. Cir. 1944).
7. Soviet policy in this regard is well stated in the Decree of the Central Executive Committee and the Council of People’s Commissars, April 9, 1931 (Sub. Zak. SSSR, No. 21, Art. 180): “In the reconstruction period, the gaining of proficiency in techniques and its develop-
manner in which the Russians have sought to effectuate these latter purposes, while simultaneously endeavoring to remain consistent with Marxist ideology, is instructive both as to the problems, limitations, and inconsistencies of the Soviet system, as well as to the testing in comparative focus of the theoretical preconceptions of laissez faire which ground the legal and economic institutions constitutive of our very way of life in the United States. Hence, it appears particularly opportune to explore in some detail the history and current operation of the Soviet law of inventions.

Historically, the Soviet law relating to inventors has undergone three principal stages. First came the sporadic nationalization decrees of 1917-1919. There followed a significant reversal of policy during the “New Economic Policy” period, which accorded some recognition to “individual rights.” Finally, in the 1930’s, with the new emphasis upon “community,” the antecedents of current Soviet practice blossomed forth.

II. HISTORICAL DEVELOPMENT
A. The Nationalization Decrees

Nascent Soviet policy regarding inventions appears to have been modeled very closely upon the earlier copyright enactments authorizing monopolization of authors’ works. Thus, by the Decree of June 30, 1919, any patent found to be useful to the State could, by decision of the Supreme Council of National Economy, be declared to be state property. The policy basis of such nationalization is certainly consistent with Marxist theory. Inventions and technical improvements form a very important constituent of the industrial complex, and such, during the transitional stage preceding the advent of “pure Communism,” was reserved to the exclusive ownership of the State.

Assuming nationalization, however, the question remained of the treatment to be accorded to inventors. They were not, as a rule, big capitalists, whose property could thus be expropriated without compensation. Rather, they were employees of the big capitalists, i.e., an

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8. Decree of December 29, 1917 (RSFSR Laws 1917-1918, text 201); Decree of November 26, 1918 (RSFSR Laws 1917-1918, text 900); see notes 180-82 infra and accompanying text.
"exploited class." In consequence, royalty payments from the State were prescribed in the event of nationalization of particular inventions.11 By this means, the Soviet inventor became converted into a kind of wage-earner, a proletarian. While he did not possess "rights of exclusive use" or "property rights" in the traditional Western sense, he was, nevertheless, not deprived of all rights in regard to his invention. His right, in the event of nationalization, was transformed into a right to receive remuneration. All other rights or interests inhering in the invention became the exclusive property of the State.

On the other hand, patent-holders of nonappropriated inventions were left to profit as they might from the "normal market process."2 Exclusive rights in the invention, in this event, adhered in the inventor; he, however, possessed no claim for remuneration from the State. This last, with the increasing nationalization of industry, became a considerable disadvantage, since no means were available for independent exploitation and development of inventions.

Regarding inheritance, patent law likewise followed the copyright practice.13 In fact, the Patent Decree incorporated by reference the provisions of the Copyright Decree on Inheritance of Royalties,14 allowing only needy relatives any maintenance from the decedent's estate. The heirs, in consequence, were denied even the right to remuneration. Rather, their claim against the estate was, of necessity, a general one, predicated upon need and detached from any notion of an interest devolving upon them in their own right.15

General control was attempted under the Decree by means of a certification procedure within the auspices of a so-called Patent Committee.16 The latter was charged with keeping records and coordinating patent activity generally within the country. By modern standards, however,

12. See Hazard, op. cit. supra note 11. "Normal market process," however, appears somewhat of a misnomer, since with nationalization rapidly subsuming the economy, very little was evidenced of either normality or a market mechanism. See Schwartz, op. cit. supra note 10.
13. See notes 180-84 infra and accompanying text.
15. The early Soviet antipathy towards inheritance, of which the patent provisions are illustrative, is treated at length in Hazard, Law and Social Change in the U.S.S.R. 28-34 (1953).
the body was extremely weak, and few, if any, positive results appear to have ensued during its reign.

B. The New Economic Policy Period

As nationalization progressed, the wheels of industry ground to an agonizing halt. The capitalist class and techniques of production had been purged, but apparently more was required to make a national economy work than wild-eyed Bolsheviks and Das Kapital. Pragmatist that he was, Lenin was quick to recognize that theory had to bend, at least temporarily, to practical immediate needs. The resulting partial restoration of private enterprise, i.e., the N.E.P. enactments of the 1920's, quite naturally permeated the field of invention law. The possibility of private industry, of course, eased the plight of non-appropriated patent-holders, who now had means of manufacturing their own inventions or of assigning their rights to private enterprise for profit. Further, on September 12, 1924, a new patent law was enacted. Framed on the German model, it afforded the patent-holder an exclusive right similar to that in capitalist countries. As the Soviet Information Bureau summarized the new law: “The patent gives exclusive right to the inventor to exploit the invention industrially in the U.S.S.R. The patentee may manufacture and sell his invention, he may license other manufacturers, or he may sell or assign his patent.”

For prerevolutionary patents issued after January 1, 1910, the law required reissuance, “novelty” being examined as of the date of the original application. The protective time-period was fifteen years; reissues, however, were computed from the date of original certification. Finally, inheritance, discouraged under the earlier enactments, was once again permissible in regard to inventor’s rights.

The policy behind the enactment is evident. Industrial progress required invention, and invention, in turn, had to be induced by means other than mere “wage claims.” The latter were not effective, not, at any rate, during the early period of “reeducating” the masses in terms of

17. This period lasted from 1922 to 1929. See 1 Gsovski, Soviet Civil Law 21 (1948).
18. For an excellent first-hand account of the problems experienced during the incipiency of Soviet National Economy, and the manner in which the Government sought to handle them, see Liberman, Building Lenin’s Russia (1945).
19. For a discussion of this period from a legal point of view, see Berman, Justice in Russia 7-50 (1950); 1 Gsovski, Soviet Civil Law 21-34 (1948).
20. USSR Laws 1924, text 97.
22. Patents issued before this date were declared to have expired.
23. USSR Laws 1924, text 97.
24. Ibid.
25. Ibid.
26. Ibid.
"social consciousness," i.e., in terms of a "duty" to supply the State with useful inventions, as opposed to notions of "personal rights" in the invention supplied.\textsuperscript{27} Hence, during the middle and late 1920's, Soviet policy reverted to traditional Western notions of promoting scientific-technical progress. The egocentric individual was supplied with "exclusive rights" which he might exploit in pursuit of his own profit, thereby promoting, in the aggregate, social ends.

C. The 1930's and The New Emphasis

The "personal rights honeymoon" did not last for long, however. As political power became consolidated and a new group of managers and technicians became trained, the strict theorists began to bend policy back into accord with Marxist tenets. As explained in the Preamble to the Decree of April 9, 1931:

The patent legislation existing up to the present time, preserving the interests of the inventor by means of allowing him exclusive rights to his inventions, already is out of accord with the aspirations of the leading inventors, those who are conscious of their position as the builders of socialist society.

It is necessary to create new forms for mutual relations of the toiling inventors with the socialist government, which will accord with the role of the working inventor, as the direct participant in the building of socialism.\textsuperscript{23}

With the new emphasis on "community," state industry was expanded drastically. This, in itself, would have all but emasculated the concept of "exclusive rights" in patents; nevertheless, the State went even further, expressly prohibiting the personal manufacture of inventions except on the scale of an artisan.\textsuperscript{29} Further, patents could no longer be licensed to private enterprises, the State assuming exclusive prerogatives in this regard.\textsuperscript{30}

The 1931 law was modified to some extent by the Decree of July 22, 1936,\textsuperscript{31} and both were replaced by the Statute of March 5, 1941\textsuperscript{32} and the implementing Instruction of November 27, 1942.\textsuperscript{33} As suggested in the earlier laws, and brought to fruition in the Statute and Instruction of the early 1940's, a new concept regarding inventor's rights was promulgated—the "author's certificate."\textsuperscript{34} The issuance of the certificate effected

\begin{itemize}
\item \textsuperscript{27} See 1 Gsovski, Soviet Civil Law 22 (1948).
\item \textsuperscript{28} USSR Laws 1931, texts 180, 181.
\item \textsuperscript{29} Hazard, Law and Social Change in the USSR 189 (1953).
\item \textsuperscript{30} Ibid.
\item \textsuperscript{31} USSR Laws 1936, text 334.
\item \textsuperscript{32} USSR Laws 1941, text 150 (English text in 2 Gsovs'd, Soviet Civil Law 361-64 (1949)).
\item \textsuperscript{33} USSR Laws 1942, text 178 (English text in 2 Gsovski, Soviet Civil Law 385-97 (1949)).
\item \textsuperscript{34} See 1 Gsovski, Soviet Civil Law 594-95 (1948).
\end{itemize}
an automatic assignment of the invention, along with the right of exploitation, to the State. The author's control over use (or non-use) was, in consequence, forever abnegated. He, in turn, in a manner reminiscent of the days of the nationalization decrees, reserved only the right to remuneration, the latter being calculated on the basis of savings to industry. The reversion to earlier policy was not complete, however, as the patent device was retained under the 1941 statute. Thus, if the inventor desired, he could apply for a patent, rather than an "author's certificate," and secure to himself monopoly rights in the invention for a period of fifteen years. He could not exploit the invention himself, however, except as an artisan, and the only object of a license agreement was a state industry. Further, the Council of Ministers was authorized to declare compulsory alienation to any industry asserting a state interest in the invention.

State policy in regard to the "choice" of the inventor in deciding between a patent and a certificate of authorship is clear in favoring the latter. Thus, the right to remuneration adhered only in the certificate, not in the patent. In addition, lucrative income tax exemptions and job priorities favored holders of certificates, such being expressly denied to patent-holders.

It is significant that government policy in this period employed indirect means to accomplish its objectives. Patents were not abolished outright as certainly would have been consistent with Marxist notions of nationalization of the tools of production. In fact, the very idea of "monopoly rights" in an individual would appear to be an anathema to consistent Marxism. Further, even under the certificates, great pecuniary

35. Ibid.

36. A translation of the schedule is contained in 2 Gsovski, Soviet Civil Law 389 (1949). For a detailed discussion of the calculation of such savings under the 1941 statute, see Hazard, Law and Social Change in the USSR 205-07 (1953). See also notes 113-19 infra and accompanying text.

37. USSR Laws 1941, text 150, tit. III, §§ 42-49 (English text in 2 Gsovski, Soviet Civil Law 376-77 (1949)).

38. That the choice is clearly his own is emphasized in the very first article of the 1941 statute. See 2 Gsovski, Soviet Civil Law 361 (1949).

39. Neither could the invention be exploited abroad without government approval; and for violations of the prohibition, criminal penalties were prescribed. See RSFSR Criminal Code § 58 (English text in 2 Gsovski, Soviet Civil Law 383 (1949)).

40. USSR Laws 1941, text 150, tit. I, § 4(d) (English text in 2 Gsovski, Soviet Civil Law 363 (1949)).

41. USSR Laws 1941, text 150, tit. VII, § 70 (English text in 2 Gsovski, Soviet Civil Law 384 (1949)).

42. USSR Laws 1941, text 150, tit. VII, § 72 (English text in 2 Gsovski, Soviet Civil Law 384 (1949)).
and status advantages were accorded to inventors, not on the basis of "need," but on the basis of "contribution," i.e., of savings which their ideas occasioned in the productive process. Once again, the Leninist theme appears manifest: Invention and its utilization must be effectuated, and if this means the employment of bourgeois notions of "rights," "property," and "the economic man," so be it, but at least dress it up in Marxist attire. The detailed exposition of the current Soviet statute, which follows, indicates with some considerable opportunity for insight, the extent to which these concepts are now incorporated into Soviet practice. Such, it is submitted, should go a long way toward explicating the frequent divergencies, in Soviet Russia, between word and action, between theory and practice.

III. THE 1959 STATUTE

The 1959 statute, which constitutes the current Soviet law of inventions, reproduces, in substance, the 1941 statute. It is important to note, however, that there are areas of significant alteration.

A. Categories and Instruments of Protection

At the outset, the 1959 statute contains a new classification, both of protectible items and of instruments for achieving such protection. The 1941 law and its implementing instruction had prescribed three categories of statutory application: (1) inventions, (2) technical improvements, and, (3) rationalization procedures. Inventions were protected by either "certificate of authorship" or "patent," the choice between the two devices, with the exception of certain items reserved solely to certifi-

43. In a society with limited incomes, the status differentiation becomes very significant. Thus, additional living space allotments, for example, assume a social significance difficult to imagine within our own society.

44. Statute concerning Discoveries, Inventions and Rationalization Proposals, enacted by the Council of Ministers of the USSR, April 24, 1959 (English text in 58 Pat. & T.M. Rev. 247-56, 296-98, 322-27 (1960)).

45. USSR Laws 1941, text 150 (English text in 2 Gsovski, Soviet Civil Law 361-84 (1949)).

46. The term was defined in the 1944 Soviet textbook as follows: "If a suggestion is of a technico-constructive nature (e.g., new construction of a machine) or one which alters the technological side of the production process and is a novelty from the point of view of world technique, it is considered an invention." 2 Civil Law 258-59 (1944) (English text in 1 Gsovski, Soviet Civil Law 596 (1948)).

47. "If the suggestion offers a solution to a technical problem that appears new only for the given establishment or a certain phase of production under the actual condition of its technical progress, it is a technical improvement." Ibid.

48. The term was defined as "suggestions . . . which, without essential change in construction or technological processes, improve production techniques or processes by means of more effective use of equipment, materials, or manpower." 1 Gsovski, Soviet Civil Law 593 (1948).
carnation, residing in the inventor. Technical improvements and rationalization procedures were protected by certificate only.

The 1959 statute, similarly, contains three categories of protectible items; the categories, however, are different. Thus, currently, (1) discoveries, (2) inventions, and, (3) rationalization proposals, comprise the statutory scheme. Discovery, the totally new category, is defined as "the establishment of hitherto unknown objective laws, properties or phenomena of the material world." Geographical, archeological, and paleontological discoveries however, as well as discoveries of useful mineral deposits and discoveries in the field of social sciences, are excluded from the application of the statute.

Invention is defined as "any essentially new solution of a technical problem in the fields of National Economy, Culture, Health or National Defence, where a positive result is achieved." Thus, the hazy and troublesome distinction between invention and technical improvement that persisted under the previous law, would appear to have been obviated by the merger, in the new statute, of the two categories—subject, of course, to the limitations of "novelty" and "positive results." The exclusion from statutory application of substances chemically derived is carried over into the new law.

Rationalization proposals are defined as:

improvements or developments of known techniques relating to machines, instru-

50. Decree of the Council of Ministers of the USSR of April 24, 1959, § 1 (English text in 58 Pat. & T.M. Rev. 247 (1960)) [hereinafter cited as Decree].
51. Ibid. § 2 (English text in 58 Pat. & T.M. Rev. 247 (1960)).
52. Ibid. § 3 (English text in 58 Pat. & T.M. Rev. 247 (1960)).
53. Ibid. § 4 (English text in 58 Pat. & T.M. Rev. 247 (1960)).
54. See Kulbin v. People's Commissariat of the Food Indus. of the U.S.S.R., § Sov. Yust. 34 (1940), as reported in Hazard & Weisberg, Cases on Soviet Law 191-92 (1950). As the case indicates, the haziness of the distinction between inventions and technical improvements may have been deliberately contrived by the Soviets. Inasmuch as the remunerative scale is substantially higher in the case of inventions, a finding that the innovation is only a technical improvement has the effect of reducing the compensation. And as Hazard has commented, the Soviet authorities "are concerned with limiting royalties and do not relish the thought of the emergence of a group of men who claim a share of the income of large segments of the industrial plant of the U.S.S.R." As he concludes, however, "within the limits set... the policy of the leaders is indicated to be the favoring of the ingenious individual who improves the productive process and makes possible important savings to the state." Hazard, Law and Social Change in the U.S.S.R. 210 (1953).
55. See note 53 supra and accompanying text. The United States requirements are similar. See note 2 supra.
56. Ibid. § 4 (English text in 58 Pat. & T.M. Rev. 247 (1960)).
ments, appliances, equipment, apparatus, assemblies and such like, improvement in productive capacity, in industrial technology, in the methods of control, observation and research, safety technique and protection of operators or proposals affording increase of output and more efficient use of energy, equipment and materials.\[57\]

Those improvements falling into category (2) of the old law which, due to failure to satisfy the "novelty" requirement are denied protection of category (2) of the new law, would seem, in the light of the broad language just quoted, accessible of protection as rationalization proposals under the 1959 statute. Thus, the scope of protection has been reduced in no way under the law, and has, in fact, been aggrandized to the extent of the new "discovery" category.

In addition to the above changes just noted in the classification of protectible items, the instruments for effecting such protection have also undergone revision. Thus, discoveries are protectible by "diplomas";\[58\] inventions, by either "patents" or "certificates of authorship";\[59\] and rationalization proposals by "attestations."\[60\] The diplomas and attestations, however, resemble the certificate in all important particulars,\[61\] so that the changes in this regard appear to be in name only.

B. The Preference for Certificates

As under the old law, the choice between patent and certification protection for the invention category is reserved to the inventor.\[62\] A host of restrictions, however, appear in favor of certification. Thus, for medical, flavoring and food substances, new methods of treating diseases, and new and improved species of animal and plant life, only a certificate, and not a patent, is issuable.\[63\] The animal and plant life exclusion did not appear in the 1941 statute, which would seem to indicate somewhat an increasing government antagonism toward patents under the new law. Also, where the invention is pursuant to normal employment duties or where aid in its effectuation is received from state or public bodies, the patent device is precluded.\[64\] Certification, in such event, however, is possible, and the inventor receives the appropriate royalty payments in addition to his regular wage.

Filing and issuance fees are charged for patents, but not for certificates,
diplomas, or attestations. In addition, if a patent application is rejected, fees and expenses are charged to the applicant in the event of appeal. Such is not the case in the appeal of rejected applications for certificates, the relevant papers and other expenses being accorded as a matter of right. Further, contestation of the issuance by other claimants is allowed during the entire period of the patent, whereas, such contest is precluded after one year in the event of certification.

The concluding six sections of the new statute contain the most conducive provisions for certification rather than patent. Thus, remuneration according to a fixed schedule promulgated by the State, a tax exemption on the first 10,000 rubles of income derived from the invention, job preferences in research establishments, and additional living space allotments, all adhere in the certificate, but are expressly denied to patent holders. Discoverers and rationalizers, on the other hand, share in the privileges thus accorded. Patent holders may license their inventions for exploitation only to state industries, which, on the other hand, may appropriate them without the patent holder's consent upon a demonstration of state interest. Finally patents may be utilized outside the national borders only with government consent, which, as might be expected, is rather difficult to obtain.

With such an assortment of inducements in favor of certification, it is a wonder that patents have survived at all under the Soviet system. Nevertheless, the device is not quite yet the corpse that the Soviets evidently desire.

<table>
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<th>Year</th>
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<td>18</td>
</tr>
<tr>
<td>1959</td>
<td>8569</td>
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It seems significant that whereas certificates only doubled in issuance in the three-year
C. Registration Procedure

Inasmuch as the registration procedure differs as among the four protective devices, separate treatment is herein accorded. First, as regards diplomas, the author makes application to the newly-created Committee for Inventions and Discoveries. A detailed description of the discovery, as well as documentary evidence of the date of formulation, must be appended to the application. The Committee may request, within ten days of receipt of the application, supplemental information; and the author, in this event, has one month in which to comply. The application is then referred to a scientific academy to ascertain "novelty." The academy, in turn, must, within three months, report back to the Committee its conclusions and the reasons therefor. If thus approved, the Committee prints the discovery in its bulletin, and if no contestation occurs within the prescribed time-period, the diploma of discovery is issued. If the diploma is refused, the applicant is allotted one month to appeal to the chairman of the Committee, whose decision, however, upon matters of issuance, is final.

In respect to certification, application is likewise addressed to the Committee for Inventions and Discoveries. Supplemental information may be obtained as described, and subject to the time period prescribed therein, in the diploma procedure. Enough information must be disclosed to satisfy the "novelty" requirement which the Committee itself determines by scrutiny both of Soviet and of foreign literature. To ascertain "usefulness," the Committee secures an opinion from the appropriate ministry, department, or other public body concerned with

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80. The procedure for registering discoveries is contained in Decree §§ 27-29 (English text in 58 Pat. & T.M. Rev. 251-53 (1960)).
82. Decree § 27 (English text in 58 Pat. & T.M. Rev. 251-52 (1960)).
83. Decree § 30 (English text in 58 Pat. & T.M. Rev. 253 (1960)).
84. Decree § 28 (English text in 58 Pat. & T.M. Rev. 252 (1960)).
85. Ibid.
86. Ibid.
87. Decree § 29 (English text in 58 Pat. & T.M. Rev. 252-53 (1960)).
88. The procedure is described in Decree §§ 30-46 (English text in 58 Pat. & T.M. Rev. 253-56 (1960)).
89. Decree § 41 (English text in 58 Pat. & T.M. Rev. 255 (1960)).
90. Decree § 30 (English text in 58 Pat. & T.M. Rev. 253 (1960)).
91. Ibid.
92. Decree § 35 (English text in 58 Pat. & T.M. Rev. 254 (1960)).
the subject-matter of the invention.\textsuperscript{3} Two months are allowed for such report.\textsuperscript{4} Upon satisfaction of the two requirements, publication is made in the bulletin and the certificate is issued.\textsuperscript{5} The Committee must, in any event, communicate its final decision, with accompanying reasons, to the inventor within four months of receipt of the application.\textsuperscript{6} If the decision is adverse, the inventor is accorded one month in which to appeal to the chairman of the Committee, whose decision, on the question of issuance, is final.\textsuperscript{7} Contestation of an award of a certificate, for reasons that the invention is not new or that the person certified is not the author, is permitted for one year after publication.\textsuperscript{8} The question of "novelty" is decided finally by the Committee.\textsuperscript{9} Recourse to the courts, on the other hand, is provided for the settlement of questions of authorship.\textsuperscript{10}

The patenting procedure is similar to that prescribed for certification,\textsuperscript{11} with the exception that in the former instance, fees and expenses are charged to the applicant.\textsuperscript{12} Upon issuance, the patentee acquires exclusive use of the invention and may grant a license for development.\textsuperscript{13} Failure to register such licensing agreements with the Committee, however, renders them void and of no effect.\textsuperscript{14} The doctrine of "prior use" is provided, thus permitting those already utilizing the invention to continue to do so.\textsuperscript{15} Finally, if the invention is appropriated by the State, the Committee establishes the remuneration to be afforded to the deprived patentee.\textsuperscript{16}

The attestation procedure\textsuperscript{17} differs from that of diplomas, certificates, and patents, in that application is made, not to the Committee, but directly to the enterprise which would use the rationalization proposal, or if capable of wide use, to the relevant ministry.\textsuperscript{18} An enterprise has fifteen days to examine and pass upon the proposal; a ministry, on the

\textsuperscript{3} Decree § 37 (English text in 58 Pat. & T.M. Rev. 254-55 (1960)).
\textsuperscript{4} Ibid.
\textsuperscript{5} Decree § 42 (English text in 58 Pat. & T.M. Rev. 255 (1960)).
\textsuperscript{6} Decree § 39 (English text in 58 Pat. & T.M. Rev. 255 (1960)).
\textsuperscript{7} Decree § 41 (English text in 58 Pat. & T.M. Rev. 255 (1960)).
\textsuperscript{8} Decree § 44 (English text in 58 Pat. & T.M. Rev. 256 (1960)).
\textsuperscript{9} Decree § 45 (English text in 58 Pat. & T.M. Rev. 256 (1960)).
\textsuperscript{10} Decree § 46 (English text in 58 Pat. & T.M. Rev. 256 (1960)).
\textsuperscript{11} Decree §§ 47-49 (English text in 58 Pat. & T.M. Rev. 296-97 (1960)).
\textsuperscript{12} Decree § 47 (English text in 58 Pat. & T.M. Rev. 296 (1960)).
\textsuperscript{13} Decree § 48(c) (English text in 58 Pat. & T.M. Rev. 296 (1960)).
\textsuperscript{14} Ibid.
\textsuperscript{15} Decree § 48(f) (English text in 58 Pat. & T.M. Rev. 296-97 (1960)).
\textsuperscript{16} Decree § 48(g) (English text in 58 Pat. & T.M. Rev. 297 (1960)).
\textsuperscript{17} Decree §§ 54-57 (English text in 58 Pat. & T.M. Rev. 322-23 (1960)).
\textsuperscript{18} Decree § 54 (English text in 58 Pat. & T.M. Rev. 322-23 (1960)).
other hand, has one and one-half months.109 The final decision pertaining to questions of issuance resides in the director with the assistance of the trade union.110 In such cases, no recourse is available to the courts;111 only as to questions of priority of claims is judicial remedy prescribed.112

D. Inventors' Rights: Remuneration

The numerous incidental benefits accruing to holders of certificates of authorship, diplomas, and attestations have already received mention in this article.113 The principal right, however, of the holder of one of these instruments, is the right to receive remuneration. Such is computed on the basis of one year's savings to industry, which, unless the invention will not reap the greatest benefits immediately, is the first year of application.114 In the event of forestalled benefit, the best of the first five years constitutes the year of calculation, interim payments being made to tide the inventor over.115 For improvements in quality of production or product, where no measurable pecuniary savings accrue to industry, compensation is determined by the director, department head, or minister, who is passing on the proposal.116

Complaints regarding the amount of compensation awarded are heard first by the administration of the local enterprise which bears the responsibility for implementing the invention or proposal.117 Appeal from the decision of the body is available, for a period of one month, to the overseeing trust or department,118 and if the inventor is still dissatisfied, recourse is then available to the courts.119 This last represents an innovation in the 1959 statute; redress under the earlier law being confined strictly to administrative process.

E. General Direction and the Introduction of Inventions

Under the 1941 statute, application for certification was made directly to the industry concerned.120 A Central Bureau of Inventions existed,

109. Ibid.
110. Decree § 55 (English text in 58 Pat. & T.M. Rev. 323 (1960)).
111. Decree § 57 (English text in 58 Pat. & T.M. Rev. 323 (1960)).
112. Decree § 56 (English text in 58 Pat. & T.M. Rev. 323 (1960)).
113. See notes 70-74 supra and accompanying text.
114. See Hazard, Law and Social Change in the U.S.S.R. 205-07 (1953). Although the figures given are now out of date, the procedure of computation remains current.
115. Id. at 206.
116. Id. at 207.
117. Decree § 19 (English text in 58 Pat. & T.M. Rev. 250 (1960)).
118. Ibid.
120. USSR Laws 1941, text 150, tit. I, §§ 3, 9 (English text in 2 Gsovsld, Soviet Civil Law 362, 364 (1949)).
but its functions were quite limited by modern standards.\textsuperscript{121} This lack of a clear locus of power, naturally, led to considerable red tape, bureaucracy, and delay in passing upon inventions and implementing them in practice.\textsuperscript{122} The new statute, in establishing the Committee for Inventions and Discoveries, seeks to counteract such evils of fragmentation. The Committee is vested with considerable power,\textsuperscript{123} and all applications for diplomas, certificates, and patents are to be addressed directly to it, rather than to individual industries as under the previous practice.\textsuperscript{124} The Committee, in turn, sends a quarterly register of inventions to the planning authorities.\textsuperscript{125} The latter then make decisions regarding the use of inventions, \textit{i.e.}, indicate the various enterprises to be charged with the introduction of the invention and the time-period to be so allowed.\textsuperscript{126} The enterprise must then establish an experimental work schedule, put the invention into operation, and publish regular reports of the results.\textsuperscript{127}

Concerning government policy in speeding up the introduction of inventions, attention should also be directed to the specific time-periods allotted to each stage of the registration process.\textsuperscript{128} The time allotments constitute specific duties on the respective officials and failure to comply entails criminal penalties.\textsuperscript{129} By this means, issuance, as well as implementation, is sought to be facilitated. In accordance with the current Soviet business policy of unitary management,\textsuperscript{130} responsibility for implementation is located squarely on the director.\textsuperscript{131} Red tape, distortion, and bureaucracy in failing to utilize inventions occasion criminal responsibilities under familiar Soviet concepts of "wrecking."\textsuperscript{132}

Thus, by locating the issuing power in a central body, setting up channels for the rapid dissemination of information, clearly locating respon-
sibility for the introduction of inventions and new techniques, and by providing for criminal penalties in the event of dereliction, the new statute seeks to accomplish what the old law was unable to achieve—the speedy amalgamation of inventions into the national economy. 133

F. Miscellaneous Provisions

Aliens enjoy equal privileges under the new statute with citizens of the U.S.S.R., providing, of course, the existence of reciprocity. 134 Thus, unlike the copyright statute, 135 no discrimination is evidenced respecting foreigners residing abroad. The right to obtain diplomas, patents, certificates, and attestations, passes by inheritance under the new law, as does the right to receive royalties. 136 This provision, as is evident, is reflective of the new Soviet policy in favor of free testation. 137 Finally, supplemental certificates or patents are prescribed in the event of improvements in basic inventions, where the new invention cannot be utilized without making use of the old. 138 In such cases, a somewhat reduced scale of remuneration is provided. 139

IV. Observations and Conclusions

As the foregoing exposition indicates, the policy of the Soviet statute is the socially-oriented one of fostering inventiveness and of implementing the resulting fruits of such activity as rapidly as possible into the industrial complex. As to this primary end, the United States practice is in complete accord. 140 In the United States however, an additional end is cognized. Thus, though subsidiary to overriding social purposes, the individual rights of inventors are recognized, under our system, as fully-protectible ends in themselves. 141 These individual ends possess double significance in our theory, constituting, in addition to the independent rights accorded to inventors, the means for achieving the social ends. 142

133. See generally Clesner, The Coordinated Soviet Effort to Promote and Apply Major Inventions, 4 P.T.C. J. Res. & Ed. 212 (1960).
134. Decree § 14 (English text in 53 Pat. & T.M. Rev. 249 (1960)).
135. USSR Copyright Act of May 16, 1928, § 2 (English text in 2 Greveld, Soviet Civil Law 399 (1949)).
136. Decree § 16 (English text in 53 Pat. & T.M. Rev. 249 (1960)).
137. See New Draft Principles of Civil Legislation art. 95 (English text in the Current Digest of the Soviet Press, vol. XII, No. 34, p. 9).
138. Decree §§ 50-53 (English text in 53 Pat. & T.M. Rev. 297-93 (1960)).
140. See Sinclair & Carroll Co. v. Interchemical Corp., 325 U.S. 327 (1945); Associated Plastics Cos. v. Gits Molding Corp., 182 F.2d 1000 (7th Cir. 1950).
Soviet practice, on the other hand, regarding the interest of inventors as an independent end or means, is not so evident. The policy of the nationalization decrees was clear in abrogating any thought of “exclusive rights” in inventors, as either ends or as the means of achieving social purposes. Contrariwise, the N.E.P. period employed the language, at least, of end-values in according “exclusive rights” on the Western model. It is doubtful, however, in the light of Marxist theory and the “community-emphasis” period which followed, that anything other than a means analysis may be imputed to the 1924 law. Yet, the patent device was not abolished by the 1931 enactment, nor has it been under the 1959 statute. By his own choice, the Soviet inventor may appropriate to himself a “monopoly” in his invention together with the accouterments, at least terminologically, that the patent device embraces in the United States. On the other hand, his inability to exploit the invention himself or by foreign license, together with the overwhelming inducements in favor of other means of development, would seem, as a practical matter, to deprive the patent holder of the substantive rights accorded under Western theory. Here, in capsule form, appears the great difficulty and confusion manifest when one social system employs the terminology and conceptualizations of a theoretically different, and in many ways contradictory, social order for describing its own institutions and practices. Thus, the Soviets utilize the language of “patent,” “property,” “rights,” etc., but intend, at least in practice, something radically different from their counterparts in Western societies. The best example of such dichotomy, however, appears in the area of “inventors rights”—a concept which runs throughout both the United States and Soviet statute, and which, of necessity, is of singular import to both systems.

Under United States practice, the right of the inventor is a property right, by which he secures to himself a monopoly in the use and development of the invention for a period of seventeen years. He may manufacture it himself or license it out to private enterprise for exploitation, obtaining by means of free contract the best terms he is able to get.

The language of the Soviet statute is, likewise, in terms of “inventors’ rights.” The words, however, have a meaning different in Soviet practice from that in the United States. The possibility of “monopoly rights” is all but obliterated in the inducements away from the patent device. In addition, private exploitation is denied outright, and the licensing power is severely constricted. Just how much out of accord with Western notions the Soviet practice is, is indicated by the following language from the Soviet textbook of 1944:

143. See note 101 supra and accompanying text.
However, it should be pointed out that soviet inventors, in contrast to inventors in a capitalist society, are not interested in retaining a monopoly for their inventions; being advanced men of production, they are concerned with the utmost utilization of their suggestions by the socialist enterprises.\textsuperscript{446}

Certification, the Soviet alternative to patent protection, in similar manner, uses the terminology of “inventors’ rights,” and it is here that the concept has undergone its greatest alteration. The “right” thus accorded to inventors is primarily a right to remuneration.\textsuperscript{447} All rights of use, exploitation, and development are assigned irrevocably to the State, the inventor being afforded in return a kind of wage-claim against the appropriate state industry or agency. As Gsovski has summarized it: “Therefore, the Soviet patent law is rather a system of bonuses to the employees for any kind of suggestion improving production.”\textsuperscript{448} In all fairness to the Soviet practice, it must be admitted that inventors are rewarded in many instances, where no such benefit would accrue to authors of similar inventions in the United States. We, for example, have no statute awarding “discoveries.” In addition, under current United States employment practices, the contract of employment assigns all rights to inventions discovered in the course of employment to the employer; the employee, as a matter of right, having no claims regarding the fruits of his discovery.\textsuperscript{449} As was indicated earlier,\textsuperscript{450} Soviet practice is to the contrary. This, in fact, is the great advantage claimed by the Soviets for their system:

In bourgeois society, patent law is designed to protect the interests of the capitalist and not those of the true inventor. In the majority of instances, inventions are made by the employees of an enterprise. But patents for these inventions are usually appropriated by the owners of the enterprises. . . . In a capitalist society invention is merchandise the price of which is fixed by the party which is economically stronger. All profits from an invention go, as a rule, to the pocket of the capitalist. Only in exceptional cases, the inventor succeeds in using the benefits flowing from his invention, but in these cases he himself becomes a capitalist.\textsuperscript{451}

It should also be mentioned that the pecuniary rewards to Soviet inventors are not mere token payments; besides being guaranteed, the payments are substantial.

As the preceding comparative analysis demonstrates, then, social ends constitute the raison d’etre of the invention statutes both of the U.S. and of the U.S.S.R. Additionally, as regards means, at least, both

\textsuperscript{146} 2 Civil Law 254 (1944); see 1 Gsovski, Soviet Civil Law 603 (1948).
\textsuperscript{147} There are, of course, also the status privileges accorded under the Decree §§ 72-77. (English text in 58 Pat. & T.M. Rev. 326-27 (1960)).
\textsuperscript{148} 1 Gsovski, Soviet Civil Law 602 (1948).
\textsuperscript{149} See Dinwiddie v. St. Louis & O’Fallon Coal Co., 64 F.2d 303 (4th Cir. 1933).
\textsuperscript{150} See generally notes 51-61 supra and accompanying text.
\textsuperscript{151} 2 Civil Law 250-52 (1944); see 1 Gsovski, Soviet Civil Law 602 (1948).
recognize the value of the lure of material gain in achieving these ends. But, whereas in United States practice an independent end value is accorded to the inventor in his own right, in Soviet practice the equivalent patent device bestows a mere "right" without substance, and certification, on the other hand, evinces a radical redefinition of "rights" so as better to accord with Marxist philosophy. Whether the true patent device, or the mere patent shell together with an alternative right to remuneration, will prove the more effective procedure remains to be seen. This is but another facet of the persistent struggle between the ideas and practices of the two great nations. It is significant, however, that the Soviets have, at least, thought it necessary to utilize the terminology of "rights" and to employ the old "bourgeois" profit motive in the pursuit of their social aims.

From the point of view of the individual inventor, it is not my intention to attempt to judge between the "rights" accorded by the two countries. In fact, the very qualitative difference in the meaning of the term under the two systems would seem to defy such evaluation. Rather, by the preceding analysis, I have sought to demonstrate a number of the problems and difficulties encountered by a new social system in attempting to utilize, or not to utilize, foreign conceptual tools in achieving its various social objectives. Here, in concrete form, appears the stress and strain between word and action, between theory and practice, which characterizes Soviet legal institutions. Here, in comparative focus, may we test our own preconceptions concerning the value of personal rights and the profit motive, and find them vindicated to the extent of their recognition and utilization by a social order theoretically dedicated to their very obliteration.

PART TWO: SOVIET LAW OF COPYRIGHT

I. PREREVOLUTIONARY COPYRIGHT

A. Early Imperial Enactments

Protection by means of statutory copyright of what in Anglo-American jurisprudence is denominated "literary property," was first recognized in Russia by the imperial enactments of 1828.3 Interestingly, formal registration, the familiar procedural prerequisite of the American statutory copyright, was absent from the provisions of the Russian law;
the mere act of creation of the work sufficing to activate the statutory provision.\textsuperscript{155}

By modern standards, the original act, in limiting application to authors and translators, was of somewhat restrictive scope. The protection prescribed, however, within the class thus delimited, was more in accord with modern views. Thus, the author or translator was endowed with the "exclusive right to reproduce, publish and disseminate his work by all possible means."\textsuperscript{156} At his death the copyright succeeded to his heirs or beneficiaries and was secured to them for twenty-five years from the death of the creator.\textsuperscript{157}

Enactments in 1830\textsuperscript{158} and 1857\textsuperscript{159} prolonged the protective time-period—in the former case, for an additional ten years upon issuance of a new edition within five years prior to the normal expiration date, and in the latter, by a blanket protraction to fifty years of the original twenty-five year period secured to successors under the 1828 law. In 1845,\textsuperscript{160} 1846,\textsuperscript{161} and 1857,\textsuperscript{162} the scope of the statute was expanded to embrace musical creations and works of fine art. Finally, in 1911, this piecemeal approach to copyright protection culminated in comprehensive constitutional legislation covering literary works, music, fine arts, and photography.\textsuperscript{163}

B. The 1911 Legislation

With a few notable exceptions, the 1911 law emulated West European theory and practice.\textsuperscript{164} Thus, the droit d'auteur constituted to the Russian, as well as to the French, the theoretical skeleton upon which the body of the copyright statute was structured.\textsuperscript{165} Particulars in the Russian enactment, significant because of their perseverance in contemporary Soviet law, fall into three principal categories:\textsuperscript{163} (1) the territorial

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\textsuperscript{155} See Gsovski, Soviet Civil Law 606 (1948).

\textsuperscript{156} This is the language of the law of March 20, 1911, Third Complete Collection of Laws of the Russian Empire, text 34935, incorporated into the General Code as §§ 695(1)-(15) of the Civil Law (vol. X, pt. I, 1914 ed.). Similar protection was accorded under the 1828 law. See note 153 supra.

\textsuperscript{157} See Gsovski, Soviet Civil Law 607-07 (1948).

\textsuperscript{158} Collection, text 3411.

\textsuperscript{159} Collection, text 31732.

\textsuperscript{160} Collection, text 18607.

\textsuperscript{161} Collection, text 19569.

\textsuperscript{162} Collection, text 31732.

\textsuperscript{163} See note 156 supra.

\textsuperscript{164} See Gsovski, Soviet Civil Law 607-08 (1948).

\textsuperscript{165} Id. at 606.

\textsuperscript{166} Id. at 607-08.
nationality limitation of the works protected; (2) the hesitancy of the Government to become involved in conventions or treaty obligations; and, (3) the relative degree of freedom allowed to translators.167

Regarding category (1), protection embraced only those works published in Russia, albeit by foreign nationals as well as by Russian citizens, or if published abroad, provided the author were a Russian subject.168

The ostensible protection afforded to foreign copyrights, i.e., the prerequisite of consent by holders of foreign copyrights to reprinting in the original language within Russia,169 was obviated, for all practical purposes, by the provision for free translation.170 In fact, the translator himself appropriated the copyright for the work as translated.171

Most countries, through the media of conventions and treaties, grant protection to foreign copyrights within their own boundaries and in return secure reciprocity by the participating foreign governments. Imperial Russia, however, refrained from joining any general international convention for the protection of copyright.172 (Category (2) above.) Limited treaties were effected with France,173 Belgium,174 Denmark,175 and Germany,176 the first three of which were permitted to expire, and the latter was abrogated by the Treaty of Versailles.177 As a practical matter, then, Russia displayed little interest in protecting the literary and artistic creations of aliens publishing or exhibiting outside her boundaries.

As noted previously, the Russian legislation permitted free translation of the foreign publications of alien authors. (Category (3) above.) Russian authors, however, or authors of works published in Russia, were accorded the exclusive right of translation by the 1911 legislation.178 This right, operative by the inclusion of a reservation clause on the

167. For a discussion of the practical problems encountered in attempting to protect the author's rights, while simultaneously permitting free translation, see notes 216-19 infra and accompanying text.
168. See 1 Gsovski, Soviet Civil Law 607-08 (1948).
169. Ibid.
170. Soviet legislation has gone even further toward free translation than did the 1911 Imperial law. Thus, currently in the U.S.S.R., translation is no infringement of copyright at all, regardless of where the work appeared, and regardless of the nationality of the author. USSR Laws 1928, text 246, §§ 1-3.
171. See 1 Gsovski, Soviet Civil Law 609-10 (1948).
173. In effect from Nov. 12, 1912 to Nov. 3, 1915.
175. In effect from July 29, 1915 to July 29, 1918.
176. In effect from Aug. 1, 1913 (would have expired Aug. 1, 1918).
177. Treaty of Versailles art. 292.
178. See 1 Gsovski, Soviet Civil Law 609 (1948).
title page or in the preface, entitled the author to ten years of protection on the translation provided it were published within five years of the appearance of the original.\textsuperscript{170}

Hence, but for the limited exceptions outlined above, Imperial Russia, reluctant to abridge national sovereignty for the sake of transnational or transpersonal considerations, confined her legislation to the territorial-nationality principle and bestowed little practical recognition upon foreign copyrights.

\section*{II. SOVIET COPYRIGHT LEGISLATION}

\subsection*{A. Early Soviet Enactments}

The manifold alterations in legal thought and practice occasioned by the fall of the Romanovs and the emergence of Leninism quite naturally permeated the field of copyright. Thus, by government decree, the Department of Education of the R.S.F.S.R. was authorized, on December 29, 1917, to declare a five year government monopoly on publication of the Russian classics.\textsuperscript{180} The scope of permission to monopolize was extended, on November 26, 1918, to include "all works of science, literature, music, or fine arts of any kind, whether published or not, no matter in whose possession they are."\textsuperscript{181} Payments, both to authors and to publishers, became a function of governmentally promulgated schedules.\textsuperscript{182} Finally, all prerevolutionary assignments by authors to publishers were abrogated by the Decree of October 10, 1919.\textsuperscript{183}

Government policy in this initial period of sovietization appears manifest. Consistent with Lenin's motto that "every literature must be party literature," control over the expression of thought was effected through government monopoly of publishing activities. By this means, a facade of guarantees of personal rights might be enunciated with some semblance of consistency between theory and practice. Even so, copyright protection was not promised to Soviet citizens until the Decree of May 22, 1922,\textsuperscript{184} and no national law appeared on the subject until January 30, 1922.\textsuperscript{184}

\textsuperscript{179} See note 156 supra.

\textsuperscript{180} RSFSR Laws 1917-1918, text 201. The works of seventeen composers and fifty writers were nationalized under this decree. See 2 Gevorski, Soviet Civil Law 416 (1949), for a partial listing of the affected composers.

\textsuperscript{181} RSFSR Laws 1917-1918, text 900, § 1. Works not monopolized could be published during the lifetime of the author upon his consent.

\textsuperscript{182} Payment was to comply with the principle of "to each according to his work," publishers being compensated only for expenses. See 1 Gevorski, Soviet Civil Law 611 (1948).

\textsuperscript{183} RSFSR Laws 1919, text 492.

1925. Though by the terms of the 1925 act, and the R.S.F.S.R. law which followed it, authors were entitled to "exclusive" publication "rights" for twenty-five years from the first appearance of the work, the "rights" accorded were only for those works of which the Government approved, i.e., which it allowed to be published. Through its monopoly of publishing activities, the Government was thus able to delimit, to suit its own predispositions, the scope of the "rights" conferred, while simultaneously, claiming to cognize the droit d'auteur.

On May 16, 1928, while still in the throes of New Economic Policy, the sporadic ad hoc enactments of the preceding ten years were replaced by a comprehensive federal act, or Statement of Basic Principles, which, in the main, persists as the basis of contemporary Soviet copyright legislation. Due to its current significance, there follows a somewhat detailed exposition of the substantive provisions of the 1928 law and of the R.S.F.S.R. Act, which is based upon it. Reference will also be made, where appropriate, to the New Draft of Civil Law Principles.

B. The Current Legislation

By the first article of the 1928 federal act, works published, or manuscripts or sketches or any creation representable in objective form, located within the territory of the U.S.S.R. are protectible by copyright to the author and his successors, regardless of their nationality. This is, as is evident, a restatement of the territorial principle embodied in the imperial legislation of 1911. Similarly, in article 3, the nationality principle is perpetuated, Soviet authors being protected within the U.S.S.R. as to works published or located abroad. Foreign authors publishing abroad are protected only pursuant to special agreement with the country of publication. Since as of this date no such agreements have been concluded, it is clear that foreign copyrights enjoy no legal
guarantees within the U.S.S.R. Articles 80 and 81 of the New Draft Principles reproduce, in substance, these same provisions.

Article 4 of the 1928 law enumerates the works protected. The catalogue of copyrightable items resembles strongly the United States view. Included are: books, articles, dramatic works, speeches, lectures, choreographic works, motion picture scripts, musical works, designs, paintings, geographic maps, and photographic works.

Article 5 secures to joint authors a joint copyright regardless of divisibility of the work, unless the work itself constitutes a collection of works, in which case, absent contrary agreement, each author retains the copyright to his part of the work. Contrariwise, Article 82 of the New Draft Principles allows separate copyright where a piece of the work has "independent significance." The term, "independent significance," is not defined. Article 6 of the 1928 law extends protection to compilers so long as the works compiled are subjected to independent rewriting. The copyright for the compilation adheres to the compiler.

Article 7 embodies the traditional droit d'auteur, guaranteeing the "exclusive right to publish ... reproduce ... circulate ... and ... to derive profits from such right in any lawful manner." It should be noted, however, that this article was dealt a "mortal blow" by the R.S.F.S.R. Act of 1932, which forbade private publication. Printing establishments operate only by license, and these by law are limited to "governmental, public, or co-operative organization[s]." The theoretical "right of the author," assured by the article, is thus reduced to the right "to [receive] remuneration in accordance with the quality and quantity of his labor, if the product of his labor is used by society." It seems significant in this light to contrast the article with its counterpart, Article 82 of the New Draft Principles:

197. Some payments have been made as a matter of grace, but there is, by law, no obligation to do so. See Iseman, Governor Stevenson's Mission to Secure Payment to American Authors and Playwrights for Use of Their Works in the Soviet Union, 7 Bull. Cr. Soc. 155 (1960).
198. See note 184 supra.
199. USSR Act art. 4 (English text in 2 Gsovski, Soviet Civil Law 400 (1949)).
201. USSR Act art. 5 (English text in 2 Gsovski, Soviet Civil Law 400 (1949)).
202. See note 184 supra.
203. USSR Act art. 6 (English text in 2 Gsovski, Soviet Civil Law 403-01 (1949)).
204. USSR Act art. 6 (English text in 2 Gsovski, Soviet Civil Law 401 (1949)).
205. USSR Act art. 7 (English text in 2 Gsovski, Soviet Civil Law 401 (1949)).
207. RSFSR Laws 1932, text 288; see 1 Gsovski, Soviet Civil Law 614 (1948).
208. 2 Sovetskoye Grazhdanskoie Pravo 226 (1944); see 1 Gsovski, Soviet Civil Law 615 (1948).
An author has the right: to publish, reproduce and circulate his work under any procedural allowed by law under his own name, under an assumed name (pseudonym) or without a name (anonymously); to receive remuneration established by the U.S.S.R. and Union-republic legislation for the use of his work by other persons or organizations, except in cases stipulated in the law; to inviolability of the work.\textsuperscript{209}

Clearly, article 7 would appear, in the words of Gsovski, to have "become obsolete."\textsuperscript{210}

Article 8 guarantees the right of first performance to the author for unpublished dramatic, musical, musicodramatic, pantomimic, choreographic, or motion picture work.\textsuperscript{211} However, once performed, the work assumes "social significance" and the Minister of Education of the Union-republic concerned may authorize its public performance without the author's consent.\textsuperscript{212} As in article 7 with reference to literary works, the "right of the author" is confined to remuneration.\textsuperscript{213}

Article 9 contains an extended enumeration of actions not to be considered as infringements of the copyright statute.\textsuperscript{214} These include: translations;\textsuperscript{215} use of one work to create an essentially new work; insertion of fragments or entire short works in scholarly journals or collections, provided the source is given; printing of speeches made in public meetings; reprinting of information published in newspapers; reprinting of drawings, diagrams, and pictures, provided the source is given; and, public performance of the works of another, provided no admission fee is charged. The right of translation, by far the most important of the exceptions provided, is the only one of the above described permissions which is discussed in the New Draft Principles. Thus, in Article 84 of the New Draft Principles, free translation is authorized so long as "the integrity and significance of the work is preserved."\textsuperscript{216}

The "rights of authors," guaranteed by articles 7 and 8 of the 1928 law, when viewed in conjunction with the great latitude of reproduction sans infringement afforded by article 9, raises somewhat of a logical


\textsuperscript{210} USSR Act art. 7 (English text in 2 Gsovski, Soviet Civil Law 401 (1949)). The provision for publication "under any procedure allowed by law," and the remuneration clause which follows it, would certainly seem to bear out this conclusion. See notes 261-69 infra and accompanying text.

\textsuperscript{211} USSR Act art. 8 (English text in 2 Gsovski, Soviet Civil Law 401-02 (1949)).

\textsuperscript{212} Ibid.

\textsuperscript{213} Ibid.

\textsuperscript{214} USSR Act art. 9 (English text in 2 Gsovski, Soviet Civil Law 402-05 (1949)).

\textsuperscript{215} It should be noted, however, that authors belonging to the various national minorities of the Soviet Union are accorded special protection. Thus, for works translated into Russian, the original authors are paid royalties at the rate of 60% of the relevant schedule for original works. RSFSR Laws 1947, text 31, art. VII; see 1 Gsovski, Soviet Civil Law 610 (1948).

\textsuperscript{216} See note 209 supra.
problem to the Anglo-American legal mind. How can authors be protected in their rights if such obvious reproduction and copying is permitted by the Soviet legislation? The Russian answer is to call attention to the basic difference alleged to exist between "authors' rights" in the U.S.S.R. and in the United States. As stated in Sovetskoye Grazhdanskoje Pravo:

It is characteristic [of "bourgeois society"] that, except for a small group of bourgeois authors, the author's right is the property . . . not of the author, but of the publisher, of a big capitalist, an industrialist. By making use of "freedom" to conclude a contract with the publisher, the capitalist acquires for a few cents the monopoly right to use and distribute the production of another person—the author. . . . In this way the author's right in capitalist countries is made into a tool of the interests of the monopolist publisher, a means of exploiting the author and of retarding the cultural growth of the masses of the people.

The basic principles of the Soviet author's right are completely different, sharply distinguishing it from the author's right in capitalist countries. The Soviet author's right has the objective of protecting to the maximum the personal and property interests of the author, coupled with the assurance of the widest distribution of the product of literature, science and the arts among the broad masses of the toilers.217 Hence, the right of the Russian author is not a property right in the Western sense at all218 but a right to remuneration. So long as he receives his royalty for "work performed," he can not be heard to complain about society enjoying its rights in the matter, i.e., "to the widest distribution of the product of literature, science and the arts among the broad masses of the toilers."219 Since this latter objective is promoted by article 9, without in any way impairing the author's right to remuneration, it is in no way incompatible, to the Soviet mind, with the guarantees of articles 7 and 8.

Articles 10 through 15 deal with the protective time period. Thus, choreographic works, pantomimes, and motion picture scripts are protected for ten years;220 photographic works, five years for individual pictures and ten years for collections;221 reviews, periodical publications, and encyclopedias, for ten years;222 and all other works, for the life of the author or creator.223 For the latter category only, copyright succeeds to the heirs and testamentary beneficiaries for fifteen years from January 1 of the year of death of the author.224 Succession in the former

217. 1 Sovetskoye Grazhdanskoje Pravo 254-55 (1938); see Hazard & Weilberg, Cases on Soviet Law 176 (1950).
218. On the application of general property concepts to copyright in the United States, see generally Higgins v. Keuffel, 140 U.S. 425 (1891); National Tel. News Co. v. Western Union Tel. Co., 119 Fed. 294 (7th Cir. 1902).
219. See note 217 supra.
220. USSR Act art. 11 (English text in 2 Gsovski, Soviet Civil Law 405 (1949)).
221. USSR Act art. 12 (English text in 2 Gsovski, Soviet Civil Law 405-06 (1949)).
222. USSR Act art. 13 (English text in 2 Gsovski, Soviet Civil Law 406 (1949)).
223. USSR Act art. 10 (English text in 2 Gsovski, Soviet Civil Law 405 (1949)).
224. USSR Act art. 15 (English text in 2 Gsovski, Soviet Civil Law 407 (1949)).
categories is operative only for the remainder of an unexpired statutory term.\footnote{Ibid.} On the other hand, the New Draft Principles prescribe a unitary time period—for life to the author, and for fifteen years to his heirs from the day of his death.\footnote{Ibid.} However, reduced periods for individual types of works may be established by Union-republic legislation.\footnote{Ibid.}

Article 16 provides that copyrights may be alienated in any legal manner, with the requirement, in most cases, of a writing.\footnote{Ibid.} The form of the contracts, and their provisions, including royalties, are left to the determination of the constituent republics,\footnote{Ibid.} as are provisions for determining damages.\footnote{Ibid.}

Article 18 forbids any changes in theatrical works without the author's consent and endows authors of books with similar protection in respect to illustrations of their works.\footnote{Ibid.}

Finally, article 20 provides for compulsory purchase by the Government of any manuscript, sketch, or other copyrightable work, with the right, of course, of remuneration to the author.\footnote{Ibid.} The New Draft Principles substantially reproduce the old article 20, with the proviso that such purchase be only in "exceptional cases."\footnote{Ibid.}

The R.S.F.S.R. Act of October 8, 1928\footnote{RSFSR Copyright Act of Oct. 8, 1928 (RSFSR Laws of 1928, text 861) \textit{(English text in 2 Gsovski, Soviet Civil Law 407-08 (1949)}) \textbf{[hereinafter cited as RSFSR Act].}} was promulgated to spell out the practical details for implementing the principles enunciated in the federal act.\footnote{Ibid.} Thus, the reprinting of literary fragments permitted by article 9 of the federal act, is confined, under Article 5 of the R.S.F.S.R. Act, to quotations not exceeding 10,000 printed characters of prose or forty lines of poetry.\footnote{Ibid.} Scientific reproductions are allowed by the same article to the extent of 40,000 printed characters.\footnote{Ibid.}

\footnote{225. Ibid.}
\footnote{226. See note 209 supra.}
\footnote{227. Ibid.}
\footnote{228. USSR Act art. 16 (English text in 2 Gsovski, Soviet Civil Law 407-08 (1949)).}
\footnote{229. USSR Act art. 17 (English text in 2 Gsovski, Soviet Civil Law 408-09 (1949)).}
\footnote{230. USSR Act art. 19 (English text in 2 Gsovski, Soviet Civil Law 409 (1949)).}
\footnote{231. USSR Act art. 18 (English text in 2 Gsovski, Soviet Civil Law 409 (1949)).}
\footnote{232. USSR Act art. 20 (English text in 2 Gsovski, Soviet Civil Law 409 (1949)). As to the right of the United States Government to appropriate a copyrighted item, see 17 U.S.C. § 8 (1958).}
\footnote{233. See note 209 supra.}
\footnote{234. RSFSR Copyright Act of Oct. 8, 1928 (RSFSR Laws of 1928, text 861) \textit{(English text in 2 Gsovski, Soviet Civil Law 410-26 (1949)}) [hereinafter cited as RSFSR Act].}
\footnote{235. The practice calls to mind the West European codes with their general and special sections. In the Soviet case, however, the legislative function is divided, the federal government promulgating the general principles, and the governments of the Union-republics providing the specific sections to implement them.}
\footnote{236. RSFSR Act art. 5 (RSFSR Laws 1928, text 861) \textit{(English text in 2 Gsovski, Soviet Civil Law 412 (1949)}) \textbf{[hereinafter cited as RSFSR Act]}.}
\footnote{237. Ibid.}
Article 9 of the R.S.F.S.R. Act provides for registration with the Minister of Education. The registration, however, serves only to determine the initial moment of the running of the duration of the copyright. It is not, as under our system, a condition precedent to protection. Article 10 provides that damages caused by infringements are collectable under Chapter XIII of the Law of Obligations of the R.S.F.S.R. Civil Code. In lieu of such damages, however, the author may claim royalties according to the schedule promulgated by the Minister of Education. Such alternative relief would, of course, prove particularly valuable where damages from infringement could not be established.

Article 13 of the R.S.F.S.R. Act implements article 20 of the federal law in authorizing purchase by the Government of any work located within its boundaries and article 15 provides for payment of the royalties due into the state budget. After a copyright has expired, unless purchased by the Government under article 13, the work, according to article 14, may be reproduced, published, circulated, and performed by any person without limitation.

Articles 17 through 29 are devoted principally to publishing contracts and assignment rights of literary works. Article 17 prohibits any assignment of publishing rights except by way of a publishing contract, the terms of which are pretty well governed by the following twelve articles of the act. Such contracts must include: the number of copies of the first edition and of subsequent editions, if such are provided for; the time by which the work must be published; the amount of royalties; and, the period for which the contract is to run. Duration is limited to four years. The compensation term of the contract is subject to the minimum established in the schedules promulgated by the R.S.F.S.R.

238. RSFSR Act art. 9 (RSFSR Laws 1928, text S61) (English text in 2 Gsovski, Soviet Civil Law 414 (1949)).
240. For a translation of this chapter, see 2 Gsovski, Soviet Civil Law 207 (1949).
241. RSFSR Act art. 13 (RSFSR Laws 1928, text S61) (English text in 2 Gsovski, Soviet Civil Law 415-16 (1949)).
242. Ibid.
243. RSFSR Act art. 15 (RSFSR Laws 1928, text S61) (English text in 2 Gsovski, Soviet Civil Law 416-17 (1949)).
244. RSFSR Act art. 12 (RSFSR Laws 1928, text S61) (English text in 2 Gsovski, Soviet Civil Law 415-16 (1949)). Succession of the copyright is confined to the immediate heirs of the author, it does not devolve upon the heirs of the heirs.
245. RSFSR Act art. 17 (RSFSR Laws 1928, text S61) (English text in 2 Gsovski, Soviet Civil Law 417-18 (1949)).
246. RSFSR Act art. 18 (RSFSR Laws 1928, text S61) (English text in 2 Gsovski, Soviet Civil Law 418 (1949)).
247. RSFSR Act art. 19 (RSFSR Laws 1928, text S61) (English text in 2 Gsovski, Soviet Civil Law 418-19 (1949)).
Council of Ministers, and the maximum number of copies permitted to one edition is similarly circumscribed. Publication is required within the time specified in the contract, or at the very least, and regardless of contract provision, within six months for periodicals containing a maximum of 200,000 printed characters; within one year for literary works of between 200,001 and 400,000 printed characters, and within two years for longer literary works. If publication is not effected within the time period prescribed, one hundred per cent royalties immediately become due the author. The publishing company may get an extension equal to one-half of the original duration, but upon a second default may be deprived of the manuscript, as the contract can then be unilaterally rescinded by the author. If the publisher wishes to reassign the rights to a literary work he must obtain the written consent of the author. Articles 26 and 27 contain the provisions for the standard publishing contracts. Such must be approved by the R.S.F.S.R. Ministry of Education with the consent of the R.S.F.S.R. Ministry of Commerce.

Articles 30 through 44 are addressed to production contracts, and, generally speaking, accord to dramatic, musical, pantomimic, choreographic and motion picture works treatment similar to that prescribed for literary contracts. However, the duration of production contracts is limited to three years, and performance must occur within two years, for productions of operas, musical comedies, and choreographic works, and within one year for all other works except motion pictures. The latter are excused of the obligation of production, unless the con-

248. RSFSR Act art. 20 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 419 (1949)).
249. RSFSR Act art. 21 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 419 (1949)).
250. RSFSR Act art. 22 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 419-20 (1949)).
251. RSFSR Act art. 23 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 420-21 (1949)).
252. RSFSR Act art. 24 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 421 (1949)). For a Soviet case employing the principles involved in articles 23 and 24, see Case No. 34813 (Sud. Prak., RSFSR, 1929, No. 8 (May 7) p. 7) (reprinted in Hazard & Weisberg, Cases on Soviet Law 183-84 (1950)).
253. A copy of the standard publishing contract is reprinted in 2 Gsovski, Soviet Civil Law 427-37 (1949)).
254. RSFSR Act art. 26 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 421 (1949)).
255. RSFSR Act arts. 30-44 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 422-26 (1949)).
256. RSFSR Act art. 33 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 423 (1949)).
257. RSFSR Act art. 34 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 423-24 (1949)).
tract provides otherwise.258 The assignor of the motion picture script, however, would still be entitled to lump sum royalty payment.259 Production contracts are limited to one city and for 150 performances therein.259 As a result, many such contracts may be outstanding between an author and different production companies in different geographical areas. The author is permitted to rescind for nonperformance within the contractual or legal time-period, and thereupon the theatrical enterprise is immediately obligated to pay the stipulated royalties. The remaining articles merely restate as to production contracts what has been said concerning publishing contracts.

Such, then, in general outline, constitutes the copyright legislation of the Soviet Union at the present time.

III. THEOREY AND PRACTICE

A. Problems in Characterizing the "Right"

Attention has already been directed to the practical problem encountered in affording recognition to the droit d'auteur, while at the same time "effecting wide distribution of the product"261 of the author through such media as free translation. As was indicated, society, as well as the author, in the Soviet view, has certain "rights" in regard to literary and artistic works—"rights" which, indeed, would appear to render nugatory the very essence of the Western notion of the droit d'auteur. Thus, the numerous exceptions to copyright infringement, spelled out in article 9 of the 1928 Act,262 appear in obvious contradiction to the provision of article 7 for "exclusive right[s]" to the author in publication, reproduction, and circulation. Indeed the very purport of article 7 would appear to be countermanded by the monopolization of publishing activities within the public sector. By this means, the Government is able to withhold publication of any work to which it objects, and, thereby, to effect a severe limitation upon the "author's right." In fact, the "author's right" is circumscribed even as to withholding of his work, in that the Government may order publication even without his consent.263

To be published, an author must contribute to the goals pronounced

258. RSFSR Act art. 37 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 424 (1949)).
259. RSFSR Act art. 40 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 425 (1949)).
260. RSFSR Act art. 35 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 424 (1949)).
261. See note 217 supra and accompanying text.
262. See note 170 supra.
263. See 1 Gsovski, Soviet Civil Law 615-16 (1948).
by the Government.\textsuperscript{264} Mere "art for art's sake" is not only discouraged; the work itself may be denied publication. As Zhdanov observed:

Our literature is not a private enterprise designed to serve various tastes of the market. We are under no obligation to give space in our belle-lettres to tastes and customs which have nothing in common with the morale and properties of the soviet people . . . . We demand that our comrades, who are the leaders of literature, as well as the writers themselves, be guided by something without which the soviet regime cannot exist, that is, politics, so that our youth may be reared not in the spirit of nonchalance and absence of ideology but in the spirit of alertness and revolution.\textsuperscript{265}

The "author's right" is thus confined by the Soviet position to the right of remuneration.\textsuperscript{266}

In light of what has been said, it seems clear that both in theory and in practice, the current Soviet view is not in accord with the characterization of copyright by the 1928 Act as an "exclusive right." Indeed, some Soviet writers have recently argued that the "exclusive right" provision should be dropped from the statutory provisions.\textsuperscript{267} As Gsovski has pointed out:

They fail, however, to offer a clear characteristic instead. They almost identify the copyright with the right to remuneration and therefore with wages. The authors of the textbook of 1944 point out that the identification of copyright with wages would mean that the government acquires the right of publication by the fact of creation of a work, which is not the case because such right is acquired by the government mostly under a contract.\textsuperscript{268}

It is significant that Article 82 of the New Draft Principles\textsuperscript{269} bestows only the "right," not the "exclusive right," to "publish, reproduce and circulate" the work, and, at that, the "right" is restricted "to any procedure allowed by the law." The "author's right" as a right solely to remuneration is emphasized by the second paragraph of the article. In consequence, the droit d'auteur would appear, to paraphrase Nietzsche, to be "dead" in the Soviet law.

B. The Author's Right in Practice: Remuneration

The "author's right" in the Soviet Union, is the right "to receive remuneration in accordance with the quality and quantity of his labor, if the product of his labor is used by society."\textsuperscript{270} Payment is according to a schedule promulgated by the Government,\textsuperscript{271} which, in turn, is

\textsuperscript{264} Resolution of the Central Committee of the Communist Party of Aug. 14, 1946.
\textsuperscript{265} See 1 Gsovski, Soviet Civil Law 616-17 (1948).
\textsuperscript{266} See note 208 supra and accompanying text.
\textsuperscript{267} See 1 Gsovski, Soviet Civil Law 615 (1948).
\textsuperscript{268} Ibid.
\textsuperscript{269} See note 209 supra and accompanying text.
\textsuperscript{270} See note 208 supra and accompanying text.
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predicated upon four 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)."272

The genre or literary type of the work, is basic, and must, accordingly, be expressly specified in the publishing contract. The latter, however, may not modify the official scale, and any attempt to do so is void as to the excess.273 Similarly, where the contract provides for a lower rate, the author may sue the publishing company for additional payment.274

The tirage limitations for various literary genres are defined by the legislation of the several Union-republics, and are not always uniform due to the various numbers of readers within the different minority language groups.275 The overstepping of tirage limits automatically constitutes a new edition, payment for which is in accordance with a scheme of progressive reduction of remuneration for each new edition.276

Compensation also depends upon the category to which the work is assigned by the publisher, such being based upon the value of the work to Soviet society. By decree of the Council of Ministers of the R.S.F.S.R. of July 15, 1947, the categories prescribed are: (1) outstanding, (2) good, and, (3) satisfactory.277 Of course, the publishing company may refuse the work altogether if the latter does not constitute a positive contribution to the building of Communism.

Finally, the publishing contract must mention volume by establishing a maximum and minimum page allocation to be allowed for the work.278 The legislation in the various Union-republics then regulates the corresponding gradations in payment.

Such insured pay schedules represent, as is evident, a basic difference between the Soviet and United States copyrights. Soviet writers boast of the difference, calling attention to the "illusiveness" of the author's right in the United States, authors in the latter country being compelled to rely solely upon "freedom of contract" which the big publishers utilize to exploit them.279 On the other hand, the exploitation of big government, described above, would appear to cast serious doubt upon the Soviet

272. Id. at 478.
273. USSR Supreme Court, Civil Division. Ruling of Oct. 22, 1952 (Text in Azov and Shatzilo, Avtorehoye Pravo Na Literaturnye Proizvedeniya 82-89 (1953)).
274. RSFSR Act of Oct. 8, 1928, art. 20 (RSFSR Laws 1923, text 851) (English text in 2 Gsovski, Soviet Civil Law 419 (1949)).
276. Ibid.
277. Id. at 480.
278. Id. at 481.
279. See the quotation from 1 Sovetskoye Grazhdanskoye Pravo at note 217 supra.
reasoning. It is certainly questionable that many authors in the Western world would be willing to sacrifice the droit d'auteur; indeed, their very individuality as artists, for the minimum pay schedules prescribed by Soviet legislation.

C. Remedies for Infringement

Remedies for violation of Soviet copyright are both criminal and civil. As to the former, it is provided by statute that the unauthorized use of literary, musical, artistic, or scientific productions entails compulsory labor for as long as three months or a fine of as much as 1,000 rubles. Application of the statute is predicated upon a demonstration of criminal intent, which, it would appear, should be rather difficult considering the liberal "borrowing" provisions of Article 9 of the 1928 Act.

The proviso for civil remedies is contained in Article 19 of the 1928 Act, which cedes to the various Union-republics the determination of damages in the event of infringement. The corresponding provision of the Copyright Act of the U.S.F.S.R. refers the aggrieved author to the general damages provision of the Civil Code, i.e., "Obligations Arising from Injury Caused to Another." Alternatively, the author may claim the payment of royalties according to the scale established pursuant to the procedure specified in Article 4 of the R.S.F.S.R. Act. By decree of the People's Commissar of Education of the R.S.F.S.R., dated June 8, 1930, for publication of a literary work without consent of the author, the author is entitled to 150 per cent of the ordinary royalty rate in damages. For plagiarism, he may claim 175 per cent. If the "borrowing" represents "substantial rearrangement" without outright plagiarism, he is entitled to fifty per cent. Due remuneration is payable for the public performance of unpublished dramatic works, musical scores, pantomimes, choreographic, or cinematographic works. The damages are assessed against the publishing company, theater, or film company which produced the "borrowed" work.

280. Or the property right, in the United States view.
283. See note 240 supra and accompanying text.
284. RSFSR Act art. 10 (RSFSR Laws 1928, text 861) (English text in 2 Gsovski, Soviet Civil Law 414-15 (1949)).
285. RSFSR Civil Code, ch. XIII; see note 240 supra.
287. For a number of typical cases, see Hazard & Weisberg, Cases on Soviet Law 178-87 (1950).
Consistent with the view that the author's right is one of remuneration, similar treatment is given to infringement suits as that accorded to suits for wages. Thus, Article 187 of the Code of Civil Procedure of the R.S.F.S.R. provides, in both instances, for immediate execution, there being no necessity to await the decision on appeal.289 In fact, by order of the Forty-fifth Plenum of the Supreme Court of the U.S.S.R.,290 the court executioner is charged with the duty of levying execution immediately upon receipt of the court order.

While on paper, the remedies for infringement may thus appear extensive, the liberal "borrowing" provision and the Soviet interest in wide dissemination must not be forgotten. As stated in Sovetskoye Grazhdanskoye Prawo: "[T]he author in the U.S.S.R. does not have a monopoly in his work and he does not need it; if the work deserves wide circulation, the Socialist society will also have an interest in the matter."291 In consequence of what has been said, the Soviet author would seem to face quite a burden in establishing a case for infringement.

D. The Rights of Foreigners Publishing Abroad

If the task of the Soviet author is burdensome, the plight of the foreigner is insurmountable. As indicated earlier,292 the Soviet copyright statutes accord no recognition to the rights of alien authors publishing abroad; nor have treaties or conventions been effectuated to this end. Thus, although payments have occasionally been made to foreign authors,293 there exists, under Soviet law, no legal obligation to do so.

An interesting case in point is the recent suit by the Conan Doyle estates against four Soviet publishing houses seeking remuneration for the reprinting in the U.S.S.R. of the Sherlock Holmes stories.294 So clearly are foreigners excluded from the provisions of the Russian law, that Professor Harold Berman, the plaintiff's attorney, specifically disclaimed any relief by way of copyright infringement.295 Rather, he addressed his plea to Article 399 of the R.S.F.S.R. Civil Code,296 i.e., the unjust
enrichment statute, arguing that merely because the copyright statute did not protect foreigners, it did not follow that foreigners were entitled to no compensation. Reasoning in Marxian terms, Professor Berman asserted that receipt of profits by the publishers without payment to the people whose sweat and toil made the profit possible was exploitation in the clearest Communist sense of the term. Thus, he concluded, the duty of restitution arose as the only means of avoiding exploitation. Needless to say, the Soviet court was not convinced.

Similarly unsuccessful in securing protection to foreign authors was the Adlai Stevenson mission on reciprocal payments between the R.S.F.S.R. Ministry of Culture and American publishers. Ambasssador Stevenson had sought to work out an agreement with the Soviet Union regarding the 77,000,000 odd copies of some 2,700 books by over 200 American authors that had been published in the U.S.S.R. between 1917 and 1958. He, like Professor Berman, argued in terms of unjust enrichment, and in addition, called attention to the Soviet policies of no discrimination because of nationality, that no useful labor should go uncompensated, and that fair compensation was to be paid when any property was expropriated by the government. Ambassador Stevenson's proposed solution was payment according to the schedule for translation from the language of a minority republic into Russian, *i.e.*, sixty per cent of the sum payable to an original work. The Soviet officials listened attentively, but nothing resulted from the meeting.

The following have been suggested as probable reasons for the Soviet reluctance to clearly recognize foreign rights: (1) the fear of foreign control over publication within the U.S.S.R.; (2) the shortage of foreign exchange; (3) that patents would be next; (4) that Soviet writers fear dilution of the profits of publishing houses, such constituting the source of their benefit fund; and, (5) that the Russians are simply piqued at the lack of demand in the United States for Russian works. With typical Stevensonian candor, Ambassador Stevenson attributed Soviet intransigence to the avowed aim of exploiting defenseless foreign writers.

But whatever the Soviet rationale may be, it is clear that foreign authors publishing abroad have no legally protectible rights in the U.S.S.R.

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298. Id. at 159.
299. Id. at 158.
300. Some hope is evinced for eventual agreement, however, by the comment by Sholokhov, who accompanied Khrushchev on his recent trip to the United States, to the effect that Russia was now considering a convention with the United States. N.Y. Times, Aug. 31, 1959, p. 1, col. 6.