

NOTES

SOVIET ACCESSION TO THE UNIVERSAL COPYRIGHT CONVENTION: POSSIBLE IMPLICATIONS FOR FUTURE FOREIGN PUBLICATION OF DISSIDENTS' WORKS

I. INTRODUCTION

On February 27, 1973 the Union of Soviet Socialist Republics acceded to the Universal Copyright Convention¹ by depositing its instrument of accession with the Director-General of UNESCO.² The accession was hailed by some as another example that the spirit of detente was genuine in the Soviet Union and deplored by others as a political trick to increase the Soviet Government's control over its dissident writers in their endeavors to publish abroad. The impending publication of Aleksandr Solzhenitsyn's latest work, *The Gulag Archipelago 1918-1956*, may prove to be the first major test of what considerations actually motivated the Soviet Union to accede to the UCC. For the first time, the Soviet government, due to its participation in the UCC, may be in a position to legally enjoin publication of Solzhenitsyn's works abroad.³ In order to understand why this possibility exists now, and not before accession, it is necessary to briefly outline the development of Soviet Copyright law prior to accession in 1973.

II. PRIOR SOVIET COPYRIGHT LEGISLATION⁴

Lenin, the founder of the Soviet state, often stated that "every literature

¹Universal Copyright Convention, Dec. 6, 1954 [1955] 3 U.S.T. 2731, T.I.A.S. No. 3324, 216 U.N.T.S. 132 (effective Sept. 16, 1955) [hereinafter cited as UCC]. See also Sherman, *The Universal Copyright Convention: Its Effect on United States Law*, 55 COLUM. L. REV. 1137 (1955).

²The accession is in accordance with Article IX, paragraph 2 and Article VIII of the UCC and became effective three months after the deposit on May 27, 1973. 68 DEP'T STATE BULL. 336 (March 19, 1973).

³Aleksandr Solzhenitsyn was arrested, stripped of his Soviet citizenship, and exiled from the Soviet Union in February 1974. His family was not allowed to follow him into exile at that time, however they were permitted to join him some weeks later. The loss of Solzhenitsyn's citizenship could possibly preclude the Soviet Union's ability to restrict publication of Solzhenitsyn's works abroad via the UCC. It is certainly so precluded for future works by this author. However, with respect to *The Gulag Archipelago, 1918-56*, the Soviet government may still try to assert a first publication argument by the work's previous circulation in the form of *samizdat*. See p. 412 *infra*. Although Solzhenitsyn and family are now safe from the possible onus of Soviet interference with publication of their works, many other dissident voices still remain within the Soviet Union whom the Soviet government would like to silence including such notables as Pyotr Yakir, General Pyotr Grigorenko, Andrei Amalrik, and, of course, Andrei Sakharov.

⁴For a very thorough examination of the development of Soviet copyright law until 1948 see V. GSOVSKI, 1 SOVIET CIVIL LAW 606-17 (1948) [hereinafter cited as 1 GSOVSKI]. For a succinct look at developments beyond 1948 see Skorodumov, *The Evolution of Soviet Copyright Law*, RADIO LIBERTY DISPATCH, May 18, 1973.

must be party literature."⁵ To implement this goal, the first Soviet Copyright laws established a state monopoly in the area of intellectual work. On December 29, 1917, scarcely a month after the Bolshevik seizure of power, the All-Union Central Executive Committee (VTsIK) issued a decree, "On State Publishing" which authorized the Department of Education of the R.S.F.S.R. to declare a five year government monopoly on publication of the Russian classics and initiated the systematic erosion of private publishing within the Soviet Union.⁶ The People's Commissariat of Education, by a resolution dated February 14, 1918, "On the Publication of Russian Writers," nationalized the works of fifty-eight of Russia's most prominent poets, critics and writers.⁷ A very important decree issued by the People's Commissars of the R.S.F.S.R. on November 26, 1918, and entitled "On the Recognition of Scientific, Literary, Musical, and Artistic Works as State Property," declared the right of the government to nationalize "all works of science, literature, music, or fine art, of any kind, whether published or not, no matter in whose possession they are."⁸ The publishers were to be compensated for their costs by a fixed schedule which would be published later. Subsequently, the R.S.F.S.R. Council of People's Commissars issued a decree "On the Nullification of Contracts Establishing Full Ownership of Literary and Artistic Works."⁹

The mere nationalization of an individual's intellectual property was not sufficient to make certain that all literature would be party-oriented. It was necessary for the state not only to control the compensation paid for an author's works, but also to tightly control the ability of an individual author to find a medium through which his thoughts could be communicated to the Russian public. Therefore, it became essential that the Soviet government gradually restrict the ability of private publishing houses to select what would be printed, and finally for the state to completely take over the means of publication itself. Via this method, the state was assured of being the only legal medium for the transmission of an author's thoughts to the Russian public. The amount of compensation paid authors was geared to state evaluation of the work, and an author's selection of themes was governed by the state's needs at the time. The Commissariat's evaluation of the social worth of the written work determined an author's status.

A May 22, 1922, declaration extended copyright protection to authors, and the right to copyright was recognized as a fundamental private property right of the citizens of the R.S.F.S.R.¹⁰ This "fundamental private property right"

⁵Burrus, *The Soviet Law of Inventions and Copyright*, 30 *FORDHAM L. REV.* 693, 713 (1962).

⁶*Id.* See also R.S.F.S.R. 1917-18 *GRAZH. KOD.* (Civil Code) 28; 1 *DECRETY SOVETSKOI VLASTI* 296 (1957).

⁷B. ANTIMONOV & E. FLEISHITS, *AVTORSKOE PRAVO* 23 (1957), cited in Skorodumov, *The Evolution of Soviet Copyright Law*, *RADIO LIBERTY DISPATCH*, May 18, 1973, at 2 [hereinafter referred to as Skorodumov].

⁸1 *GSOVSKI* 611. See also B. ANTIMONOV & E. FLEISHITS, *supra* note 7, at 24.

⁹51 *Sob. uzak.* R.S.F.S.R. 492 (1919), cited in Skorodumov 2.

¹⁰R.S.F.S.R. 1922 *GRAZH. KOD.* (Civil Code) text 423 (1922). See also 1 *LITERATURNAYA*

was seriously circumscribed by a decree issued by the R.S.F.S.R. Council of People's Commissars on June 6, 1922 which introduced censorship designed to give literature and art a specific "politico-ideological" trend. To enforce this resolution, GLAVLIT was created, a special institution now known as the Main Department for the Protection of State Secrets in the Press of the Council of Ministers of the USSR:

- (1) For the purpose of putting into effect all types of political, ideological, military, and economic controls over items prepared for publication or distribution in the press, over manuscripts . . . there shall be organized under the People's Commissariat for Education of the RSFSR a Chief Administration for Matters of Literature and Publishing Houses (GLAVLIT).
- (2) In order to carry out the tasks placed upon it, GLAVLIT shall be permitted to forbid printing, publishing, and distribution of productions which:
 - (a) contain agitation or propaganda against Soviet authority or the dictatorship of the proletariat;
 - (b) reveal state secrets;
 - (c) stir up ethnic and religious fanaticism. . . .¹¹

The first decree dealing with copyright on an all-Union basis was the resolution "On the Principles of Copyright" passed by the Central Executive Committee and Council of People's Commissars of the USSR on January 30, 1925, which decree was based "on the principle of combining personal with public interests;" *i.e.*, subjecting one's personal interest (his intellectual property) to the state's interest (ideologically correct works).¹² Article 12 of this 1925 law provided that "a copyright may be partly or fully alienated by a publisher's contract," while Article 15 made provision for "compulsory purchase by the government of the U.S.S.R. or the Union Republic on whose territory the work was first published or on which it exists in manuscript form."¹³ In a decree dated October 11, 1926, and issued by the R.S.F.S.R. Council of People's Commissars provision was included for "the permanent surrender by an author of the exclusive right of publication of his work" to state, trade union, party, and cooperative publishing houses.¹⁴ The government's authority to expropriate an author's property contradicts the May, 1922 decree that copyright protection was one of the fundamental private property rights of a Soviet citizen. These early provisions for governmental expropriation were later incorporated into the May 16, 1928 "Principles of Copyright" which was not revised until

ENTSIKLOPEDIJA 32 (1929). A comprehensive study of this decree in English is found in Freund, *Civil Law in the Soviet Union*, 22 ILL. L. REV. 710 (1928).

¹¹Decree of June 6, 1931, Censorship, [1931] 31 Sob. ukaz. R.S.F.S.R. Item 273, J. HAZARD & I. SHAPIRO, *THE SOVIET LEGAL SYSTEM* 77-78 (1962).

¹²U.S.S.R. Laws [1925] 67, *cited in* Skorodumov 3-4.

¹³On the Principles of Copyright, 7 Sob. Zak. S.S.S.R. art. 6 (1925), *cited in* Skorodumov 4.

¹⁴Decree of Oct. 11, 1926, art. 14, [1926] 72 Sob. ukaz., (VTsIK and the Council of People's Commisars of the R.S.F.S.R.), Skorodumov 4; *see* R.S.F.S.R. 1926 GRAZH KOD. (Civil Code) 567 (1926).

Soviet accession to the UCC in 1973.¹⁵ Under this law, copyright is protected during the lifetime of the author,¹⁶ and for fifteen years after his death for his heirs or testamentary beneficiaries.¹⁷ Section 7 provides that, "An author will have the exclusive right to publish his work . . . and to reproduce and circulate his work by any legal means within the period of time fixed by law, and likewise to derive profits from such right in any lawful manner."¹⁸ But the "legal means" by which an author could publish or circulate his works were already quite restricted in 1928, and after a 1932 law, any printing (including mimeograph) establishment required a license which could be issued only to a "government, public, or co-operative organization."¹⁹ It should come as no surprise that these latter two organizations were also under government scrutiny.²⁰ Martynov flatly states that private publishing was "continuously reduced and by 1931 or 1932 had ceased altogether."²¹ Finally, the underlying premise of Section 7 is explicitly renounced in the 1938 Soviet Civil Law Textbook in which the author states that:

The phrase in the Statute concerning the right of the author to reproduce and circulate his work should not be taken in the sense that the author himself may publish and distribute the work. These operations are at present performed in the USSR by special organizations of the socialized economy, in particular, the public offices, which themselves organize the process of issuing a work and perform its distribution by means of a corresponding mechanism. But they can do it, of course, only with consent of the author.²²

The fallacy of the last sentence in that statement is to be found in Section 16 of the 1928 law which provides for the "partial or complete alienation of a copyright by a publishing contract, a will or other legal means,"²³ and Section

¹⁵Law of May 16, 1928, U.S.S.R. Copyright Law, 27 Sab. Zak. S.S.S.R. Item 246 (Joint Resolution of the U.S.S.R. Central Executive Committee and the Council of People's Commissars), 2 GRAZH. PRAVO (Civil Law) 229 (1944), 2 GSOVSKI 398-409 (1949). Similar legislation was enacted in the R.S.F.S.R. Law of Oct. 8, 1928, R.S.F.S.R. Copyright Law, R.S.F.S.R. 1928 GRAZH. KOD. (Civil Code) (1964), W. GRAY, SOVIET CIVIL LEGISLATION 126-36 (1965) [hereinafter cited as GRAY], in [1964] 13-14 SOV. IUST. 48-52.

¹⁶Law of May 16, 1928, U.S.S.R. Copyright Law § 10, 2 GRAZH. PRAVO (Civil Law) 229 (1944), 2 GSOVSKI 405; see R.S.F.S.R. 1928 GRAZH. KOD. (Civil Code) art. 496 (1964) GRAY 131, in [1964] 13-14 SOV. IUST. 50.

¹⁷Law of May 16, 1928, U.S.S.R. Copyright Law § 15, 2 GRAZH. PRAVO (Civil Law) 229 (1944), 2 GSOVSKI 407; see R.S.F.S.R. 1928 GRAZH. KOD. (Civil Code) art. 497 (1964), GRAY 132, in [1964] 13-14 SOV. IUST. 50.

¹⁸Law of May 16, 1928, U.S.S.R. Copyright Law § 7, 2 GRAZH. PRAVO (Civil Law) 229 (1944), 2 GSOVSKI 401; see R.S.F.S.R. 1928 GRAZH. KOD. (Civil Code) art. 479 (1964), GRAY 127, in [1964] 13-14 SOV. IUST. 48.

¹⁹R.S.F.S.R. 1932 GRAZH. KOD. (Civil Code) 288 (1932), 1 GSOVSKI 614; see Levitsky, *The Soviet Press and Copyright Legislation*, 25 FORDHAM L. REV. 469, 477 (1956).

²⁰1 GSOVSKI 412, 617.

²¹Martynov, *Basic Problems of Copyright*, 4 SOVIET STATE 31 (1941), cited in 1 GSOVSKI 614 n.196.

²²2 GRAZH. PRAVO UCHEBNIK (Civil Law Textbook) 264 (1938), 2 GSOVSKI 614.

²³Law of May 16, 1928, U.S.S.R. Copyright Law § 16, 2 GRAZH. PRAVO (Civil Law) 229

20 asserts bluntly that "the copyright to any work may be compulsorily purchased by the government of the U.S.S.R. . . ."²⁴

A Soviet author's rights in his works are conditioned upon governmental approval. State control over the means of publication effectively gives the author the right *not* to publish at all or to submit his work to the publishing houses for censorship and possible publication. The censors require the author's work to be ideologically correct and to accord with the philosophy of the state. Article 125 of the 1936 U.S.S.R. Constitution pinpoints the "prerequisites" for freedom of the press asserting that:

In conformity with the interests of the working people, and in order to strengthen the socialist system, the citizens of the U.S.S.R. are guaranteed by law: . . . (b) freedom of the press.²⁵

Obviously, the work must be in conformity with the interests of the working class and must strengthen the socialist state. This effectively grants the population the right to uphold the Soviet state and not to criticize it.²⁶

Such then were the rights of Soviet authors to their intellectual property *within* the borders of the Soviet Union itself, but what of publication abroad? Section 3 of the 1928 Act stated that:

An author who is a national of the U.S.S.R., and his heirs or testamentary beneficiaries, shall enjoy within the territory of the U.S.S.R. protection of the copyright to his work published or located abroad as a manuscript, sketch, or in any other presentable form, regardless of whether the U.S.S.R. has with the country concerned any such agreement as is specified in Section 2.²⁷

The result of this legislative enactment was to recognize within the Soviet Union copyright in a Soviet citizen who was first published abroad. However, it is obvious that these internal laws could not, without more, achieve an extraterritorial effect. The Soviet government, while recognizing copyright in Soviet authors who first published abroad, were unwilling to recognize such

(1944), 2 GSOVSKI 407, *as amended*, Law of Dec. 8, 1961, Principles of Civil Legislation of the U.S.S.R. and Union Republics, 50 Ved. Verkh. Sov. S.S.S.R. Item 525 (Supreme Soviet U.S.S.R.), 15 THE CURRENT DIGEST OF THE SOVIET PRESS No. 4, at 12 (1962); *see* R.S.F.S.R. 1928 GRAZH. KOD. (Civil Code) art. 479, GRAY 127, in [1964] 13-14 SOV. IUST. 48.

²⁴Law of May 16, 1928, U.S.S.R. Copyright Law § 20, 2 GRAZH. PRAVO (Civil Law) 229 (1944), 2 GSOVSKI 405; *see* R.S.F.S.R. 1928 GRAZH. KOD. (Civil Code) art. 501 (1964), GRAY 132, in [1964] 13-14 SOV. IUST. 51.

²⁵FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS, U.S.S.R. CONST. art. 125 (Dec. 5, 1936), 3 A. PEASLEE, CONSTITUTIONS OF NATIONS 985, 1005 3d ed. 1968). *See also* J. HAZARD & I. SHAPIRO, *supra* note 11, 78.

²⁶Levitsky, *supra* note 19, at 469. The Soviet Constitution respects the freedom of press; however, this freedom is limited by the necessity of conforming "with the interests of the working people." FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS, U.S.S.R. CONST. art. 125 (Dec. 5, 1936), 3 A. PEASLEE, CONSTITUTIONS OF NATIONS 985, 1005 (3d ed. 1968). Any attempt to utilize the freedom of press to the detriment of the state must be classified as a counterrevolutionary crime. A. VYSHINSKY, THE LAW OF THE SOVIET STATE 617 (Babb transl. 1948).

²⁷Law of May 16, 1928, U.S.S.R. Copyright Law § 3, 2 GRAZH. PRAVO (Civil Law) 229 (1944), 2 GSOVSKI 399-400.

rights in non-Soviet citizens who first publish abroad.

Barring any international agreement, a non-Soviet author who publishes a literary work outside the Soviet Union is excluded from attaining copyright protection for that work within the Soviet Union.²⁸ Section 2 of the 1928 Act stated that:

Copyright to a work published abroad or located abroad as a manuscript, sketch, or in any other presentable form, shall be recognized *only if* the U.S.S.R. has a special agreement to this effect with the country concerned, and only within the limitations of such agreement.²⁹

As the Soviet Union, prior to accession to the UCC, had concluded no such international agreements, the net effect of this provision was to deny to non-Soviet citizens whose works were first published outside the Soviet Union, copyright protection within the Soviet Union.³⁰ If a non-Soviet author first published in the Soviet Union, his copyright would be recognized by Section 1 of the 1928 Copyright Act.³¹ This section granted copyright protection to any author, regardless of nationality, who first published in the Soviet Union.

By virtue of these provisions, an American author who first published in America would be denied copyright within the Soviet Union. His work could be republished in the Soviet Union without royalties being paid to him. An American author could, of course, first publish in the Soviet Union; however, this action would remove any protection he would have gained by first publishing in a country that adheres to any of the international copyright agreements.

Translation of an author's work into a different language was not considered to be an infringement of copyright. Any published work could be translated into a different language without the consent of the author; however, the author was to be notified.³² No sanctions were provided in the event that the translator did not notify the author. As a result, this requirement was rarely, if ever,

²⁸*Id.* § 1, 2 GSOVSKI 398, as amended Law of Dec. 8, 1961, Principles of Civil Legislation of the U.S.S.R. and Union Republics, 50 Ved. Verkh. Sov. S.S.S.R. Item 525 (Supreme Soviet U.S.S.R.), 14 THE CURRENT DIGEST OF THE SOVIET PRESS No. 4, at 12 (1962); see Cramer, *International Copyright and the Soviet Union*, 1965 DUKE L.J. 531, 535. Article 97 of the Principles of Civil Legislation of the U.S.S.R. now provides:

A copyright on a work published for the first time in the U.S.S.R. or not published but existing in the territory of the U.S.S.R. in some objective form is recognized as belonging to the author and to his heirs regardless of citizenship and also to other assignees of the author.

Decree of Feb. 28, 1973, 9 Ved. Verkh. Sov. S.S.S.R. Item 138 (Supreme Soviet U.S.S.R.), 25 THE CURRENT DIGEST OF THE SOVIET PRESS No. 11, 8 (1973).

²⁹Law of May 16, 1928, U.S.S.R. Copyright Law § 2, 2 GRAZH. PRAVO (Civil Law) 229 (1944), 2 GSOVSKI 399 (emphasis added); see R.F.S.F.R. 1928 GRAZH. KOD. (Civil Code) art. 478 (1964), GRAY 127, in [1964] 13-14 SOV. IUST. 48.

³⁰Cramer, *supra* note 28, at 536.

³¹Law of May 16, 1928, U.S.S.R. Copyright Law § 1, 2 GRAZH. PRAVO (Civil Law) 229 (1944), 2 GSOVSKI 398.

³²*Id.* § 9(a), 2 GSOVSKI 402, as amended Law of Dec. 8, 1961, Principles of Civil Legislation of the U.S.S.R. and Union Republics, art. 102, 50 Ved. Verkh. Sov. S.S.S.R. Item 525 (Supreme Soviet U.S.S.R.), 14 THE CURRENT DIGEST OF THE SOVIET PRESS No. 4, at 12 (1962).

applied. Certain foreign authors were paid royalties by the Soviet government but no uniform practice was established.³³ If payment was made, the manner of payment was usually by deposit of Russian currency in Russian banks. As a result of its practices regarding foreign authors, the Soviet Union has been characterized as "the world's most active literary pirate."³⁴

The American author thus received no copyright protection for his works in the Soviet Union. A question remains regarding the copyright protection a Soviet author acquired in the United States, if he first published in the Soviet Union. The answer appears in Section 9 of the United States Copyright Law, which, in pertinent parts, provides:

The author or proprietor of any work made the subject of copyright by this title, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this title: *Provided, however,* That the copyright secured by this title shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation only under the conditions described in subsections (a), (b), or (c) below:

(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this title or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto. . . .

(c) When the Universal Copyright Convention, signed at Geneva on September 6, 1952, shall be in force between the United States of America and the foreign state or nation of which such author is a citizen or subject, or in which the work was first published. Any work to which copyright is extended pursuant to this subsection shall be exempt from the following provisions of this title: (1) The requirement in section 1(e) that a foreign state or nation must grant to United States citizens mechanical reproduction rights similar to those specified therein; (2) the obligatory deposit requirements of the first sentence of section 13; (3) the provisions of sections 14, 16, 17, and 18; (4) the import prohibitions of section 107, to the extent that they are related to the manufacturing requirements of section 16; and (5) the requirements of sections 19 and 20: *Provided, however,* that such exemptions shall apply only if from the time of first publication all the copies of the work published with the authority of the author or other copyright proprietor shall bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

Upon the coming into force of the Universal Copyright Convention in a foreign state or nation as hereinbefore provided, every book or periodical of a citizen or subject thereof in which ad interim copyright was subsisting on the

³³Cramer, *supra* note 28, at 544-45.

³⁴N.Y. Times, May 24, 1959, § 2, at 3, col. 1.

effective date of said coming into force shall have copyright for twenty-eight years from the date of first publication abroad without the necessity of complying with the further formalities specified in section 23 of this title. . . .³⁵

As a Soviet national publishing within the Soviet Union could not achieve any of these prerequisites of copyrights protection under United States law prior to the Soviet accession to the UCC, the answer was that the United States recognized no copyright in the Soviet author. His works were in the public domain and could be freely published with no royalties due the author.

However, this state of affairs did not exist if the Soviet author first published in UCC country. Under the UCC, the copyright must be recognized if first published in any UCC country.³⁶ In effect, the Soviet authors, such as Solzhenitsyn, who found it impossible to legally publish their works within the confines of the Soviet Union, could smuggle their works abroad, and attain publication outside the Soviet Union. Moreover, the Soviet author could disclaim, as Solzhenitsyn has done, that he authorized publication abroad and thus escape the onus of Soviet Criminal Statutes.³⁷

In 1961, revised copyright legislation came into effect under a U.S.S.R. Statute entitled "Principles of Civil Legislation of the U.S.S.R. and Union Republics."³⁸ Under Article 98 of this law the author only had the right to publish, reproduce, or distribute his works by means *allowed by law*. Article 101 announced bluntly that the use of a work covered by a copyright was permissible only under a publishing contract which must be drawn up according to a state standard. Thus the author's dependence on the state publishing monopoly is embodied by the statute. An author could not consent to have his work published abroad except in accord with a method allowed by Soviet law. The net effect of these laws was to make it *legally* impossible for an author whose works did not comport with the party line to be published within the Soviet Union. If an author, whose views were labelled "anti-Soviet" by the authorities, wished to have his work circulated within the Soviet Union, he had to reproduce his works illegally as *samizdat*, literally translated, *self-publishing*. Each year in the Soviet Union thousands of pieces of *samizdat* are printed on illegal presses, and are circulated from hand to hand within the intellectual communities. The government wages a continuing war on this small vestige of free press, but it never seems to completely shut them down. This

³⁵17 U.S.C. § 9 (1970).

³⁶UCC art. II(1). According to the UCC, works first published in any contracting state shall enjoy in every other contracting state the same protection as that other state accords to works of its nationals first published in its own territory. *Id.*

³⁷Law of Dec. 25, 1958, Law on Criminal Responsibility for State Crimes, art. 7, [1958] 1 Ved. Verkh. Sov. S.S.S.R. Item 8 (Supreme Soviet U.S.S.R.), J. HAZARD & I. SHAPIRO, *supra* note 11, at 72.

³⁸Law of Dec. 8, 1961, Principles of Civil Legislation of the U.S.S.R. and Union Republics, 50 Ved. Verkh. Sov. S.S.S.R. 1961, Item 525 (Supreme Soviet U.S.S.R.), 14 THE CURRENT DIGEST OF THE SOVIET PRESS No. 4, at 12 (1962).

small tear in the web of censorship at home is not nearly as frustrating to the Soviet authorities however as is the ability of "anti-Soviet" authors such as Solzhenitsyn and Amalrik³⁹ to be able to have their works published abroad and circulated around the world.

As pointed out previously, the Soviet authorities' ability to shut off foreign publication had been impossible because this control was left to international agreements between the Soviet Union and the foreign publishing state, and no such agreements were in effect. The Soviet accession to the UCC marks a dramatic shift in the validity of the assertion that the Soviet authorities cannot control publication abroad of their "dissident" writers. This fear has led to public and private outcries in this country protesting the possibility of the Soviet government denying its authors the freedom of foreign publication which they had previously enjoyed.

II. SOVIET ACCESSION TO THE UCC

At first glance, the Soviet accession to the UCC seemed but another conquest for East-West detente. Former Secretary of Commerce Peter Peterson's talks with Foreign Trade Minister N. Patolichey in November, 1972, touched on a number of topics including the possibility of the Soviet Union's accession to the UCC. The American tour of Boris Stukhalin, Chairman of the U.S.S.R. State Committee on Publishing further aroused the hopes of such a possibility. News of the accession was greeted generally with optimism and the few voices of pessimism were assured that the Soviets would not try to suppress publication abroad of their dissidents via the UCC. However, Stewart Richardson of Doubleday Publishing Co., while asserting that the Soviets would not try to use the UCC for suppressive purposes, raised the possibility that they might try to profit from such accession by privately publishing three thousand *samizdat* issues of an authors works in Russia, and thus claiming "first publication" and copyright protection.⁴⁰

³⁹In his book, *Will the Soviet Union Survive Until 1984?*, Andrei Amalrik predicted a bleak future for his nation. He was sentenced to three years, then a further term for defaming the state while in custody. He is now in exile.

⁴⁰Astrachan, *Soviets Join Copyright System*, Washington Post, March 1, 1973, § H, at 8. A question exists whether a private publishing in Russia by the Soviet government would qualify the work for copyright protection. The Soviet government could qualify as a protected person. Article I of the UCC provides that protection must be granted to the rights "of authors and other copyright proprietors." The term copyright proprietor recognizes the possibility that a legal or governmental entity may be entitled to protection. A. BOGSCH, *THE LAW OF COPYRIGHT UNDER THE UNIVERSAL CONVENTION* 7 (1968).

The UCC provides published works of Nationals of any contracting state and works first published in that state with the same protection as any other contracting state accords works of its nationals first published in its own territory. UCC art. II(1). This provision raises the question when publication occurs. The reproduction in tangible form and general distribution to the public qualifies as publication under the UCC. *Id.* art. VI. Apparently, both aspects are necessary for publication. A. BOGSCH, *supra*, at 73-74. However the various texts of the UCC differ in their definition of distribution. The definitions include putting at the disposition, making accessible, and communication, as acts resulting in publication. *Id.* at 76. Another qualification is the need for

The possibility of Soviet governmental control over publication appears to be highly possible. However, an interesting case decided in England in 1971 militates against the Soviet authorities going this route.⁴¹ This case dealt with the issue of who had the legal rights to publish Solzhenitsyn's novel, *August 1914* in Great Britain. The plaintiff, The Bodley Head Ltd., claimed and established that in January 1970, the Russian author had signed a power of attorney in Moscow appointing a Swiss attorney, Dr. Fritz Heeb, to deal with his works outside of Russia.⁴² In May, the Swiss attorney entered into agreement with the Y.M.C.A. Press in Paris to publish a limited number of copies in Russian, and thus gain copyright protection for the author under the Berne Convention.⁴³ This convention offers copyright protection to works of Soviet authorship *first published* in a member country in the original Russian language.⁴⁴ France is a member of the Berne Convention. In July, plaintiff acquired the exclusive right to publish and serialize the work in the United Kingdom in consideration of certain royalties, subject to the stipulation that it not act before August 1972. Plaintiff then sold serialization and paperback rights with the same stipulation. At this time, the plaintiff learned that the defendant, Mr. Alec Flegon, trading as the "Flegon Press," had attempted to sell serialization and paperback rights to the same companies at a reduced rate and without the stipulation. This suit was filed against the defendant asking for injunctive relief and damages for copyright infringement and conversion.

In his answer, defendant asserted the novel defense that the Y.M.C.A. Press publication of Solzhenitsyn's work, through which plaintiff held his title, was not the "first publication" demanded by the Berne Convention. Rather, the work's circulation within the Soviet Union constituted the "first publication," and as this *samizdat* circulation was not by a Berne Convention member, the work was in the "public domain" in the West.⁴⁵ Had the court accepted this

"general" distribution. This term reflects the intent that the copies should be available to any prospective purchaser as long as the copies last. *Id.* at 77. Regardless of various definitional differences in national law, each contracting state must be in a position to give effect to the terms of the UCC. UCC art. X.

⁴¹The Bodley Head Ltd. v. Flegon, [1972] 1 W.L.R. 680 (Ch.).

⁴²R.S.F.S.R. 1926 GRAZH. KOD. (Civil Code) art. 62-77 (1964), GRAY 17-21.

⁴³See A. BOGSCH, *supra* note 40, at 14-15. Under the Berne Convention, nationals of a non-Union country other than those habitually residing in a Union country, are to be accorded protection for their works first published in a Union country, or simultaneously published in a non-Union country and in a Union country. Berne Convention for the Protection of Literary and Artistic Works, art. 6(1), revised June 26, 1948, 331 U.N.T.S. 219, 225 (1959), revised July 14, 1967, W. COPINGER & E. JAMES, COPYRIGHT 705-64 (11th ed. 1971) [hereinafter cited as Berne Convention]. The protection for the national of a non-Union country can be eliminated by a Union country if the individual's country fails to adequately protect works of foreign authors. *Id.* art. 6(2). However, this limitation operates only prospectively after the Swiss government is notified of the restriction of protection. *Id.* art. 6(3).

⁴⁴Schwartz, *The State of Publishing, Censorship, and Copyright in the Soviet Union*, 203 PUBLISHERS' WEEKLY 32, 35 (Jan. 15, 1973). The Berne Convention provides the same protection for translations, adaptations and other alterations of literary work as it provides for the original work of the author. Berne Convention, art. 2(2).

⁴⁵In general, the United States and Great Britain do not provide copyright protection to a work

defense, any publisher outside the Soviet Union could publish works that circulated as *samizdat* within the Soviet Union. However, the court accepted the Y.M.C.A. Press publication as the first publication. The English copyright subsisted by virtue of Section 2 and 32 of the 1956 Copyright Act as well as the Copyright Order of 1964, which states that English copyright protection will be afforded where *first publication* takes place in a foreign country to which the relevant provisions of the 1956 Copyright Act have been extended, notwithstanding the fact that the author has neither British nationality, residence nor domicile. France is one such country while Russia is not.⁴⁶ The court, in ruling for the plaintiff found that the defendant did not produce sufficient evidence to establish *samizdat* publication. Fortunately, the court went on to say that Section 49(2) of the 1956 Act asserted that there could be no infringement of copyright of a "publication which is merely colorable and not intended to satisfy the reasonable requirements of the public."⁴⁷ The court questioned whether *samizdat* circulation could possibly be regarded as an effort to satisfy the reasonable requirements of the Russian public, such requirements being unable to be voiced by potential readers or satisfied by the author.⁴⁸ The theory of nonrecognition of "first publication" rights in *samizdat* as not meeting "public requirements" could also be applied to stop the Soviet authorities from asserting such a right now after accession to the UCC.

Soviet exploitation of *samizdat* publication diminished as a possibility after the changes made in domestic Soviet copyright law by Decree 138, issued February 21, 1973, by the Presidium of the U.S.S.R. Supreme Soviet.⁴⁹ To fully grasp the import of these changes, and the possible repercussions on Soviet authors who wish to publish abroad, it is necessary to scrutinize the specific wording of the Act.

III. DECREE 138: AN ANALYSIS

Article 97 deals with copyright on works published in the U.S.S.R. and abroad, and with the qualifications for copyright holders. This copyright holding class has been expanded to include not only the author and his heirs, but also to include the "assignees" or the "legal successors" of the author.⁵⁰ These

of a foreign author unless that author receives protection under a treaty. The Berne Convention extends copyright protection to authors of the Soviet Union only if they first publish their works in a Union country. Berne Convention, art. 6(1). For purposes of article 6, "published works" shall be works copies of which have been issued and made available in sufficient quantities to the public. *Id.* art. 4(4).

⁴⁶The *Bodley Head Ltd. v. Flegon*, [1972] 1 W.L.R. 680, 687 (Ch.).

⁴⁷*Id.* at 687. The legislation referred to is the Copyright Act of 1956, 4 & 5 Eliz. 2, c.74 § 49(2). See also A. BOGSCH, *supra* note 40.

⁴⁸The *Bodley Head Ltd. v. Flegon*, [1972] 1 W.L.R. 680, 687 (Ch.).

⁴⁹Decree of Feb. 28, 1973, 9 Ved. Verkh. Sov. S.S.S.R. Item 138 (Supreme Soviet U.S.S.R.), 25 THE CURRENT DIGEST OF THE SOVIET PRESS No. 11, 8-9 (1973). See also Skorodumov 11-17.

⁵⁰Decree of Feb. 28, 1973, 9 Ved. Verkh. Sov. S.S.S.R. Item 138 (Supreme Soviet U.S.S.R.), 25 THE CURRENT DIGEST OF THE SOVIET PRESS, No. 11, 8 (1973), amending 2 GRAZH. PRAVO (Civil Law) art. 97 (1944), as amended Law of Dec. 8, 1961, Principles of Civil Legislation of the

"legal successors" are capable of holding copyrights on works which are published for the first time or exist in some objective form in the territory of a foreign state. Further, under amended Article 102, the translation of a work into a different language for the purpose of publication will be permitted only with the permission of the author or his "legal successors."⁵¹ The creation of this new class of potential copyright holders has generated the Western fear of possible Soviet governmental interference in publication abroad.

A new section of Article 97 deals with foreign assignees of Soviet authors and stipulates that their copyright will be recognized in the Soviet Union "in cases where this copyright has been transferred to them according to the procedure established by U.S.S.R. legislation."⁵² Further, the Soviet copyright legislation was amended to recognize the establishment of a procedure by which an author who is a U.S.S.R. citizen can transfer the right to use his work in the territory of a foreign state.⁵³ The amendments to Article 102 assert that competent U.S.S.R. agencies can, according to a procedure established by U.S.S.R. legislation authorize the translation of a work into a different language.⁵⁴ The competent organ appears to be the new Soviet Copyright Agency, established in September 1973, and headed by Boris Pankin.⁵⁵

The Soviet Copyright Agency maintains a unique position in the Soviet Union. As in all other UCC countries, once the author's copyright is assured at home, it is protected abroad as well. In the Soviet Union, however, it appears that the Copyright Agency holds a monopoly on what legally goes abroad. Article 106 remains unchanged and states that "a copyright on the publication . . . may be compulsorily purchased by the state from the author and his heirs under a procedure established by Union-Republic legislation."⁵⁶ Curiously, the class from whom the copyright may be compulsorily purchased was not broadened to include the "legal successor." This omission was not an oversight and strengthens the possibility that the "legal successor" is meant to be an organ of the government itself.

These basic changes of Decree 138 portend the possibility of the Soviet government using the UCC to subvert the spirit of its creation as embodied in the Preamble:

To ensure respect for the rights of the individual . . . and facilitate a wider dissemination of works of the human mind and increase international understanding.⁵⁷

U.S.S.R. and the Union Republics, 50 Ved. Verkh. Sov. S.S.S.R. Item 525 (Supreme Soviet U.S.S.R.), 14 THE CURRENT DIGEST OF THE SOVIET PRESS No. 4, at 12 (1962).

⁵¹2 GRAZH. PRAVO (Civil Law) art. 102, 25 THE CURRENT DIGEST OF THE SOVIET PRESS No. 11, 8 (1973).

⁵²*Id.* art. 97.

⁵³*Id.* art. 98.

⁵⁴*Id.* art. 102.

⁵⁵Boris Pankin was the former chief editor of *Komsomol'skaya Pravda*, a publication of the young communist organization in Russia. See generally Boiter, *The Soviet Copyright Agency*, RADIO LIBERTY DISPATCH, Sept. 21, 1973.

⁵⁶*Id.* art. 106.

⁵⁷KAPLAN & BROWN, COPYRIGHT 733 (1960).

It now remains to be seen how the West and the United States will respond to this challenge.

IV. AMERICAN REACTION TO DECREE 138

The changes in the Soviet internal copyright laws brought quick and vocal American response. The Authors' League of America asked the State Department to lodge a strong protest and demand that the new provisions of the Soviet law be amended or rescinded if they purported to prevent foreign publication of works by dissident Soviet authors.⁵⁸ The Authors' League also lobbied in Congress to amend the American copyright law to prevent the U.S.S.R. or any other foreign government from appropriating a United States copyright granted to their authors and using this appropriation to bar publication of the author's work in the United States. On March 20, the Authors' League sent letters to Senator John McClellan and Representative Robert Kastenmeier, the Chairmen of the Senate and House Judiciary Subcommittees dealing with copyright matters. The letters expressed fear that the Soviet government would claim proprietary rights in the United States' or foreign nations' copyright of the works of Soviet nationals, a right which would be perfected by its recent adherence to the UCC. Roger Strauss, president of the American publishing firm that handles Solzhenitsyn's works, stated that there was "absolutely no doubt that the Soviet government can now control publication at home and abroad. Adherence to the UCC gives the Soviet government a handle on foreign publication it did not have before it joined the international copyright system."⁵⁹ Mr. Strauss added that the Soviets would now be able to go into United States' courts to obtain injunctive relief against publication of its nationals' works.

Fearing such a possibility, Jerome Weidman, president of the Authors' League, forwarded to Senator McClellan a proposed amendment to the United States copyright law, which ultimately became Senate Bill 1359 upon its proposal on March 26, 1973. The bill was to amend Section 9 of Title 17 of the United States Code and stated:

- (d) A United States copyright secured by this title to citizens or subjects of foreign states or nations pursuant to Section (b) and (c), and the right to secure such copyright, shall vest in the author of the work, his executor, or administrators, or his voluntary assigns. For the purposes of this title, any such copyright or right to secure copyright shall be deemed to remain the property of the author, his executor, administrators, or his voluntary assigns regardless of

⁵⁸Wagner, *Authors, Publishers, Deplore Soviet Moves to Curb Dissident Writers by Copyright Legislation*, 203 PUBLISHERS' WEEKLY 47 (Mar. 26, 1973).

⁵⁹*Id.* at 47. Article I of the UCC provides that copyright protection must be granted to the rights "of authors and other copyright proprietors." A copyright proprietor may include the Soviet government. The term copyright proprietor was used to indicate that those agencies or persons who acquire the rights of the author are in the same position as the author. A. BOGSCH, *supra* note 40, at 7. Therefore, if the Soviet government acquires the rights of the author, then the Soviet government is entitled to copyright protection as an author.

any law, decree or other act of a foreign state or nation which purports to divest the author or said other persons of the United States copyright in his work, or the right to secure it; and no action or proceeding for infringement of any such copyright or right to secure it, or common law right in such work, may be maintained by any state, nation or person claiming rights in such copyright, right to secure copyright, or common law rights by virtue of any such law, decree or other act.⁶⁰

On March 28, Representative Jonathan Bingham introduced a companion bill to the same effect. Before introducing the bill, he forcefully asserted his desire that the Soviet government not be permitted to use the UCC to abridge the rights of its citizens to publish abroad:

Mr. Speaker, whatever gains nations and publishers outside the Soviet Union might stand to reap from Soviet participation in the UCC would surely be outweighed by the damage that could be done to fundamental human rights of freedom of expression should the Soviets choose to use their accession as a muzzle on foreign publishers and Soviet authors. I believe that firm action must be taken now to make it clear to the Soviets that we do not intend to stand for such a cynical, unjust, and self-serving abuse of the UCC We do not seek in this bill to impose upon the Soviet Union our system of freedom to publish; committed and devoted as we are to that freedom. We seek only in this bill to prevent the Soviet Union from imposing on us—on our citizens and publishers—the repressive system they maintain in their country.⁶¹

These legislative proposals dealt with the possibility that a Soviet author could no longer claim with impunity that he had not authorized publication abroad of his work, as Solzhenitsyn had done after publication of *The First Circle* and *Cancer Ward*. When an author now makes such a claim, the Soviet Government may, through the medium of the UCC, bring an action in the foreign publishing nations seeking an injunction either on behalf of its citizen or in its own right. If the Soviet author admits that he did authorize the foreign publication, then the Soviet Government, while precluded from suing the foreign publishing company, could take action against the author himself.

Generally, Soviet spokesmen tend to belittle American fears of Soviet literary suppression; however, contrary evidence exists. Dr. Yuri Matveev, senior lecturer at Kiev University, gave a lecture in New York City entitled "Copyright Protection in the U.S.S.R." In his lecture, he replied to an assertion by a correspondent that works not published in Russia but circulated in a manuscript form were not covered by copyright. His reply indicated that Russian copyright covers all literary works, without regard to its value, or the intentions

⁶⁰S. 1359, 93d Cong., 1st Sess. § 9(d) (1973), 119 CONG. REC. 5613 (March 26, 1973) (Remarks of Senator McClellan); see Wagner, *Senate Bill Would Amend Copyright Laws to Thwart Soviet Actions on Dissident Authors*, 203 PUBLISHERS' WEEKLY 26 (April 2, 1973).

⁶¹119 CONG. REC. 2233 (March 28, 1973) (Remarks by Representative Bingham). See also Wagner, *Congress Gets Copyright Bill, Firm United States Action Sought*, 203 PUBLISHERS' WEEKLY 42 (April 9, 1973).

of the author in creating it.⁶² This comment supports Stewart Richardson's fear that the Soviets might publish a few editions and thereby qualify for protection under the UCC.⁶³

Finally, during the hearings on the proposed amendments to the American Copyright Act, Acting Registrar of Copyrights, Abe Goldman, made the following proposal which reads:

The expropriation by a government organization of a foreign country, of a copyright or any right comprised in a copyright, or of any right in a work for which copyright may be secured, or the transfer of a copyright or of any such right from the author or proprietor to the government organization of a foreign country pursuant to any law, decree, regulation, order or other action of the foreign government requiring such transfer, shall not be given effect for the purpose of this title.⁶⁴

Last November it was anticipated that the Domestic Copyright Revision Bill, including Senator McClellan's and Representative Bingham's proposed changes to Section 9, would be reported out of the Judiciary Committee and onto the Senate floor by March, 1974. Thus far any progress of the bill toward this goal has not been publicized.

V. CONCLUSION

The long-range effect of Soviet accession to the UCC upon Soviet authors cannot be accurately predicted at this time. While Soviet accession to the UCC was not solely to suppress publication abroad of dissident works, it could have such a collateral objective in the eyes of the Soviet authorities. A previous commentator reached the conclusion that it made "little sense to argue, as many have, that the major motivation for the decision was the desire to use the UCC as an international mechanism for further suppression of dissident Soviet writers."⁶⁵ That author listed five reasons justifying his conclusion:

- (1) [There] appeared to be little need for additional means to [reach] that end—obviously the Soviet government had certain well known internal powers to deal with the dissidents in other ways.
- (2) Copyright would be a clumsy and exposed tool for suppression.
- (3) Under [the] UCC, the Soviets cannot possibly control any work that has not been first published in the U.S.S.R., nor can they claim any rights, suppressive or otherwise, in a work first published and copyrighted in another country.
- (4) It seems highly unlikely that the Soviets would get away with "tokenism" publishing as a repressive measure, or that they would even try to do so.
- (5) [Any] attempt to use copyright as a suppressive tool would expose the

⁶²*Soviet Copyright Expert Belittles United States Fears*, 203 PUBLISHERS' WEEKLY 36-37 (April 30, 1973).

⁶³Astrachan, *supra* note 40.

⁶⁴Wagner, *Copyright Office Suggests New Language to Cover Soviet Dissidents under UCC*, 204 PUBLISHERS' WEEKLY 30, 31 (Sept. 17, 1973).

⁶⁵Benjamin, *Some Observations on Certain Consequences of the Soviet Union's Accession to the UCC*, 20 COPYRIGHT BULL. 391, 394 (Sept. 1973).

Soviets to international detection and censure of a kind which they are anxious to avoid at the present time of 'detentism'.⁶⁶

Soviet misuse of the UCC is more likely than is generally perceived. In response to the first point raised above, the Soviet authorities have sufficient internal means to suppress freedom of expression within the borders of the Soviet Union, as the development of Soviet Copyright law would indicate. Solzhenitsyn, Sakharov, and Amalrik were threatened and Sinyavsky, Daniel, Yakir, and Krasin were imprisoned for attempting to exercise freedom of expression within the Soviet Union. The fear being expressed in the West from publishers and Congress is not that Soviet accession will further suppress writers in the Soviet Union but that it will be used to still their voices abroad as well. Before the Soviet accession, the Soviet authorities lacked the legal means for attacking publication of their authors abroad. Their accession to the UCC, together with the internal copyright law revisions, now gives the Soviet government the possibility, as a "legal successor," of controlling a Soviet author's foreign copyright as well as the right of translation into a foreign language.

In response to the second point made by Mr. Benjamin, while copyright law may be a "clumsy tool," it is nevertheless available for Soviet use. Threats, national disgrace, and even imprisonment have not been enough to silence Soviet writers. However, control over copyright law may be the means by which the Soviets silence their "dissident" writers. Also, the Soviet revision of their internal laws being an "act of state" creates the possibility that American courts could uphold the validity of Soviet copyright law on that ground alone, despite the fact that other international laws may allegedly be violated.⁶⁷

⁶⁶*Id.* at 394-95.

⁶⁷See Norton, *Reflections on the Act of State Doctrine: A Fifth Wheel in Conflicts of Laws*, 10 HOUSTON L. REV. 1 (1972-73). The Supreme Court applied the act of state doctrine in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), *rev'g* 307 F.2d 845 (2d Cir. 1962). The decision, in effect, validated the Cuban government's expropriation of American property in Cuba. Mr. Justice Harlan, writing for the majority, states that:

The court will not examine the validity of a taking of property within its own territory by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if the conflict alleges that the taking violates customary international law.

376 U.S. 398, 428 (1964); see Coerper, *The Act of State Doctrine in the Light of the Sabbatino Case*, 56 A.J.I.L. 143 (1962); Collinson, *Sabbatino: The Treatment of International Law in United States Courts*, 3 COLUM. J. TRANSNAT'L L. 27 (1964); Metzger, *Act-of-State Doctrine Defined: The Sabbatino Case*, 1964 SUP. CT. REV. 223; Stevenson, *The State Department and Sabbatino*—"Ev'n Victors are by Victories Undone," 58 A.J.I.L. 707 (1964).

Following this decision Senator Hickenlooper added an amendment to the Foreign Assistance Act of 1964 which allowed the courts to proceed to adjudicate the merits of a case unless the President stated that such action would hinder the conduct of foreign affairs. 22 U.S.C. § 2370 (c)(2) (1970); see Henkin, *Act of States Today, Recollections in Tranquility*, 6 COLUM. J. TRANSNAT'L L. 175, 178-83 (1967); Lowenfeld, *The Sabbatino Amendment—International Law Meets Civil Procedure*, 59 A.J.I.L. 899 (1965); Reeves, *The Sabbatino Case and the Sabbatino Amendment: Comedy-or-Tragedy of Errors*, 20 VAND. L. REV. 429 (1967). The effect of the Hickenlooper Amendment on the Sabbatino decision was most recently tested in *Banco Nacional*

The third and fourth reasons given by Mr. Benjamin contradict each other. In the former, he overlooks the possibility of the Soviet government claiming "first publication" rights under the UCC, while in the latter he points out that token publication is possible, although he discounts such a possibility. Evidently, since *Bodley Head Ltd.*, the Soviets could not obtain a valid copyright through the means of token publication in Great Britain. This question has never been tested in a United States court. Further, the February 21 Soviet decree makes provision for copyright protection to an author's "legal successor." Should the Soviet government prevail upon an author to assign his rights to such "legal successor," a United States' court may accept such an assignment. A forceful use of assignments may render moot the question of token publication. Also, an assignment would not tend to have the repugnance to a Federal Court that appropriation under Article 105 would surely have. Finally, even though there may be first publication in a foreign country, nevertheless, the Soviet author might be persuaded to assert that he never gave consent for its publication abroad. This lack of consent would allow the copyright holder, the Copyright Agency, to enjoin publication to protect its rights. Prior to accession, this disclaimer had no legal consequences because Soviet works were public domain in the West.

Regarding Mr. Benjamin's last observation, the fear of "international detection" and "censure" at the present time of "detentism" did not deter the Soviets from subjecting Solzhenitsyn to abuse and the ultimate degradation of exile from the Soviet Union. It has not dissuaded the Soviets from threatening to send forces to the Middle East, nor has it resulted in a let-up in official pressure against all internal "aberrations" be they intellectual, religious, political, or nationalistic. Soviet detente is economically oriented, external in nature, and commensurate with any external relaxation of tensions there is an internal tightening on dissent. For these and other reasons, it cannot be said that there will be no misuse of the UCC by the Soviets.

The bills proposed by Senator McClellan and Representative Bingham will

de Cuba v. First National City Bank, 406 U.S. 759 (1972). The case involved the validity of an offsetting claim asserted by the defendant, First National City Bank against plaintiff, Bank of Cuba, for the confiscation of defendant's property in Cuba without compensation. The district court considered Sabbatino to have been overruled by the Hickenlooper Amendment and since, in its opinion, the confiscation was in violation of international law, granted summary judgment for defendant. 270 F. Supp. 1004, 1007, 1011 (S.D.N.Y. 1967). On appeal, however, the Second Circuit Court of Appeals refused to adopt as broad an interpretation of the effects of the Hickenlooper Amendment and reversed. 431 F.2d 394, 404 (2d Cir. 1970). The Supreme Court, without commenting on the merits, vacated and remanded on basis of communique issued by the State Department 400 U.S. 1019 (1971); see 10 INT'L LEGAL MAT'LS 89-93 (1971); Note, *Executive Suggestion and Act of State Cases: Implications of the Stevenson Letter in the Citibank Case*, 12 HARV. INT'L L.J. 55 (1971). The appellate court refused to recognize this type of communique as binding on it. 442 F.2d 530, 535 (2d Cir. 1971). The Supreme Court again granted *certiorari* and in a 5-4 decision again reversed and remanded. 406 U.S. 759 (1972). The majority, including Mr. Justice Rehnquist, Chief Justice Burger, and Mr. Justice White, placed primary emphasis on the letter emanating from the State Department. Mr. Justice Powell, concurring, based his decision on a "balancing of interests" between the executive and judicial branches. 406 U.S. 759, 774-76.

not injure the detente between the Soviet Union and the United States if the Soviets have no intention of using the UCC to suppress foreign publication of "dissident" works. Should passage of these bills frustrate the Soviet intention to quash such publication abroad, then such intentions should be exposed now and the strength of the detente tested. Passage of the amendments to the Copyright Act would strongly indicate to the Soviets that we do not intend to see the principles of the UCC circumvented and would prevent a denial of an author's right to publish by the application of Soviet law in an American courtroom. At the same time, such legislation would not interfere with Soviet internal legislation.

Credulity would be stretched to the limit to assume that the Soviet hand dangling the sword over Damocles' head would never allow the sword to drop. That hand is already subject to few international restraints, and if, sometime in the future, the gains seemed to outweigh the losses, then that sword would surely drop!

Lee Jeffrey Ross, Jr.