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Copyright

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Communication

GERMANY

The Permanent Representative of Germany to the Office of the United Nations and to the other International Organizations in Geneva has requested that the following contents of his letter to the Director General of WIPO, dated October 3, 1990, and received on that date, be communicated:

[T]hrough the accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German states have united to form one sovereign state, which as a single member of the World Intellectual Property Organization remains bound by the provisions of the Convention Establishing the World Intellectual Property Organization. As from the date of unification, the Federal Republic of Germany will act in the World Intellectual Property Organization under the designation of "Germany."

WIPO Notification No. 150, of October 12, 1990.

Treaty on the International Registration of Audiovisual Works

Ratification

MEXICO

The Government of Mexico deposited, on October 9, 1990, its instrument of ratification of the Treaty on the International Registration of Audiovisual Works, adopted at Geneva on April 18, 1989.

The date of entry into force of the said Treaty will be notified when the required number of ratifications, acceptances, approvals or accessions is reached in accordance with Article 12(1) of the said Treaty.

IRAW Notification No. 5, of October 9, 1990.

Studies

The Bicentennial Celebration of the Enactment of the United States Patent and Copyright Laws

Donald W. BANNER*

In my role as President of the Foundation for a Creative America, I take this opportunity to greet all of you who are here from other countries. We hope that your stay with us will be something that you will always favorably remember.

There are some real problems, apparently, with the world of today. But things are not totally lost unless we stop trying. We can always do a better job even though we have made mistakes at an earlier time. I am reminded of a quotation from our former President, Theodore Roosevelt. Let me read it to you. He said:

> It is not the critic who counts; not the man who points out how the strong man stumbles or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, and comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deed; who knows the great enthusiasms, the great devotions; who spends himself in a worthy cause; who at the best knows in the end the triumph of high achievement, and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and timid souls who know neither victory nor defeat.

We have a wonderful history in intellectual property matters; we have had many people who did strive, err, but worked and continued to do so. That is part of the great pleasure of participating with people in intellectual property throughout the world.

I would like to talk about some of the background of the patent law and the copyright law in the United States. A proper understanding of the patent and copyright systems in the United States must, I believe, include an analysis of the background of their creation; the experiences and biases of the people who created those systems; the institutions and practical considerations that were involved.

As we all know, the Constitution contains the famous power to Congress "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

Needless to say, that provision did not come out of thin air. To investigate the roots of that provision let us consider the historical considerations from which it matured.

It will be remembered that on September 6, 1781, the great ships of the English line retreated slowly north from their position off Yorktown, Virginia—just a few miles from here—where they had been engaged by the French fleet under Admiral de Grasse. Those English ships never returned.

As Michener said in his wonderful book, *Chesapeake*, that battle

> ...accomplished nothing but the freedom of America, the establishment of a new system of government against which all others would eventually compare themselves and a revision of the theory of empire.

The armies of Rochambeau and Washington held the British, under Cornwallis, in an iron vise. It was a position from which they could not escape, a position in which they must surrender or die. The surrender of Cornwallis led to the Treaty of Paris in 1783, granting independence to the United States. Independence; a heady thought.

They had created a truly revolutionary country, one which, as Abraham Lincoln said many years later, was conceived in liberty and dedicated to the proposition that all men were created equal. It was a country where the people were sovereign and governed themselves. The people elected their leaders and they were not controlled by some hereditary leadership. Truly, it was a revolutionary experiment.

Many of the educated, privileged, and noble people of Europe knew it would not work. What had been established, in their eyes, was a government which would act by a vote of the rabble; government by the low-born. This was a concept which would never be successful, in their view.

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* Former Commissioner of Patents and Trademarks, now a partner in the firm of Banner, Birch, McKie & Beckett, Washington.

Note: The above statement was made in Washington, on May 8, 1990, at the Celebration of the 200th anniversary of the first patent and copyright laws of the United States of America.

The interesting thing about it is, as time went on, it looked like they were right! The new government *did not* work.

In the first place, it was faced with a vast territory between British Canada and the Gulf of Mexico and it extended from the Atlantic to the Mississippi. There was no effective government over more than half of that enormous, unpopulated expanse. Indeed, for several years after the Treaty of Paris the British refused, contrary to the Treaty, to evacuate the forts along the western boundary of the United States. The new country did not have the power to force the British to comply with the Treaty.

In similar manner the Spanish government closed the Mississippi River, preventing entry into the Gulf of Mexico. Spain charged a tariff for each ship going down the Mississippi to the Gulf, and there was nothing that the new government could do about it.

It will be recalled that after the Second Continental Congress the Articles of Confederation were in effect. Each state had its own constitution. The Federal Congress had very little power and was so ineffectual that eventually some of the states stopped sending representatives to it.

Conflicts arose between the states. There were minor border wars between them. Settlers of the Tennessee area threatened to secede from North Carolina and they set up a state called Franklin. Kentucky residents said they wanted to secede from Virginia, and Vermont wanted to be free from the State of New York. There were very heated arguments about those matters and shooting incidents had occurred.

Financially, chaos reigned. The new government had a war debt of over $40 million, which was much money in those days, but the Federal Government had no power to tax. It was necessary to plead with the states for funds, a practice that Robert Morris, the federal Superintendent of Finance, said was "like preaching to the dead."

A severe depression occurred shortly after the end of the war. British merchants dumped their manufactured goods on the new nation. Its infant industries were swamped. Congress had no power to regulate commerce and could do nothing about this.

In addition, the preferential trade treatment enjoyed by the states in their earlier colonial status was terminated by the British. For example, exports of fish and lumber from New England to the West Indies were stopped. The ruling powers of England were sure that the states could be forced back to their earlier state of colonial dependency.

The depression was so great that there were trade barriers set up between the various states. Commodity prices plummeted, and the debtor/creditor relationship became a significant political issue. In Massachusetts, mortgage foreclosures reached a record high in 1786. That was a time in which not only were farms confiscated for failure to pay the mortgage, but individual debtors were frequently jailed.

When the Massachusetts legislature in 1786 adjourned without doing something to help those people with credit problems, armed men closed the courts at various places throughout Massachusetts. They closed the Supreme Court of Massachusetts so that default decrees could not be issued. Angry, armed men had had enough.

The leader of that force was a man named Daniel Shays, and the conflict became known as the Shays' Rebellion. He was a farmer/debtor at the time of the uprising. Earlier, however, he had been an officer in the Revolutionary Army, and had fought valiantly at Bunker Hill and at Saratoga. The country he and his colleagues had fought to establish, the ideal of independence for which they had suffered, had not only played them false but had turned their brightest hopes for the future into ashes.

It was in this context that the Constitutional Convention was held. Unemployment, huge national debt, trade deficits were problems on everybody's mind. From the heady excitement of the proud cries of "Independence," the country had come in just a few years to a dangerous condition; to a place where obviously something drastic had to be done.

You may remember that when many of the delegates went to the Constitutional Convention they were instructed only to improve the Articles of Confederation, not write a new Constitution. The country's situation was so drastic, however, they did not do what they were told to do. They created a revolutionary, new Constitution. They had one more chance to prove to the world that government by the people was truly possible. A strong country had to be formed, a country which would provide employment, a country which would become rich, a country which would have strength of arms.

At that Constitutional Convention, James Madison of Virginia and Charles Pinckney of South Carolina submitted, on the same day, their respective recommendations concerning the power of Congress to promote the progress of science and useful arts. There was no recorded debate on the issue. The recommendations were modified in the Committee on Detail and we finally, of course, have that wonderful provision in the Constitution. It is worthwhile to look at this precise, balanced sentence in which they created both the copyright and the patent systems. They said that Congress would have the power "to promote the Progress of Science and useful Arts, by securing

for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

I think it would probahly take us about six pages today to write such a monumental provision, and then nobody would understand it.

Those were the words incorporated into the Constitution on September 5, 1787, a wonderful day in American history. That was just one year after Shays' Rebellion.

It is interesting to note, by the way, that both of the recommendations of Madison and Pinckney used the words "to secure" the rights possessed by authors and inventors. And the word "securing" finds itself in the constitutional provision. That, too, was no accident, and the concept, too, did not arise from thin air.

Much earlier, in 1783, in the Continental Congress, a committee was formed which included James Madison. It was directed to consider "the most proper manner of cherishing genius in useful arts throughout the United States." The committee prepared a report which recommended that the several states "secure to the authors and puhlishers of any new books..." the exclusive right to their creations. It was only a recommendation to the states hecause the federal Congress had no power to do anything like that, but the concept of securing the rights of authors was plainly set forth. To secure, in other words, rights which authors already possessed, to pass legislation which would protect those inherent rights.

Madisons's colleague in the Constitutional Convention, Pinckney, had had similar experience in his home state of South Carolina. They had a patent/copyright statute in South Carolina with which Pinckney was familiar. It was entitled "An Act for the encouragement of arts and sciences," and it too referred to securing those rights.

It is therefore clear that the concept of securing the rights possessed by authors and inventors was behind the thoughts of both Pinckney and Madison. That concept was, of course, accepted by the Convention, as evidenced in the words of the Constitution.

The Constitution, therefore, provided for what was the first substantive law in history which affirmatively recognized property rights in the result of those mental acts producing what we now call intellectual property. Securing meant that there were rights that creative people inherently possessed and which Congress had the right to secure. They were rights very different from "patents" derived from the grace of the Monarch. As Commissioner Eubank later said:

> Inventors abroad still pray for and accept patents as "special acts of the sovereign's grace." With us this insulting and debasing proposition is effectually ignored. Not subjects, but free men, inventors here claim and receive patents of right—their own right.

In his message to the Second Session of the First Congress of the United States on January 8, 1790, President George Washington urged the enactment of laws giving "effectual encouragement" to the exertions of "skill and genius."

In response, the Congress passed the patent and copyright laws which, on April 10, 1790 and on May 31, 1790, respectively, were signed by President Washington and became the first patent and copyright laws in the United States of America.

The thing to remember is that those laws did not spring from merely a theoretical experience. They were not merely concepts for lawyers to argue about. They came ahout because our founding fathers wanted to alleviate problems which were threatening the life of the republic: massive unemployment, a huge national debt, a debilitating trade deficit.

They strove to create a strong, rich country. They strove to provide employment for their people, to provide products in the marketplace in abundance and of quality, and to make the country militarily strong. The patent and copyright systems were intended to do just that. Did they work? They certainly did.

Two hundred years ago there were less than four million people in the United States. The country was primarily populated in a thin strip along the eastern seaboard. Now there are over 250 million people in this country, spread across a huge continent. Jobs have been found for almost all of those people, and not only for the people born here, but also for those millions of people who came here from other countries.

They came to this rich, free country in response to invitations of the type expressed by Emma Lazarus on the Statue of Liberty:

> Give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door.

They came from all parts of the world to the wonderful experiment that was, and is, America.

Without doubt the patent system played an important role in the creation of that "golden door" by stimulating and protecting investment in new products. Consider, for example, a short list of some of the results of that system. One of the early inventions was the cotton gin, which made production of cotton viable. The reaper and the steel plow came too, providing for millions and millions of people food in unlimited quantities from the huge prairies and the fertile land of this great Continent.

We also had inventions as diverse as the Colt revolver, known to all cowboy fans; the telegraph,

vulcanized rubber, evaporated milk, the elevator, barbed wire, the telephone, the phonograph, the light bulb, the linotype machine. All those products were made available to the world by American inventors prior to the Centennial of the patent and copyright systems, 100 years ago.

After the Centennial the flying machine, synthetic fabrics, television, and miracle drugs were invented and produced, as were instant photography, transistors, printed circuits, television and many, many others. We will be celebrating one of those inventions on Thursday night when the man who invented Tetracycline, the first broad-based wide-spectrum antibiotic, will be with us. Imagine how many people are alive today because of that one invention.

The things we owe to all creative people is unmeasurable. In the copyright world we need only think, for example, of the music, the motion pictures, the books and the plays of Americans to realize how much they have raised the quality of life throughout the world.

I found something in the proceedings of the Centennial, 100 years ago, which I think you might find interesting. A man was talking about what had happened in the 100 years preceding the Centennial. He said:

> We do not often stop to think how or whence our blessings come. We accept them with a dim sense of gratitude to somebody or something, as a flower smiles its thanks to the sunshine. But in the light of the reflections which this occasion suggests we can realize faintly how vast is the obligation which we owe to the inventors of America. Not a garment that we wear, not a meal that we eat, not a paper that we read, not a tool that we use, not a journey that we take but makes us debtor to some American inventor's thought. Measured by what we can learn, see, do and enjoy in a lifetime, we live longer than Methuselah, we are wiser than Solomon, richer that Croesus and greater than Alexander. Archimedes has found his fulcrum; it is the brain of the inventor.

That was 100 years ago. The creative process is a thrilling, moving experience. Another man at the Centennial, 100 years ago, said:

> The exercise of the inventive facility is the nearest akin to that of the Creator of any faculty possessed by the human mind; for, while it does not create in the sense that the Creator did, yet it is the nearest approach to it of anything known to man.

I close with a line Maxwell Anderson wrote in one of his plays, *Valley Forge*. He said "There are some men who lift the age they inhabit till all men walk on higher ground..."

We are all in debt to such men and women and to the patent and copyright systems which cherished and encouraged and protected their genius.

Correspondence

Letter from the USSR

New Developments in Soviet Copyright

E.P. GAVRILOV*

This fifth "Letter" deals with developments in Soviet copyright during the period since the writing of our last contribution to this journal.[1] The present paper elaborates on the following topics: international copyright agreements of the USSR; the new domestic legislation; recent court decisions; scientific life.

I. International Copyright Agreements

1. The Deputy Minister of Foreign Affairs of the USSR, Mr. V.F. Petrovsky, while in London at the International Information Forum, made a statement on April 19, 1989, according to which, in his country "the necessary preparatory work had been nearly completed that would enable the USSR to accede to the Berne Convention for the Protection of Literary and Artistic Works."[2]

Following that statement, a number of indications appeared in the Soviet press to confirm that the USSR was currently getting ready to become party to the Berne Convention, and that the new Soviet Copyright Act had been drafted. It was further made clear that prominent copyright specialists from WIPO had afforded assistance to the Soviet Union in the drafting of the Act.

All Soviet lawyers and of course authors welcomed the announcement of the forthcoming accession of the USSR to the Berne Convention. The few criticisms[3] were, we believe, due to misunderstanding.

Soviet lawyers and authors share the opinion that the USSR's accession to the Berne Convention would have the effect of strengthening and expanding the international contacts and ensuring mutual confidence, which in turn would bring about an increase in the number of Soviet works used abroad.

The second favorable aspect is that the level of protection of Soviet works in the USSR may be expected to increase owing to the fact that the Berne Convention provides for strong protection in member countries. Nobody can deny, however, that the same higher level of protection could have been achieved even without accession to the Convention.

Still another benefit of the USSR's accession to the Berne Convention would be the fact that the works of Soviet authors would be protected in about two dozen countries that are party to the Berne Convention but not to the Universal Copyright Convention. This consideration is not a crucial one, however, although it does have some importance.

At the same time, it has to be said that there are also some adverse factors. First of all, membership of the Berne Union is subject to payment of quite substantial annual contributions. However, the Government of the USSR is known to have already settled that question.

It would moreover be necessary to pay additional royalties to both Soviet and foreign authors; these payments would be due to the greater scope of copyright and to the higher level of protection.

Apart from these financial considerations, one can imagine certain purely technical problems, such as the need to organize monitoring of the use of works (in particular, in radio or television broadcasts), to introduce a system for the payment of authors' remuneration and for requesting authorization from the authors to use their works.

2. On October 20, 1988, the Soviet Union deposited its instrument of accession to the Conven-

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[1] See *Copyright*, 1987, pp. 220–238.

[2] *Pravda*, April 20, 1989. Other ideas from his report are also worth mentioning, e.g., he said that (1) "We proceed from the stability of principles of respect for the copyright of journalists"; (2) a great deal of work is under way in the USSR to ensure the reception of foreign television programs; (3) the USSR proposes to create and regularly broadcast an information and cultural television program which may be produced by Intervision and Eurovision.

[3] A. Sukhanov, A. Fokov, "Beard Tax, or How to Save Copyright," *Ogonyok*, 1989, No. 44, pp. 7–8.

tion Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, adopted in Brussels on May 21, 1974. The USSR thus became the 12th State bound by the Convention on January 20, 1989.

3. An Agreement on the Mutual Protection of Copyright was signed between the USSR and the Democratic Republic of Madagascar on April 19, 1989. The Agreement provides for mutual copyright protection on the basis of formal reciprocity. It is to be presumed that the Agreement also covers works published prior to the date of entry into force of the Agreement (April 19, 1989), but in fact its provisions are applicable only in those instances where use has occurred after that date.

The Agreement may be considered a milestone in the sense that it was concluded with a country not party to the Universal Copyright Convention, in other words outside the framework of that Convention.

II. New Domestic Legislation

1. On February 17, 1987, the Central Committee of the CPSU and the Council of Ministers of the USSR adopted the joint Ordinance "On the Promotion of Activities of Creative Unions."[4]

Among other things, the Ordinance specified two major tasks to be carried out by various ministries and departments together with the All-Union Copyright Agency (VAAP) and creative unions:

- the planning of measures for the improvement of the copyright protection of literary and artistic works;
- the establishment of a uniform practice for the payment of authors' remuneration in cases of publication or public performance of works and use of works in radio or television broadcasts and in the production of phonograms.

According to the press, both tasks have been completed. However, while the second project did indeed result in the new legislation, the first seems to be still pending.

The draft amendment to the current Copyright Act[5] provides in particular for the introduction of contractual relations between author and user organizations in the following fields: radio and television broadcasts, motion pictures, newspapers. The proposed copyright term is 50 years after the author's death.

As for the other task, namely the establishment of a uniform practice for the payment of authors' remuneration, it was much more successful: it was dealt with in a number of regulations at both Union and Republic level. Further regulations are in the final stage of drafting.

The expression "establishment of a uniform practice" can be interpreted in different ways. In 1983, for instance, a uniform practice was established by a mere increase in the author's remuneration rate for the public performance of certain not very popular works, and a reduction in the author's fee (in some cases by more than two-thirds) for other "too popular" works.

This time, in 1988-1989, the establishment of a uniform practice took the form of an increase in authors' fees. It was a step in the right direction, although one could doubt the adequacy of the increase, particularly in view of the continuous growth of wages and prices.

The establishment of a uniform practice was embodied in Decree No. 825, adopted by the USSR Council of Ministers of July 12, 1988, "On the Establishment of a Uniform Practice for Paying Authors' Fees in Respect of Publication and Other Forms of Exploitation of Literary and Artistic Works." The Decree was given comprehensive and detailed coverage by the Soviet press.[6]

The Decree introduced new, higher authors' fees and also certain new approaches to the payment of authors' remuneration for the publication and public performance of works, their use on radio and television and on phonograms. With respect to the fees payable for the publication and public performance of works, the new tariffs and new approaches were worked out in detail at Republic level. These local decrees provide all the practical rules. They were adopted by the governments of the Union Republics and officially published in all 15 Republics, whereas the above-mentioned Decree of the Union Government was not made public.

Author's Remuneration for Publication of his Work

2. In late 1988 and early 1989 all the Union Republics adopted new decrees on the author's remuneration for publication of his work. For an example one can refer to Decree No. 532 of December 19, 1989, adopted by the Council of Ministers of the Russian Federation "On Authors' Fees for

[4] *Izvestia*, February 24, 1987, No. 56; Collection of Decrees of the Government (CD) of the USSR, 1987, Part 1, No. 16, p. 61.

[5] Set forth in detail in *Literaturnaya Gazeta* of January 4, 1990, in an interview with N.N. Chetverikov, Chairman of the Board of VAAP, as well as in the Minutes of the meeting of the Council of Founders of VAAP, held on December 27, 1989 "Copyright: Current Problems," *Literaturnaya Gazeta*, January 31, 1990.

[6] See, for example, V. Karpov, "A New Stimulus for Creative Work," *Literaturnaya Gazeta*, August 3, 1988.

Publication of Literary, Artistic or Scientific Works."[7]

The decrees introduced the following new features in particular:

Basic fee increase. The rates of author's remuneration payable for the first publication in book form of the original version[8] were increased, on average, by 25 to 30%. Thus, while the rate for works of pure literature (including literature for children) was formerly 175 to 400 rubles per standard author's sheet (40,000 characters) for a total print-run of fewer than 15,000 copies, nowadays it is 300 to 500 rubles per standard author's sheet; for works of poetry issued in fewer than 10,000 copies the old rate was one to two rubles per line, whereas now it is one and a half to three rubles per line: for popular science literature the fee used to be 100 to 300 rubles per author's sheet, but is now 125 to 375 rubles.

The provisions on payments for the first publication of a work in its original language (in the event of the work having been published before in translation) were unchanged: for pure literature the old rate was 60% and for other kinds of literature 30% of the basic fee (applicable in the case of first publication in the language of the original).

Remuneration for subsequent editions. The former legislation provided that for each subsequent edition an author was entitled to just a percentage of the basic fee (usually 60%, then 40%, etc.); starting with the sixth, seventh or eighth edition all subsequent reprints brought the author either 30% of the basic fee (pure literature rate) or 10% (other works of literature); sometimes the rates were reduced still further.

Since subsequent editions require less investment by the publishing house than the first edition, and since in foreign countries the author's remuneration for reprints is usually higher than for the first edition, the corresponding provisions of the Soviet copyright legislation had been justifiably criticized: the majority of critics had advocated the same level of fees in respect of any publication, whether of the first edition or of a reprint.

A compromise provision has now been adopted: for each reprint of a literary work the author would be entitled to remuneration corresponding to 70% of the basic fee (i.e. of the full remuneration) in the case of reprinting in the original language, or 60% (30%) of the basic fee in the case of reprinting in translation.

Payment for intermediate translation. The problems of payment for intermediate translations are already known to our readers.[9] At present, legislation in each of the Union Republics expressly provides for the protection of rights belonging to authors of so-called intermediate translations. In the Russian Federation the following rates have been established for the use of a translation as an intermediate one: for works of pure literature 60%, for other literary works 30% of the standard fee applicable to translations. This remuneration is independent and may not be deducted either from the remuneration due to the author of the original work or from the fees payable to the author of the final translation.

Amount of author's remuneration for works created in the absence of a contract. Formerly, a work that had been published in breach of the law, without any contract between the author and the publisher, gave the author the choice of either accepting the amount of remuneration offered him by the publisher, or insisting on an evaluation of the work's merits and, on the basis of the results of the evaluation, demanding, in court, a higher rate of remuneration. In that way a publisher could violate copyright provisions without suffering any material loss. New legislation in several Union Republics (RSFSR, Uzbekistan, Lithuania, Latvia, Moldavia, Tadjikistan, Armenia, Turkmenia) now provides that, in the case of exploitation of a work without a contract with the author, the offender will be obliged to pay the author's remuneration at the maximum rate.[10] Moreover, as before in such circumstances, the author may try to recover his loss (in all Union Republics) over and above the payable remuneration; he does however have to show proof of the loss and its amount.

General comments on the new Act on the amount of remuneration for publication. Notwithstanding the above innovations and a number of other new provisions in the decrees, the general approach to the calculation of the author's remuneration has not changed: the amount of remuneration depends on the volume of the work and the number of copies printed, and not on either the selling price or the number of copies sold. The legislator did not introduce a system for the calculation of author's remuneration on the basis of the income from copies sold, although proposals to that effect had been introduced and outlined in a number of articles published in 1987 and 1988. Publishing houses have now won authorization, for a trial period during 1989 and 1990, to "index" the payment of

[7] CD of the RSFSR, 1989, No. 5, p. 23.

[8] These rates are used as a reference when paying for reissues and publications of translated works.

[9] See *Copyright*, 1987, pp. 224, 226.

[10] This is exactly what we proposed 10 years before the introduction of the new provisions; see E.P. Gavrilov, "Soviet Copyright in the Conditions of the Whole People's State," in the book *Problems of Soviet Copyright*, Moscow, 1979, pp. 12–13.

author's remuneration to the income from sales.[11] It is to be hoped that the outcome of this experiment will be made known to the public.

To our regret, the new legislation has inherited many drawbacks and inconsistencies from the earlier Acts. For instance, only three out of all the Union Republics (Lithuania, Moldavia and Estonia) specify the fees payable to authors of works of pure literature written in a foreign language where the translation of the work in any other language is being used. So in such cases the amount of remuneration has to be agreed upon by the interested parties.

Here is another example of the discrepancy between the law and its implementation: in determining the existence of previous editions of a work, the laws of all the Union Republics require that only the fact of publication (and then only in book form) on the territory of the Soviet Union be taken into consideration. In other words, any publication abroad has no bearing on the decision whether one is dealing with the first edition or with a subsequent publication. And yet that decision is of primary importance, since the remuneration for a subsequent publication is lower, as a rule, than for the first edition. The provision seems crystal clear, but in practice publications abroad are also taken into account.

Author's Remuneration for Public Performance of his Work

3. On January 1, 1989, new regulations on the rate of remuneration for the public performance of works came into force in all the Union Republics. We shall comment on the new features introduced by analyzing, as a model, Ordinance No. 531 "On the Rates of Authors' Remuneration for the Public Performance of Literary and Artistic Works," adopted by the Council of Ministers of the Russian Federation on December 19, 1988.[12]

Increase in royalty rates for each public performance. It is well known that these rates represent a fraction of the total income from ticket sales. In many cases the applicable rates were significantly increased. Thus, for each public performance of a multi-act play (in Russian, in prose) the rate used to be 4%, whereas at present it is 6% of the total income; for a one-act play the former rate was 1.5%, and now it is 2%. For a stage show the old and new rates are 2% and 2.5%, and for a symphony concert 5% and 7% respectively.

It is worth mentioning that in the USSR ticket prices have gone up recently for both theaters and concerts, particularly for the performances of foreign groups and actors; this fact also contributed to the increase in authors' royalties.

Remuneration for intermediate translation. Earlier, the rights of an intermediate translator in the public performance of a play were completely ignored: no remuneration was provided. Now, the situation has changed dramatically, and the author of an intermediate translation is entitled to the following fees: 1% for a multi-act play and 0.5% for a one-act play, the percentage being calculated on the total income from ticket sales. This kind of royalty has been established over and above the normal remuneration payable to the author and to the translator.

Removal of rate limitations. The former legislation contained provisions to the effect that the remuneration due to the author for the performance of original plays, musicals, stage adaptations and translations of such works (or, to be more precise, for those public performances that took place during the first five-year period) was payable to the author subject to application of so-called "maximum rates," meaning that the first 10,000 rubles were paid in full, whereas only 60% of the second 10,000, 40% of the third 10,000 and only 30% of each subsequent portion was to be paid to the author. Actually, these maximum rates had the effect of a rather heavy income tax imposed by the State revenue authorities. The new Act has abolished "maximum rates," thus restoring some social justice in this matter.

Remuneration due to choreographers. The old legislation did not provide for any royalties to be paid to a choreographer (ballet director) for each performance. So each performance of an operetta or musical earned a certain royalty for the composer and the script writer (and even the script translator, if the work was presented in translation), but not for the choreographer. The choreographer was, moreover, deprived of a royalty even for a ballet performance, although it was generally recognized that the dance elements were the central feature of the ballet. Such inconsistency in the law made it a target for justified criticism. In this respect the provisions of the new Act, which introduced remuneration payable to the choreographer for every public performance of dances, seem quite logical.

Transitional Provisions on Author's Remuneration for Publication and Public Performance

4. The above-mentioned Ordinance of the USSR Council of Ministers (of July 12, 1988) and

[11] "Copyright—Current Problems," *Literaturnaya Gazeta*, January 31, 1990.

[12] CD of the RSFSR, 1989, No. 4, p. 21.

all similar Acts at Union Republic level concerning the rates of author's remuneration for publication and public performance of his work came into force on January 1, 1989. All of them contain the same transitional clause, according to which the new rates of author's remuneration should be applicable to those payments that became due after December 31, 1988, with the pro rata increases in the rates specified in contracts signed before that date.

Whenever this transitional clause is applied to contracts and agreements signed prior to January 1, 1989, and where payments under such contracts take place after December 31, 1988, the time at which the right to each payment came into being has to be verified. That time is specified either by law or by the contract. If the right to a certain payment came into being before January 1, 1989, the remuneration would be calculated on the basis of the former rates and no readjustment could be expected. If on the other hand the right to a payment arose after December 31, 1988, the amount of remuneration would have to be increased pro rata. To determine the pro rata amount, one would have to be aware of the old and new rates, calculate the average rates under the old and new regulations, work out the percentage average rate increase and apply the same percentage to the calculation of the remuneration due.

Thus, where the new rates are fixed at the level of 300 to 500 rubles for a standard author's sheet, the new average rate is 400 rubles ((300 + 500) : 2 = 400). In the past the range of author's rates was 175 to 400 rubles, making the average rate (175 + 400) : 2 = 287.5 rubles. Generally, the increase in the average rate amounts to 31%. If, therefore, a contract signed prior to January 1, 1989, stipulated a rate of 200 rubles, but the right to the payment came into existence after December 31, 1988, the applicable rate should be increased by 31%, making 262 rubles for each standard author's sheet.

The amount of remuneration also increased as a result of the introduction of new regulations on payments for reissues of works.

Publishers must automatically readjust remuneration amounts without waiting for any request from the authors. Any disputes have to be settled by the courts within the established period for submitting claims (three years).[13]

5. On June 16, 1989, Goskomizdat SSSR (now the USSR State Committee for Publications – Goskompechat SSSR) issued Order No. 195 "On Remuneration for the Works of Artists and Photographers," which introduced "Rates of Author's Remuneration and Tariffs for Works of Graphic Art and Photography for Publications" and the "Statute on the Remuneration Payable to Freelance Artists and Photographers."[14]

The Order came into force on July 1, 1989, and had the effect of invalidating the earlier Order No. 314, issued by the USSR Ministry of Culture on July 20, 1963, which dealt with the same set of problems.

Order No. 195 contains many novel provisions. First of all, it has established payment of 70% of the initial rate for each subsequent republication of a work of art.

Certain rates have been increased. Whereas in the past an illustration (drawing) that occupied one column might earn 40 to 140 rubles in remuneration for the first issue in more than two colors, now that remuneration can be from 70 to 280 rubles.

Finally, the number of cases where there is no provision for payment has been limited. In particular, the rule under which no remuneration was payable for reproductions in specialized art journals has been abolished.

Rates of Remuneration for the Use of Mechanically Recorded Works

6. The earlier legislation provided for quite modest rates of author's remuneration for the use of mechanically recorded works (records, tapes, etc.); the rates were moreover fixed in absolute figures (in kopeks and fractions of a kopek) and the remuneration was due for each recorded copy but not linked either to sales or to the price of the copy.[15]

Decree No. 825, approved by the USSR Council of Ministers on July 12, 1988, introduced new, much higher rates of remuneration for literary and artistic works reproduced in the form of phonograph records, magnetic tapes, videotapes and compact discs. The same rates are applicable to the subsequent copying of records, including custom-made records. The rates are established for each copy of the recorded work.

For the records of rock groups up to one kopek is payable for each recorded copy, for variety shows up to two kopeks, for operas, ballets, musicals, symphonies up to 16 kopeks, etc.

The text of the Regulations sets the remuneration for variety music works at one kopek, and for making copies of sound recordings to order at 6% of the income received by the producer. As the press noted, the rates of remuneration for videocas-

[13] On statute-barring, see *Copyright*, 1987, pp. 235–236.

[14] Payment for Work to Non-Staff Artists and Photographers, Moscow, 1989.

[15] See *Copyright*, 1976, p. 108.

settes and laser discs are quite insignificant; it may be assumed that these categories of recordings were mentioned in the enactment by mistake, and that in practice the rates are not applied to them.

7. Order No. 212, issued by the Goskomizdat SSSR on July 3, 1989, introduced new "Regulations on the Affixing of the Copyright Symbol to Works of Science, Literature and Art Published in the USSR."

The new Regulations provide that the copyright symbol should be accompanied by an indication of the author's name rather than the publisher's (as the previous Regulations did). The press claimed this innovation to be a great democratic achievement. It is hard to agree with this, especially if one knows that on the territory of the USSR the copyright symbol has no legal meaning: copyright protection in the USSR does not require any formalities, and the copyright symbol on published Soviet works serves the single purpose of ensuring that the works enjoy copyright protection in those foreign countries, party to the Universal Copyright Convention, that prescribe certain formalities for copyright protection.

8. From 1973 to the end of 1989 the standard publisher's contract contained a "special clause," which was in fact a separate, independent contract. The special clause provided that the author transferred his copyright to use the work abroad (in all foreign countries, for the whole term of the copyright and for all kinds of use) to the publishing house that was the first to publish his work; the author nevertheless retained the right to remuneration coming from abroad. The publisher undertook the obligation to negotiate the most beneficial terms (for the author) for exploitation of this work abroad. The copyright thus obtained was transferred by the Soviet publishers to the All-Union Copyright Agency (VAAP) under the special general agreement, and VAAP enjoyed the right to sign contracts on behalf of Soviet authors for the exploitation abroad of the works issued in the USSR between 1973 and 1989 (in fact VAAP still has those rights). The material (substantive) rights of Soviet authors remained intact.

Order No. 356, issued by the Goskompechat SSSR on November 15, 1989, under the title "On the Introduction of Amendments to the Standard Publisher's Contract," provided for the exclusion of the "special clause" from the standard publisher's contract; so the right to sign authors' contracts for the exploitation of their unpublished works abroad (or works published outside the period from 1973 to 1989) now belongs to Soviet authors, who must however act through a competent external trade agency (see below).

9. Back in 1973, at the time of the USSR's accession to the Universal Copyright Convention, it was provided that the right to the exploitation abroad of the work of a Soviet author, published earlier or unpublished, could not be transferred by the author (or his successor in title) otherwise than through VAAP (a few exceptions were expressly stated in the law); the same procedure applied in the case of the acquisition from foreign authors of the right to use their works in the USSR.[16]

The above provision remained unchanged till the end of 1988. On December 2, 1988, the USSR Council of Ministers adopted Decree No. 1405 "On Further Promotion of External Economic Activities of State, Cooperative and Other Public Enterprises, Associations and Organizations,"[17] which laid down the principle of refraining from monopoly control of export/import transactions. Still another Decree of the USSR Council of Ministers (No. 203, dated March 7, 1989) "On the Measures of State Control Over External Trade Activities"[18] opened the door for any organization to be registered by the Ministry of External Economic Relations and to enjoy the right of independent access to foreign markets. This Decree also covered "invisible" exports and imports, namely inventions and other achievements in the field of science and technology, theatrical and artistic activities and copyrightable works.

The former regulations which made VAAP the sole agent for exporting and importing copyrights were not expressly revoked, however, and that led to a legally ambiguous situation: could any other agency, like VAAP, act as intermediary in the acquisition of foreign-owned copyright by Soviet user organizations and in the transfer abroad of the copyright of Soviet authors?

A well-known Soviet scholar, Dr. V.A. Dozortsev, believed at first that the VAAP monopoly was a thing of the past, but that VAAP would fight to retain its monopoly status.[19] Later, however, he expressed the opinion that in the international sphere VAAP was still the "undisputed monopolist" in copyright export and import transactions.[20]

On the other hand, the VAAP Board Chairman, while confirming that VAAP still had its monopoly

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[16] Paragraph 2 of the VAAP Charter; in the book *Copyright. Collection of Normative Acts*, Moscow, 1985, p. 307.

[17] CD of the USSR, 1989, Part I, No. 2, p. 7.

[18] CD of the USSR, 1989, Part I, No. 16, p. 50.

[19] V. Dozortsev, "Talents and Intermediaries. For What Services Does VAAP Take its Percentage?" *Izvestia*, April 14, 1989,; this author also expressed the opinion that now other organizations, having the right to enter foreign markets, can also act as export/import intermediaries.

[20] V. Dozortsev, "Does an Author Need a Guardian? VAAP Today and Tomorrow," *Literaturnaya Gazeta*, December 20, 1989.

status, has declared that "VAAP has no strong feelings about its monopoly," although the situation does dictate respect for the current regulations and compliance with their requirements.[21]

Leaving aside theoretical discussions, it can be said that the process of demonopolizing copyright export and import activity is under way.

10. In the copyright sphere two kinds of regulations can be distinguished: the countrywide (All–Union) regulations and those of the Union Republics. Naturally, a Union Republic Act is valid on the territory of that particular Republic (territorial principle of law).

However, as far as public performance is concerned, all the Union Republics have adopted one provision in particular that departs from this principle: if a professional theater, independent stage troupe or circus is on a tour within the territory of another Union Republic, it has to pay author's remuneration not at the place of performance but at the place of its permanent base. In such cases therefore the author's remuneration is neither collected nor payable in the Union Republic where the public performance takes place. This departure from the territorial principle has raised no questions until very recently.

On August 28, 1989, the Council of Ministers of the Lithuanian SSR adopted Decree No. 185 "On Registration of the Statute of the Lithuanian Writers' Union," which, among other things, provided that all stage troupes of the Lithuanian Republic, and indeed any other stage troupe from another Union Republic or from abroad being on tour in Lithuania and cooducting public performances on its territory, should pay author's remuneration at the place of performance and in accordance with the rates applicable in Lithuania. Where a Lithuanian–based troupe gives a public performance on the territory of another Union Republic and pays no author's royalty on the spot, the calculation and payment of royalties should be made by the troupe itself (on its return from the tour) in Lithuania and in accordance with the rates applicable in Lithuania.

This oew feature, while obviously within the competence of the Republic since it corresponds to the principle of the territorial effect of the law, is nevertheless making other Union Republics amend their legislation.

11. On February 7, 1989, Goskomizdat SSSR issued Order No. 41 to introduce "Regulations on the Publication of Works at the Author's Expense." These Regulations replace the earlier ones of 1988.

Publishing houses and other organizations authorized to engage in publication, including magazine publication, may issue literary works at the author's expense.

A new and earlier–issued work may be published at the author's expense. This should be done on the basis of a contract between the author and the publisher. Such a contract is not an author's contract, however, but rather an economic contract.

The contract stipulates the transfer of the work, by the author, to a publisher; the latter guarantees publication of some 3,000 to 5,000 copies on the condition that the whole edition becomes the author's property, while the author covers the production costs of publication and pays an additional 20% of the costs which constitutes the publisher's profit. The calculations can also be based on a fraction of the selling price. The term of the contract (from signing to actual publication) must not exceed one year. The author commercializes the edition either himself or through booksellers (in the latter case the sellers' share is usually 25% or, but less often, 10% to 12% of the price of the edition).

There is no author's remuneration in such a case. If however the work is later published in the usual way, in other words under an author's contract, the remuneratioo payable is calculated as if it were the first edition, that is without any regard to the earlier publication at the author's expense.

Already a few hundred works have been published in the USSR at their author's expense.

Whenever works published at the author's expense are sold abroad (or in Soviet currency stores), the author is entitled to 70% of the currency income, while 30% is payable in rubles (see USSR Council of Ministers Decree No. 479 of June 16, 1989).[22]

Copyright Protection of Computer Software[23]

12. There are no express provisions concerning the protection of computer software in Soviet copyright. Nevertheless, if computer software meets the conditions required of copyright works, it too should be eligible for copyright. This is the stated opinion of legal writers.

Their opinion is backed up by the Regulations issued by the USSR State Committee on Computerization and Informatics. That Committee, with

[21] An interview with N.N. Chetverikov, "Creativity, Law, Commerce...," *Pravda*, January 4, 1990; see also "Copyright—Current Problems," *Literaturnaya Gazeta*, January 31, 1990.

[22] CD of the USSR, Part I, 1989, No. 26, p. 93.

[23] See E.P. Gavrilov, "The Legal Protection of Algorithms and Computer Programs in the USSR: the Present Situation and Prospects," *Voprosy Izobretatelstva*, 1990, No. 1, pp. 8–12.

the consent of the USSR Ministry of Justice and VAAP, adopted on November 30, 1988 "Regulations on the Registration and Protection of the Copyright of Computer Software Authors," and on August 29, 1988, "Regulations on Author's Remuneration for the Development (Mass Production) and Implementation of Software for Personal Computers under an Author's Contract," and a "Model Author's Contract for Development and Implementation of PC Software."

These office regulations adopt the right approach to the situation in my opinion: they make it clear that copyright provisions are equally applicable to software, which is treated as an object of intellectual creative activity.

The regulations specify that software authors enjoy exclusive rights (both moral and proprietary), and that the exploitation of software is subject to the provisions of the author's contract unless the law expressly prescribes otherwise.

Along with the clarifications, the regulations contain a number of substantive law provisions: the obligation to pay advances under the contract, the rates of author's remuneration, etc. These new provisions should however be understood as recommendations only since, strictly speaking, they go beyond the competence of the USSR State Committee for Computerization and Informatics. This is the reason (in addition to the lack of practical application of the copyright provisions to computer software protection, and in particular the lack of practice in settling conflicts in and out of court) why this issue cannot be regarded as finally fixed.[24]

13. One particular provision of Soviet legislation, on the term of copyright, has been applied to a surprisingly great extent. It is well known that current Soviet legislation provides a term of protection of 25 years after the author's death (starting on the first of January of the year following that of the author's death). A new supplementary rule to this provision has been adopted: where the author has been the object of repression, has died and has since been posthumously rehabilitated, the copyright term should be calculated not from his death but rather from the date of receipt, by his heirs, of the notice of rehabilitation.[25] At present, quite a number of persons (victims of injustice between the 1930s and 1950s) are being rehabilitated; the works of those persons are being returned to circulation, and their copyright protection is being extended (for instance the works by N.I. Boukharin, who died in 1938 and was rehabilitated in 1988).

14. On December 29, 1988, the USSR Council of Ministers adopted Decree No. 1468 "On Control over Certain Forms of Cooperative Activity under the Law on Cooperation in the USSR."[26] The provisions of this Decree forbid cooperative enterprises to engage in certain activities, in particular the publication of literary works, the organization of the exchange, rental and public showing of cine and video films, including external economic activities in this field, and the mass copying of cinematographic works and videotapes containing motion pictures or other programs, including any other activities in this field.

Under the Decree cooperatives may undertake certain forms of activity, provided that they enter into contracts with the enterprises, organizations and agencies for which those kinds of activity are statutory. This provision is applicable in particular to editorial and publication services rendered to the organizations that are authorized to act as publishing houses, including the mass production of printed works; it also applies to the organization and holding of pay concerts, discotheques and variety shows, to the production, copying and selling of phonograph records and magnetic and other kinds of recording, to the distribution (selling) of printed material and to the production of cine and video works.

What is the practical meaning of these provisions? In the past, before the adoption of the Decree, there were numerous infringements of copyright by cooperative organizations that made use of copyright works, from payment of "super-rate" author's remuneration (i.e., royalties in excess of maximum remuneration rates) to complete disregard of copyright. So the prohibition of cooperative organizations from involvement in certain forms of activity, and the introduction of the rule requiring supervision of other forms of cooperative activity by agencies authorized to deal with copyright works should, in principle, reduce the number of copyright infringements, and is thus supposed to play an active role. And yet, as this step strengthened the monopoly of "copyright authorities" (agencies and the like), the Soviet public, according to the press, held it in low esteem.

15. On April 23, 1990, the Union Law "On the Income Taxation of Soviet Nationals, Foreign Nationals and Stateless Persons" was adopted. It came into force on July 1, 1990. The Law introduces a number of new provisions dealing with the taxation of high royalty amounts (for instance, where annual remuneration exceeds 18,000 rubles, income tax is

[24] A review of Soviet literature in this respect can be found in: A. Vida, E.P. Gavrilov, "Software-Schutz in der Sowjelunion," *Informatik und Recht*, 1988, Nos. 11–12, pp. 434–443.

[25] See e.g., A. Ivanov, "One More Rehabilitation," *Literaturnaya Gazeta*, January 10, 1990.

[26] CD of the USSR, Part I, 1989, No. 4, p. 12.

50%), accumulated annual royalty taxation (based on the taxpayer's declaration, provided that the total taxable income is reduced by the sum of the expenses involved), and the application of extremely high income taxation of heirs (60% to as much as 90%). On the other hand, it revoked the unjustifiably high rates of income taxation that had been applicable to author's remuneration in foreign currency (where currency income exceeded 5,000 rubles in any given year, the tax was 75%, the minimum tax being 30%).

The new Law also introduced a uniform approach to the taxation of foreign authors. A foreign author who stays on USSR territory more than 183 days in a calendar year is treated in the same way as a Soviet national, and must pay the same taxes as a Soviet author.

Stateless persons without permanent domicile in the USSR pay 20% income tax at the place where they receive their remuneration.

Nevertheless, on a reciprocal basis or by virtue of an international treaty, foreign authors may be relieved of the income tax. It is assumed that in such cases earlier bilateral agreements on double taxation retain their effect.

Paragraph 3 of Article 30 of the Law contains an interesting provision which says that external trade transactions should not include taxation clauses to the effect that a party paying remuneration also undertakes payment of the income taxes of foreign nationals.

16. The Law "On Property in the USSR" was adopted on March 6, 1990. The accompanying Decree on the introduction of the Law provides that the USSR Council of Ministers should, in 1990, submit to the USSR Supreme Soviet draft "legislation governing relations in the field of creation and exploitation of inventions, scientific discoveries, literary, artistic and scientific works and other objects of intellectual property." The adoption of a new improved copyright law in the USSR may be expected in the near future.

17. On June 12, 1990, the Supreme Soviet of the USSR passed the Law of the USSR "On the Press and Other Mass Media" (*Izvestia*, June 20, 1990, Iss. No. 172).

The Law concerns periodicals (newspapers, magazines), radio and television, audio and audiovisual reports and material, and in particular documentary films.

The following copyright amendments were introduced on August 1, 1990, with respect to the Law's coverage:

(i) Publication of readers' letters. Such letters used often to be printed in incomplete or altered form, to the indignation of their authors, and the issue was not regulated by copyright law. The new Law (Article 25) recognizes that "shortening and editing in the text of readers' letters is allowed when the letters are published, provided that it does not lead to any distortion of their intended meaning." In such cases "shortening and editing" does not suggest any need for agreement with the author. It is to be supposed that the provision is also applicable to radio and television.

(ii) Pecuniary compensation for moral damage. One of the fundamental principles of Soviet civil law (copyright included) was that moral damage could not be evaluated in terms of money. Under the new Law (Article 39) moral damage caused to a citizen by the dissemination of untrue information by the mass media is compensated by virtue of a court ruling with "the size of compensation for moral damage in terms of money to be determined by the court."

(iii) Statutory right to demand the publication of refutations in connection with published untrue information defamatory to honor and dignity. Earlier there was no provision for a statutory right to make such a demand.

Now (Article 27) "a concerned citizen or organization shall be entitled to bring an action within one year from the publication date." The new provision may also cover infringement of the author's moral rights (the right to claim authorship, the right to inviolability of the work, etc.).

(iv) The right to prevent the mention of the author's name. Under current copyright law the author may publish his work with his name mentioned, under a pseudonym or without any mention of his name (anonymously), and this by virtue of Article 479 of the Civil Code of the Russian Federation. There has been no disagreement among legal writers on this score: the author has the right to choose any designation of his name when his work is published, and if he wishes to use a pseudonym or otherwise conceal his true name, no one has the right to reveal that true name without his authorization.

The new Law—evidently responding to practical experience of applicable copyright law having been frequently ignored—tends to worsen the position of journalists in this respect.

Paragraph 7 of Article 30 of the new Law grants the journalist the right "to withdrawn his signature from material the subject matter of which has in his view been distorted during the editing process" (it should be noted that in doing this the journalist does not give up his authorship). Proceeding from the contrary, it follows that in other cases the journalist may not withdraw his name. Paragraph 8 of Article 30 lays down the journalist's right "to stipulate keeping his authorship anonymous." That too could imply that, in the absence of any such stipula-

tion made by the journalist, his name will be revealed by the media.

There is apparently a great deal of work in prospect to bring both provisions into line with Article 479 of the Civil Code of the Russian Federation.

III. Case Law

1. Text writer and designer of an album are not coauthors; they sign independent contracts. Ruling of the Civil Affairs Board of the Khabarovsk District Court in an action brought by B. against the Khabarovsk publishing house for payment of author's remuneration (January 25, 1985).

In 1979 the parties entered into an agreement for the making of photoslides for an album. The plaintiff submitted his work and the publishing house informed him of its approval. The album failed to be issued, however, because the text writer did not prepare his contribution.

The court ignored this circumstance and did not relieve the defendant of its responsibilities, since the two agreements were independent, and, referring solely to the terms of the agreement between the parties concerned, ruled that the defendant had to pay the remuneration in question (1,990 rubles).

2. The act of an officer signing a contract should be understood as an act of the organization he represents. Decision of the People's Court of the Kievsky District of Moscow in a civil action brought by author C. against the Moscow Dramatic Theater named after Pushkin for the recovery of author's remuneration (November 3, 1989).

The parties concluded an agreement on the production of a stage play. The author submitted the script in due course but had no information from the theater regarding its approval. The defendant's agent declared that the agreement had been signed by former producer–in–chief M., who was not with the theater any longer, that the theater had no information on the play and that it therefore did not recognize the claim.

The court dismissed the above declaration and ruled in favor of the plaintiff.

3. A dispute between an author and an organization concerning the author's non–compliance with the organization's request that he redraft his work can be settled by the court. Decision of the People's Court of the Raiyansky District of Kiev in a civil action brought by the Dovzhenko Motion Picture Company against author P. for the recompensation of contractual author's advance payment (September 22, 1986).

On June 9, 1982, the parties concluded an agreement for the creation of a screenplay based on a literary work. The screenplay was submitted; the motion picture company made a few remarks. The author amended the screenplay and presented the second version to the company. On April 7, 1984, the company decided that the defendant had not made the recommended amendments, and that therefore the screenplay still did not meet its requirements. The company annulled the contract and demanded that the advance remuneration of 1,580 rubles be returned. To justify its decision the court requested the examination by art experts. The examination revealed that the defendant had met all the plaintiff's requirements and had made all the amendments and changes in the first draft that had been recommended by the company, thereby bringing the screenplay into full compliance with the requirements of the commissioned work.

The court agreed with the conclusions of the examination and dismissed the case. It referred to Article 508 of the Civil Code of the Ukrainian SSR, which provided that an organization could request recovery of payments under the contract only if it proved the author's fault.

4. If under the contract the author submits a work of a different kind (not of the kind specified in the contract, and more voluminous) and the publishing house does not make any objections to it in due time, the work should be considered done under the contract. The author should be paid remuneration at the rates applicable to the actual work.

Transfer of rights not covered by the contract to a third party should not be considered as violation of the contract. A decision of the Collegium for Civil Affairs of the Leningrad City Court in a civil action brought by author B. against the Leningrad branch office of the "Energoatomizdat" publishing house (January 16, 1989).

On November 3, 1986, the parties concluded a publishing contract for preparation of a non–fiction work, specifying the volume—20 standard author's sheets—and payment—90 rubles per standard author's sheet.

The author submitted a work of some 23 standard author's sheets and informed the publishing house that his work was a monograph, which should be paid for at the rate of 150 to 300 rubles per standard sheet.

The publishing house received the manuscript as it was, did not comment on the change of literary genre and did not communicate with the author (at all) within the prescribed time limit. The manuscript was therefore considered approved, and the author became entitled to 60% of the author's remuneration.

The publishing house insisted that the author had no right to the remuneration because, during the currency of the contract, he had transferred the

right to exploit his work to a foreign publisher in violation of the provisions of Article 509 of the Civil Code of the Russian Federation (transfer of rights in a work to a third party), and stated that where remuneration had been paid by the defendant the author would be obliged to pay it back.

However, the contract between the conflicting parties was concerned with publication of the work in Russian, whereas the contract with the foreign publisher provided for publication of the work in English. So the two contracts had different spheres of application. By signing the second contract the author did not infringe the provisions of the first one.

The court found that the manuscript had been approved and, not withstanding the change of genre, that the contract had been fulfilled. Taking into consideration the genre of the work actually submitted, the court set a new rate of remuneration under the contract, selecting the minimum rate (150 rubles per standard author's sheet).

5. If, after conclusion of the contract, the author happens to be faced with "creativity failure," the advance remuneration paid to him cannot be recovered. Decision of the People's Court of the Sokolniki District of Moscow in a civil action brought by author G. against the "Khudozhestvennaya Literatura" publishing house and in the counterclaim by that publishing house against author G. (February 25, 1988).[27]

On July 28, 1982, the parties concluded the agreement on the writing and publication of a work of art criticism. Under the contract the author received an advance payment of 1,485 rubles. The manuscript was submitted by the author, but on December 27, 1985, the publishing house announced that it was rescinding the contract "on the account of the author's creativity failure and the rejection of the manuscript." It requested repayment of the advance, but then, on February 4, 1987, concluded a new contract with author G. for the creation of the work under the same title as in 1982. The new contract included the clause to the effect that the advance payment received under the 1982 contract should be considered part of the advance under the 1987 contract. In September 1987 the second contract was also rescinded by the publishing house on the grounds that the manuscript had been rejected. Thereupon author G. brought a civil action to receive the advance under the 1987 contract, and the publishing house brought a civil action for the recovery of the advance payment.

The court ruled in favor of the author and dismissed the claim of the publishing house. In its decision the court stressed that, in this particular case, the advance payment was stipulated by the law and it could be recovered only on the condition that the publishing house proved the author's fault in his failure to submit the proper manuscript. Both contracts were annulled on the ground of "author's creativity failure," that is, without his actual fault. Under both contracts the advance payment was due, although in fact, it had been paid only under the 1982 contract.

6. Where, within the time limits specified by the contract, the author does not receive the comments on the work handed in, the work should be considered approved. The fault of an officer should be treated as the fault of the organization itself. Decision of the Kotlas City Court in a civil action brought by author P. against the Kotlas Theater for the recovery of remuneration (July 31, 1986).

The parties concluded an agreement on the creation of a stage play. The work was handed in. The theater, within a 40–day period, was to consider the play and inform the author of its findings. This obligation was based both on the actual contract and on the principle written into the model contract. On May 15, 1985, the author mailed the manuscript to the theater (this date is recognized as a submission date). On June 21, 1985, the theater rejected the play on the ground of its lack of artistic and ideological merit. The record of this decision was sent to the theater documentation group, but somehow, owing to the negligence of clerical staff, it was never mailed to the author.

In these circumstances the court decided that the play had been approved and ruled that the remuneration should be paid to the author.

7. Submission of the work to the organization when the parties are bound by contract, even after the agreed deadline, should be considered due submission under the contract.

Where the deadline for approval of the work handed in under the contract is not met, the work should be considered approved (tacit approval). If the publishing house chooses to send the work to another organization, that fact does not prolong the time allowed for the approval of the work. Decision of the People' Court of the Sevastopol District of Moscow in a civil action brought by author P. against the "Rosselkhozizdat" publishing house (March 5, 1987).

Model contracts fix strict periods for the consideration of a work submitted under the contract. This rule is also written into actual contracts.

Under the contract concluded between the parties the author had to submit his work by October 20, 1984. The author submitted his work on De-

[27] *Sovetskaya Yustitsia*, 1989, No. 9, pp. 13–14.

cember 25, 1984. The deadline for consideration and approval of the work (by the volume) as submitted to the publishing house expired on March 5, 1985. On May 5, 1985, the publishing house informed the author of its comments concerning the work. The author took those comments into consideration and handed in the amended version of the work on June 28, 1985. The deadline for evaluation of the work under such circumstances (handed in under the contract with due regard to the comments) expired on August 2, 1985. The publishing house, in a letter of September 2, 1985 rescinded the contract on the ground of the work's uselessness.

The author appealed to the court for the payment of 100% remuneration (1,500 rubles).

The defendant contested the claim, stating that:

(i) The work reached the publishing house on December 25, 1984, i.e. more than two months after the deadline specified by the contract. It could not therefore be treated as duly submitted under the contract.

The court dismissed this statement on the ground that the publishing house had not cancelled the contract and had not notified the author of the "unprovoked" nature of his work.

(ii) During the first term allowed for evaluation of the manuscript it had been sent for comments to the RSFSR Goskomizdat, and in addition the author had had several contacts with the examiner, in an attempt to secure a favorable assessment. It was those contacts, for which the publishing house was not responsible, that had caused the failure to meet the time limits allowed for the publisher's actions, and on those grounds the publishing house claimed the work to be "not approved."

The court did not agree with the above statement, indicating that the publisher had in no way been obliged to send the work to a higher authority, and that therefore the delay had resulted from the publisher's actions.

The court moreover emphasized that the publisher had failed to comment in time on the work as amended by the author on the basis of the publisher's comments. This fact gave rise to the author's belief that the work had been approved.

All in all, the court ruled in favor of the plaintiff.

8. In the calculation of the term fixed under the contract for the work to be approved (such term being dependent on the number of pages in the work), reference should be made to its actual volume and not to the volume specified in the contract.

The date of handing the work in should be understood as the date of actual submission of the work to the publisher by the author, not the date of entering of the work in the publisher's registration journal.

The fact that the rewriting or editing of the manuscript was continued after the expiration of the term of the contract could constitute a ground for restoring the period of limitation for filing an action, but cannot be interpreted as a prolongation of the contract. Decision of the People's Court of the Kievsky District of Moscow in an action brought by author B. against the "Economica" publishing house for the recovery of author's remuneration (September 22, 1986).

On June 1, 1977, the parties concluded a publishing contract for the literary work with a specified volume of 14 standard author's sheets.

On August 30, 1978, the author submitted the work in the amount of 11 standard author's sheets. The registration of the work thus submitted occurred on September 4, 1978. On November 16, 1978, the publisher notified the author (in writing) of the rescission of the contract on the ground that the work was not fit for publication. Nevertheless, after the notification, both the author and the publisher continued their joint effort to rewrite and edit the manuscript until, in 1984, the author filed an action for the recovery of remuneration under the 1977 contract (972 rubles).

This action was the subject of two court decisions, a number of attorney's (prosecutor's) protests and appeals as well as several pronouncements by the higher judicial authorities.

The first item in the dispute had to do with establishing the date on which the manuscript was submitted to the publisher. The author brought it in on August 30, 1978, but it did not enter the registration journal of the publishing house until September 4, 1978, of which the author was aware and to which he did not object. The court nevertheless decided that the manuscript should be treated as submitted under the contract, i.e. on August 30, 1978.

The second item in the dispute related to the calculation of the period within which the publisher had been obliged to inform the author of his evaluation of the manuscript. The standard (model) contract provides that this period should be a basic 30 days plus four days for each standard author's sheet of the work (this being the evaluation period). If the publisher fails to reply within the period allowed, the work should be treated as approved (tacit approval).

The publisher was of the opinion that the evaluation period should be calculated on the basis of the work as commissioned, i.e., 14 standard author's sheets, and that therefore the manuscript had been validly rejected within the evaluation period so calculated. The court decided that calculations should be based on the actual (smaller) number of sheets, that the rejection had therefore been announced after expiration of the period and consequently had

no legal effect. The court found that the manuscript had been approved and that the contract had remained in force for three more years thereafter (Article 509 of the Civil Code of the RSFSR; paragraph 1 of the model publishing contract), whereupon it had been automatically terminated. On approval of his work the author became entitled to 60% of his remuneration (which was what he was claiming).

The third item before the court concerned the period of limitation for the filing of the action. In the opinion of the publisher the plaintiff, having been notified of the rejection of the manuscript and of the rescission of the contract (on November 16, 1978) had had the right to file an action within the three-year period of limitation. The court, however, came to the decision that the subsequent joint work of the author and the publisher on the manuscript had provided the grounds for application of the rule specified in Part 2 of Article 87 of the Civil Code of the Russian Federation: "If the court...finds that the reason for non-compliance with the period of limitation for filing the action was legitimate, the infringed right must be defended."

The court made the award in favor of the plaintiff. The ruling was appealed against by the publisher. The Legal Collegium on Civil Affairs of the Moscow City Court, in a decision on December 10, 1986, upheld the ruling. On an objection lodged by the Moscow City Attorney, the case was heard by the Presidium of the Moscow City Court, which upheld both previous rulings.

9. The author of illustrative material for a literary work has to submit it on the basis of approved work, failing which he may not be required to pay back the advance remuneration. Decision of the People's Sverdlovsky District Court of Moscow in an action brought by the "Molodaya Guardia" publishing house against author K. for the recovery of advance remuneration (June 29, 1987).

The parties concluded a publishing contract for the creation of illustrative material for a book, which was a literary work in the nature of an encyclopaedia. The defendant had received an advance payment of some 1,330 rubles, but had not presented the work, so the plaintiff had requested the repayment of the advance.

The defendant stated that he had not presented his material because the publisher had failed to provide him with the text of the approved literary work. He had worked on the basis of fragments of text and the headings of individual articles to be included in the work. On that basis he had prepared the drafts of his illustrations, which had been approved by the publisher. However, the final drawings for the work could not be prepared under the above conditions. This statement was confirmed by witnesses.

The plaintiff evaluated the work submitted by the defendant at 530 rubles and claimed repayment of the advance (after deduction of the 530 rubles). The court, however, ruled that the advance had to be paid back only where failure to submit the work was the author's fault, which was not proved by the plaintiff in this particular case. The court dismissed the claim and ruled that the author should keep the advance.

10. Images projected on a screen during a stage performance form an integral part of the scenery of the performance.

Theater must pay author's remuneration for the use (projection) of such images notwithstanding the fact that the image carriers (slides) were not handed over to the theater. Decision of the Legal Collegium for Civil Affairs of the Moscow City Court in an action brought by author S. against the Moscow Theater of Drama and Comedy on Taganka for recovery of author's remuneration and remuneration under a labor contract (February 12, 1986).

The plaintiff was on the technical crew that worked on that particular play in the theater. Apart from that he had concluded a proper labor agreement under which he undertook to produce original slides for projection on a screen during the performance; the slides were to be submitted against separate remuneration.

In fact the plaintiff produced the slides and, in person, projected them on the back screen during the public performances of the play. At the end of each performance he took the slides home. In all there were four performances, with the showing of an average of 90 slides at each. He received no remuneration.

The court decided that the plaintiff had not fulfilled his obligations under the labor contract, and therefore was not entitled to the corresponding remuneration. However, he was entitled to receive author's remuneration for the actual use of his work in the performances. The court found that the slide projection constituted part of the scenery and effects of the theater play. On May 15, 1986, this decision was upheld and reinforced by a ruling of the Legal Collegium for Civil Affairs of the Supreme Court of the Russian Federation (to which the plaintiff brought his appeal, being dissatisfied with the amount of remuneration).

11. Use of a work after expiration of the contract may not be considered based on the contract. Author's death does not terminate the effect of the author's contract. Decision of the People's Court of the Oktiabrsky District of Moscow in an action brought by the heiress of author K. against the

"Legkaya Promyshlennost" publishing house to recover author's remuneration for non-contractual use (April 28, 1989).

On June 28, 1983, the publisher and the author concluded a publishing contract which provided for submission of the work by the author by December 20, 1983. On February 24, 1984, the author died without having submitted his work. Soon afterwards K's widow and heiress handed the manuscript in to the publisher. The work was published in 1989. The plaintiff claimed recovery of the remuneration on the following grounds:

The manuscript was submitted (by her) in 1984 under the 1983 contract. This manuscript was supposed to be evaluated and approved by the publisher. Since the publisher did not notify her in due time, in writing, of the rejection of the work, the latter was considered approved (in mid-1984), and the contract remained in force for three years thereafter, whereupon it would automatically expire (such are the provisions of the Civil Code and the model publishing contract); during that time the author is entitled to remuneration regardless of whether or not the work has been published. The fact of publication of the work after the term of the contract constitutes "non-contractual" publication and is subject to separate payment.

The publisher opposed the claim, but failed to prove that:

(i) it had accepted the manuscript "non-contractually" in 1984, in other words had taken the 1983 contract to be terminated in view of the failure to submit the work in due time;

(ii) it regarded the manuscript as "unfit" for publication or requiring further improvement.

Under these circumstances the court ruled in favor of the plaintiff. This court decision confirmed a view that had been expressed in legal literature: the author's contract is not terminated on the ground of the author's death.

12. Use of a work without a contract does not allow the application of the law provisions applicable where there is a contract. Decision of the People's Court of the Leninsky District of Moscow in an action brought by author A. against the "Progress" publishing house for the recovery of author's remuneration amounting to 698 rubles (January 20, 1988).

The plaintiff was the author (designer) of an album issued in 1986 by the "Plakat" publishing house. The defendant—without any contract with the author—had issued the album in two editions—with the text matter translated into English and into Hindi. The remuneration was paid as for one edition with reference to the following provision: "Works of fine art should be treated as one edition in the case of publication of the work, within the term of the contract, with the textual part translated into several languages" (USSR Ministry of Culture Order No. 314 of July 20, 1963). Therefore, if the publishing contract existed, both editions, since they were produced within the contractual term for publication (two years from the approval of the work), were to be paid for as a single edition.

The court, however, emphasized that the plaintiff had not received the author's consent to publication of his work, and that therefore one could not refer to publication "within the contractual term for the edition," which meant that the defendant had used the work twice.

Under these circumstances the court ruled in favor of the plaintiff.

On February 22, the Legal Collegium for Civil Affairs of the Moscow City Court decided to uphold the above ruling.

13. Where entitlement to part of the remuneration has arisen within the term of copyright, this part has to be paid. Decision of the People's Court of the Centralny District of Minsk in an action brought by K. against the "Mastatskaya Literatura" publishing house for the recovery of the remuneration (April 8, 1988).

The plaintiff is the heir of author L., who died in 1961, so the term of copyright would expire on January 1, 1987. Prior to that date the plaintiff and the defendant concluded a publishing contract under which the publisher would in 1986 arrange the publication of two of the deceased author's works and, subject to approval, would pay 60% of the remuneration to the heir. The rest, that is, the remaining 40% of the remuneration, would not be payable to the heir since actual publication was envisaged in 1987 (after the copyright term). However, the work was actually signed for printing on December 30, 1986. Thus, the author (or rather his heir) was still entitled to the remaining 40% of the remuneration. On that ground the court ruled in favor of the plaintiff.

14. Publication of the work after expiration of the contractual term should be treated as publication outside of the contract. Decision of the People's Court of the Leninsky District of Moscow in an action brought by authors Z. and M. against the "Sovetskaya Rossiya" publishing house for the recovery of remuneration (September 26, 1989).

The plaintiffs, authors of a photograph album, presented the album to the publisher under a contract dated December 31, 1982. The contract expired in December 1986, and the album had not been issued within the contractual term. It was eventually published at the end of 1987. The defendant insisted that the delay had in no way been the publisher's fault.

The court, however, found that the late publication had not been legally justified and therefore obliged the defendant to pay author's remuneration (8,149 rubles) regardless of the settlement under the contract.

On October 30, 1989, the ruling was upheld by a decision of the Legal Collegium for Civil Affairs of the Moscow City Court.

15. Request by the defendant for postponement of the hearing, with an indication that remuneration will be paid to the plaintiff later, constitutes recognition of the action by the defendant. Decision of the People's Court of the Moskvoretsky District of Moscow in an action brought by authors G. and K. against the Moscow Musical Experimental Theater for the recovery of remuneration (March 27, 1989).

The plaintiffs concluded a contract with the defendant for the writing of a literary scenario for a New Year show for children, handed it in, but received no remuneration. They filed a claim with the court. The defendant did not appear in court, but sent a letter to it, stating that the money would be transferred to the plaintiffs by April 30, 1989. The court treated that letter as the defendant's agreement with the action, and judged in favor of the plaintiffs.

16. If the author has not been aware of a use of his work, then the period of limitation has not begun. Decision of the Legal Collegium for Civil Affairs of the Leningrad City Court in an action brought by the North–West Division of VAAP for the protection of the interests of author E. against the Kirovsky Zavod Production Association for the recovery of author's remuneration (January 3, 1986).

In 1979, under a contract with the defendant, the author drew sketches for seven souvenir medals on the theme "Petrodvorets," and for this he was given a certain amount of remuneration.

From 1981 to 1985 the Association produced copies of the set of souvenir medals, the total number of sets produced amounting to 203,750. The Association did not notify the author of the fact that it had begun to produce medals to his design which belonged to the category of works of decorative applied art.[28] The author learned about that fact by chance in 1984.

The court determined that certificates had been prepared for the set of medals as works of decorative applied art, and that, in total, 13 runs of medal sets were made, for which remuneration should be paid to the author. The defendant believed that the action should be satisfied only in respect of the previous three years, i.e. 1983, 1984 and 1985, but not in respect of 1981 and 1982 since the plaintiff had missed the period of limitation for his action. The court rejected these arguments because the defendant: (i) informed neither the author nor VAAP of the beginning of the production of copies of the set of medals; (ii) did not enter into a contract that would have established a norm of one run. Under those circumstances the author did not know and could not have known about the infringement of his copyright.

The court judged in favor of the author's action. The decision would have been different had the defendant proved that the author knew beforehand about the copying of his work.

IV. Scientific Life

The years from 1987 to 1989 were the years of "perestroika," rapid development of democracy, openness and pluralism in Soviet society. This was bound to influence the copyright issues, notwithstanding the narrowness and the specific nature of this field. The most characteristic feature of this period (here, of course, we are speaking of copyright issues only) was the active and very pertinent discussion of copyright issues in the press—newspapers and magazines. Great attention was also paid to these issues by non–professional periodicals of a general nature.

Among the issues under consideration were the following: the protection of works of classic writers (preservation of their integrity, term of protection), the drawbacks of the current legislation (transfer of exclusive rights under contracts, insufficient protection in the field of motion pictures and television), the drafting of new legislative provisions, the exploitation of video films, and many others.

Severe criticism was directed against VAAP. It is still being criticized for its monopolistic position, for the fact that it is a mandatory go–between in all copyright export and import transactions, for its slowness and inefficiency in operation, and in particular for the high commission charged to Soviet authors (25%, sometimes 15%) and the enormous income tax (imposed by the State, but in certain cases, such as the export of copyright, recovered by VAAP).[29] In January 1990, VAAP made a number of public statements to the effect that it

[28] About specific features of the protection of such works, see *Copyright*, 1984, pp. 238–239.

[29] A typical example: the Minister of Culture of the USSR said that in 1989 the author's remuneration payable to the heirs of Vladimir Vysotsky (he died in 1980; during his life his works were not actually used) was calculated to be 237,000 rubles, but after taxation the heirs were paid only 48,000 rubles (i.e., 16% of the sum as calculated). This, according to the Minister, affords evidence of the injustice of taxation, in *Sovetskaya Kultura*, February 10, 1990, p. 5.

was willing to step down from its position as sole literary agent and that it would insist on a decrease both in its commission rate and in the income tax applicable to author's remuneration.

Part of the critics' argument was based on an erroneous notion that VAAP collected income tax for its own benefit (whereas in reality it transfers the sums collected to financial bodies); VAAP has come in for a lot of criticism because of the low rates of author's royalties, although it is not responsible for this situation.

A number of studies on copyright matters have been published in the USSR:

1. Kouznetsov M.N., *Copyright Protection in Private International Law*, Moscow, 1986, 108 pages.
2. Matveev Y.G., *The International Protection of Copyrights*, 3rd edition, Moscow, 1987, 224 pages.
3. Klyk N.L., *The Protection of the Interests of the Parties to the Author's Contract*, Krasnoyarsk, 1987, 186 pages.
4. Kouchinskas L., *The Law and Design*, Vilnius, 1987, 204 pages.
5. *Scientific and Practical Comments on the Civil Code of the Moldavian SSR*, Kishinev, 1987 (copyright – pp. 526 to 573).
6. Dillentz V., *Copyright: Past and Present. What Next?* Moscow, 1988, 48 pages.
7. Yurchenko A.K., *The Publishing Contract*, Leningrad, 1988, 104 pages.
8. Kouznetsov M.N., *The Protection of Creative Activity Results in Private International Law*, Moscow, 1988, 180 pages.
9. Gavrilov E.P., *Copyright. Publishing Contracts. Author's Remuneration*, Moscow, 1988, 176 pages.
10. Musiyaka V.L., *Authors' Contracts*, Kiev, 1988, 84 pages.
11. Chertkov V.L., *Copyright in Periodicals*, Moscow, 1989, 144 pages.
12. Dumas R., *La propriété littéraire et artistique; le droit d'auteur en France*, Moscow, 1989, 336 pages.
13. *Comments on the Civil Code of the Kazakh SSR*, Alma–Ata, 1990, 688 pages (copyright – pp. 537 to 601).

During the period under review, a number of dissertation papers were defended by candidates for science degrees: Protopopova O.Y., "The Author's Contract in USSR Foreign Trade" (Moscow, 1986); Smirnova M.Y., "The Protection of Copyrights Owned by Foreigners for Literary and Artistic Works in France" (Moscow, 1987); Odintsova V.U., "International Cooperation in the Field of Copyright Protection in Cinematography and Television" (Moscow, 1987); Bagirov B.G., "Legal Problems of Translation of Works into Other Languages" (Moscow, 1988); Valeyeva N.G., "Civil Law Regulation of Relations in the Sphere of Folk Arts" (Sverdlovsk, 1988); Globa V.K., "Non–Contractual Use of Works Protected by Copyright" (Kharkov, 1988).

One doctorate dissertation paper was defended at the end of 1988: Kouznetsov M.N., "Peculiarities of the Modern Development of Private International Law, and its Influence on the Protection of Creative Activity Results," author's thesis for doctorate of law, Kharkov, 1989, 29 pages.

Calendar of Meetings

WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

1990

December 10 to 14 (Geneva)

PCT Committee for Administrative and Legal Matters (Fourth Session)

The Committee will continue to examine proposals for amending the Regulations under the Patent Cooperatioo Treaty (PCT).
Invitations: States members of the PCT Union and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.

1991

April 15 to 18 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Ninth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (April 1989) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

Juoe 3 to 28 (The Hague)

Diplomatic Conference for the Cooclusion of a Treaty Supplemeoting the Paris Cooventioo as Far as Patents Are Concerned

This diplomatic conference will negotiate and adopt a treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty).
Invitations: States members of the Paris Uoion and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

July 1 to 4 (Geneva)

WIPO Permaneot Committee for Development Cooperation Related to Industrial Property (Fourteentb Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May/June 1989) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

September 23 to October 2 (Geneva)

Governiog Bodies of WIPO and tbe Unions Administered by WIPO (Tweoty-Second Series of Meetings)

All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary sessions every two years in odd-numbered years. In the sessions in 1991, the Governing Bodies will, *inter alia*, review and evaluate activities undertaken since July 1990, and consider and adopt tbe draft program and budget for the 1992-93 biennium.
Invitations: States members of WIPO or the Unions and, as observers, other States members of the United Nations and certaio organizations.

UPOV Meetings

(Not all UPOV meetings are listed. Dates are subject to possible change.)

1991

March 4 to 19 (Geneva) — **Diplomatic Conference for the Revision of the UPOV Convention**

Invitations: Member States of UPOV and, without the right to vote, States members of the United Nations not members of UPOV as well as, as observers, certain organizations.

Other Meetings in the Field of Copyright and/or Neighboring Rights

Non-Governmental Organizations

1991

January 20 and 21 (Cannes)	International Association of Entertainment Lawyers (IAEL): International Lawyers Meeting
April 22 to 29 (Aegean Sea)	International Literary and Artistic Association (ALAI): Congress
May 12 to 16 (Dunkeld, United Kingdom)	International Confederation of Societies of Authors and Composers (CISAC): Legal and Legislation Committee