Adherence of the U.S.S.R. to the Universal Copyright Convention: Defenses under U.S. Law to Possible Soviet Attempts at Achieving International Censorship

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The decision of the government of the U.S.S.R. to join the International Geneva Convention on Copyright [U.C.C.] can significantly contribute to the reduction of mutual distrust and, in the long view, to cultural rapprochement among nations.

While definitely approving this action on the whole, nevertheless, we consider it our duty to express certain apprehensions . . . . In the particular conditions of our country, the law concerning the monopoly of foreign trade could be put to use for restricting or even for suppressing entirely the international intellectual property rights of Soviet citizens . . . . The Decree of the Presidium of the Supreme Soviet, dated February 21, 1973, and published in the press, not only fails to eliminate the apprehensions we have noted above but instead makes them still more explicit . . . .

—open letter by six prominent Soviet intellectuals

The Soviet Union's current relations with the West present a Janus-like ambiguity. While encouraging closer trade relationships with the United States, the Soviet leadership seems equally intent on suppressing internal dissent and disabusing the West of the idea that détente will engender a freer flow of ideas between East and West. At the same time that Soviet jamming of the Voice of America has ceased, concerted attacks are under way to silence dissident intellectuals within the Soviet Union. It is against this shifting and uncertain backdrop
that the Soviet Union's role as the sixty-fourth member nation of the Universal Copyright Convention [U.C.C.] will be played.

There exists speculation that the Soviet Union will use its newly-acquired membership in the U.C.C. as an instrument for tighter domestic and international censorship. Pessimists emphasize the Soviet history of tight domestic censorship and point to the Soviet copyright law which permits the compulsory purchase of any copyright, a governmental privilege which has been exercised frequently. Many fear that under article I of the U.C.C. the Soviet Union might enter a United States court as a copyright proprietor to enjoin the unauthorized publication of samizdat works by notable dissident Soviet writers. It is also feared that the Soviet Union's laws requiring Western


6. There is no single "Soviet Copyright Law." This note bases its analysis on Chapter IV of the 1961 "Bases of Legislation in Respect of Civil Law in the U.S.S.R. and Federated Republics." J. BAUMGARTEN, supra note 5, at 65-67. Article 106 reads as follows:

The State may compulsorily purchase the copyright to the publication, public performance or other utilisation [sic] from the author or his heirs by the procedure laid down in the legislation of the Union Republics.

S. LEVITSKY, INTRODUCTION TO SOVIET COPYRIGHT LAW 274 (Law in Eastern Europe No. 8) (1964). See J. BAUMGARTEN, supra note 5, at 114 n.317.

7. See Wolfman, The Author and the State: An Analysis of Soviet Copyright Law, 14 ASCAP COPYRIGHT LAW SYMPOSIUM 1, 19-20 (American Society of Composers, Authors and Publishers 1966) [hereinafter cited as ASCAP No. FOURTEEN]. Article 106 derives from a 1918 decree empowering the revolutionary government to declare a state monopoly of "all works of science, literature, music, or fine arts of any kind, whether published or not, no matter in whose possession they are." Decree of Nov. 26, 1918, as quoted in Wolfman, id. at 18-19. In the 1920's this decree was the basis for the nationalization of works by such great Russians as Moussorgsky, Tchaikovsky, Gogol, Pushkin, Tolstoi, Turgenev, and Chekhov. By a 1925 official decree, the State even nationalized all Russian translations of the works of Upton Sinclair. The decree was formalized as an article in the 1928 Federal Copyright Law but was not frequently exercised again until the late 1950's, when it was turned against "loaing" heirs of popular writers. But see Matveev, Copyright Protection in the U.S.S.R., 20 BULL. COPYRIGHT SOCY. 219, 221 (1973) where a Soviet expert on the 1971 Paris Revision of the U.C.C. states that the State monopoly on works not in the public domain was not to last more than five years.

8. This term, which literally means "self-published," signifies Soviet literary works in typed manuscript form which were rejected for publication by the State publishing houses or were never submitted and are circulated secretly by hand. Solzhenitsy's First Circle and Pasternak's Dr. Zhivago are two of the most well-known samizdat works.
publishers to negotiate with a government literary agency\(^9\) would make it possible for the U.S.S.R. to: (1) refuse translation rights to anti-Soviet works; (2) request that "correct" translations be made to fit a censored version of the original; (3) insist that propagandistic prefaces be included in certain works; and (4) require that only pro-Soviet editors be allowed to compile anthologies of Soviet works.\(^1\)

Optimists belittle these fears, citing Soviet reluctance to enter a foreign court to seek international censorship, a manifest desire to ease East-West tension, and the eagerness of Soviet publishing houses to receive works from the West.\(^1\)\(^1\) Despite these assurances, however, the fears remain, and unrest has even made itself felt in the Congress, where possible solutions are under consideration by the House and Senate Subcommittees on Patents, Trademarks, and Copyrights.\(^1\)\(^2\)

This note explores three related questions:

(1) Is fear of Soviet entrance into a United States court as a copyright proprietor in order to enjoin publication of samizdat works justified?

(2) Is concern over heightened Soviet administrative censorship through the Soviet All-Union Copyright Agency (VAAP) warranted?

(3) Are there any defenses under United States law to possible Soviet injunctive and administrative censorship? Would a proposed American

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9. See N.Y. Times, Sept. 21, 1973, at 3, col. 1. The Soviet Union announced the formation of the All-Union Copyright Agency (VAAP) to act as the authorized representative of the State publishing houses in dealings with Western publishers.


11. Id. at 31; see also Benjamin, Of Copyright and Commissars: A Rejoinder, The New Leader, June 21, 1965, at 19.


The texts of the two companion bills in the House, H.R. 6214, 93d Cong., 1st Sess. (1973), and H.R. 6418, 93d Cong., 1st Sess. (1973), which are identical to the bill in the Senate, read as follows:

In section 9, title 17, of the United States Code, add a subsection (d) to read:

"(d) A United States copyright secured by this title to citizens or subjects of foreign states or nations pursuant to subsection (b) or (c), and the right to secure such copyright, shall vest in the author of the work, his executors or administrators, or his voluntary assigns. For the purposes of this title, any such copyright or right to secure copyright shall be deemed to remain the property of the author, his executors or administrators, or his voluntary assigns, regardless of any law, decree or other act of a foreign state or nation which purports to divest the author or said other persons of the United States copyright in his work, or the right to secure it; and no action or proceeding for infringement of any such copyright, or right to secure it, or common law right in such work, may be maintained by any state, nation, or person claiming rights in such copyright, right to secure copyright, or common law rights by virtue of any such law, decree, or other act."
Publisher's Union solve the problem of administrative censorship without violating United States antitrust laws?

I

THE UNIVERSAL COPYRIGHT CONVENTION

The preamble to the U.C.C. states that the member nations are moved by the desire to ensure in all countries copyright protection of literary, scientific and artistic works . . . [and are] persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding.\(^\text{12}\)

The U.C.C. does not grant one copyright, but rather ensures the granting of copyright protection by each member nation. The convention provides that each U.C.C. member will accord the same protection that it gives to works by its own nationals to the works of citizens of other member nations. The writings of nationals of non-member countries which are first published in a U.C.C. signatory nation are to be afforded similar safeguards.\(^\text{14}\) Thus, in essence, the U.C.C. grants sixty-four copyrights of differing quality.\(^\text{15}\) Although copyright protection varies from nation to nation, article I requires that "adequate and effective protection of the rights of authors and other copyright proprietors" shall be accorded.\(^\text{16}\)

Designed for those nations who felt the Berne Convention requirements were too stringent,\(^\text{17}\) the U.C.C. requires a minimum amending of domestic copyright law; only the provisions relating to the duration of the copyright and the awarding of a compulsory license to translate are explicit. Those who had hoped for Soviet accession to a multilateral treaty saw the U.C.C. as the only possible solution. Nevertheless, the sudden decision of the Soviet Union to adhere to the Universal Copyright Convention came as somewhat of a surprise,\(^\text{18}\) and specula-

\(^{13}\) It should be stressed that the preamble to the 1952 U.C.C. is not legally binding. A. Bogsch, *Universal Copyright Convention: An Analysis and Commentary* I (1958).

\(^{14}\) U.C.C., arts. I, II; see also A. Bogsch, *supra* note 13, at 3-26.


\(^{16}\) A. Bogsch, *supra* note 13, at 3-5. The Chairman of the Geneva Conference indicated that the rights conferred on authors by the U.C.C. should include those given to authors by "civilized" countries. 5 *UNESCO Copyright Bull.*, No. 3-4, at 47 (1952).

\(^{17}\) 4 *UNESCO Copyright Bull.*, No. 1-2, at 10 (1951).

\(^{18}\) N.Y. Times, May 28, 1973, at 6, col. 1. The Soviet Government has been
tion was rife that some hidden reason existed to account for the country's sudden change of position. The theory that the Politburo desired another weapon of censorship in its pitched battle with dissident Soviet intellectuals seemed to provide the answer, and this theory gained support with the publication of the decree amending the Soviet copyright laws as required under article X of the U.C.C. This decree extends copyright to published, unpublished and samizdat works alike and allows assignment of a Soviet copyright or publication rights to a foreign publisher only "according to the procedure established by U.S.S.R. legislation." Article 106 of the decree, allowing the compulsory purchase of a copyright from the author by the Soviet government, has been retained from the former copyright law. This leaves open the possibility that the U.S.S.R. could compulsorily purchase the copyright to samizdat works and utilize its copyright proprietorship to sue in the United States courts for an injunction to halt publication.

notoriously reluctant to sign any multilateral copyright convention in the past, and from 1917 to 1967 rebuffed all invitations to conclude bilateral treaties. In 1967 the Soviet Union signed its first bilateral copyright treaty with Hungary and entered into a similar treaty with Bulgaria in 1972. See Shaye, Piracy Within the Law: A Consideration of the Copyright Protection Afforded Foreign Authors in the United States and the Soviet Union, ASCAP No. FOUneen, supra note 7, at 226, 230-33 (1964). See also J. BAUMGARTEN, supra note 5, at 9 n.18.


22. Washington Post, Mar. 23, 1973, at 14, col. 1; N.Y. Times, May 28, 1973, at 6, col. 2. An interesting question arises as to whether the Soviet Union would sue for an injunction in the federal or the state courts. If a samizdat publication is considered an unpublished work in the United States, the Soviet Union, as an alleged proprietor of an unpublished work's copyright, would be suing to protect the work's common law copyrights (one for each state) and may sue in a state court. It is unclear at present, however, whether a samizdat work would be considered an unpublished work. A British court recently held the samizdat distribution of Solzhenitsyn's August 1914 not to be a publication for copyright purposes. The Bodley Head Ltd. v. Flegon, [1972] 1 W.L.R. 680 (Ch. 1971). Baumgarten suggests that U.S. courts might liken samizdat works to "limited publications," but the end result would be no different since the common law copyright adheres to limited publications as well. J. BAUMGARTEN, supra note 5, at 43-44. Federal jurisdiction might be obtained, however, on the theory that a construction of the Copyright Act is required to resolve whether the Soviet Union's practice of eminent domain constitutes a valid assignment. See T. B. Harms Co. v. Eliscu, 339 F.2d 829, 828 (2d Cir. 1964); Royalty Control Corp. v. Sanco, Inc., 175 U.S.P.Q. 641 (N.D. Cal. 1972). Federal jurisdiction might also be obtained on the theory that the resolution of the issue was closely tied to foreign policy, with a consequent need for nation-wide uniformity. See Republic of Iraq v. First Nat'l City Bank, 353 F.2d 47, 50-51 (2d Cir. 1965), cert. denied, 382 U.S. 1027 (1965). The defendant might also remove from the state court to the federal district court on the separate jurisdictional base of diversity of citizenship.
Congress has responded to this threat with proposed legislation which would nullify any attempt by a foreign government to exercise eminent domain over an author's copyright in the United States. Two bills have been introduced in the House and one in the Senate with identical texts to amend section 9 of Title 17 of the United States Code. The bills add a sub-section (d), which allows a copyright to vest in the author, his executors, administrators or assigns. Under the proposed amendment, assignees could acquire title to the copyright only through the voluntary consent of the author, not through a foreign government's decree, act or law. It appears, however, that passage of these bills is not critically needed, since injunctive censorship is not only politically unlikely, but under United States law is virtually impossible.

23. See note 12 supra and accompanying text.
24. Soviet authorities already have sufficient internal power to deal with dissidents in other ways and copyright injunctions in a foreign court would be a "clumsy and exposed tool for suppression." Publishers Weekly, May 14, 1973, at 31. See also the translation of The Criminal Code of the R.S.F.S.R., Oct. 27, 1960, as amended to Mar. 1, 1972, arts. 69, 70, 78, 190-1 (1966), in H. Berman & J. Spindler, Soviet Criminal Law And Procedure: The R.S.F.S.R. Codes 125, 153-54, 155, 180-81 (2d ed. 1972). Article 70 of the criminal code of the largest Soviet republic prohibits the circulation of "slanderous fabrications which defame the Soviet State and social system." Article 78 punishes smuggling of "goods or other valuables across the state border of the U.S.S.R." and could conceivably be applied to the smuggling of a samizdat novel across the border. Article 190-1 repeats the prohibition of article 70, but provides for imprisonment for up to three years. Imprisonment under article 70 may not exceed seven years. An unauthorized sale of a work by a samizdat author might also be punished as a violation of the Soviet laws establishing a state monopoly on foreign trade. N.Y. Times, Dec. 30, 1973, at 1, col. 1, and at 17, col. 5. The stiffer penalties possible might be eight to fifteen years imprisonment, plus from two to five years of exile, under article 69. This article prohibits acts which, in order to subvert trade, obstruct the normal work of a State organization (e.g. V.A.A.P.).

The motivation of the Soviet Union to adhere suddenly to the 1952 U.C.C. may not have been due to a desire for another instrument for internal censorship. Article IX § 3 of the 1971 Paris Revision of the U.C.C. provides that "after [its] coming into force . . . no state may accede solely to the 1952 Convention." 1971 Paris Revision of the Universal Copyright Convention, in 2 UNESCO, COPYRIGHT LAWS AND TREATIES OF THE WORLD Item B-1, at 9 (Supp. 1971). The Soviets reportedly were worried about the provisions in the Paris Revision which expressly protect broadcasting and performing rights. Publishers Weekly, Mar. 5, 1973, at 47. The Soviet Union may also have felt that the Paris Revision would prohibit the recent amendment to article 103 of the Soviet Copyright Law allowing nonprofit reproduction of educational and scientific materials. J. Baumgarten, supra note 5, at 64 n.171. At the time of the Soviet Union's accession, only five nations had signed the Paris Revision: Cameroon, France, Hungary, the United Kingdom and the United States. By Aug. 10, 1974, however, the required twelve nations had signed and the treaty entered into force. 70 DEP'T. OF STATE BULL. No. 1823, at 619 (1974). The U.S.S.R.'s haste may have been due to a desire to sign the 1952 U.C.C.
It is well established that copyrights have no extraterritorial effect. Thus, prior to the Soviet Union’s signing of the U.C.C., the grant of a copyright to a Soviet citizen by his government had no significance in the United States. Conversely, the Supreme Court has held that a foreign statute which would have the effect of depriving a foreign citizen of a United States common law copyright also has no automatic legal effect in the United States. The Soviet Union’s membership in the U.C.C. has not necessarily changed this situation with regard to samizdat works.

Although the United States recognizes the potential right of a foreign government to enter U.S. courts as a copyright proprietor, it before the 1971 Paris Revision superseded it. Article IX § 4 of the 1971 Paris Revision provides that “relations between states party to [the Revised] Convention and states that are party only to the 1952 Convention [Soviet Union], shall be governed by the 1952 Convention.” UNESCO, COPYRIGHT LAWS AND TREATIES OF THE WORLD, Item B-1, at 9 (Supp. 1971).

In addition, the Soviet Union disclosed an income tax decree revising a basic 1943 tax law to authorize a royalty tax on Soviet and foreign authors’ works of up to 75 percent. Decree of Sept. 4, 1973, Concerning the Taxation of Income Derived from Royalties, [1973] 37 Ved. Verkh. Sov. S.S.S.R. Item 497, at 587-90. (Presidium of the Supreme Soviet U.S.S.R.) (unofficial English translation in 12 INT’L LEGAL MAT’LS 1517 (1973)). This strongly suggests that the U.S.S.R.’s need for foreign exchange might also have played a role in its adherence to the U.C.C.

Finally, since the United States has always accorded common law copyright protection to the unpublished works of aliens, the Soviet Union, even before acceding to the Universal Copyright Convention, could have compulsorily purchased the common law copyright of any samizdat work and sued in the state courts for an injunction of any infringing U.S. publication. No such attempt has ever been made—a strong indication that this was not the reason for the Soviet accession to the U.C.C.


27. Ferris v. Frohman, 223 U.S. at 433-34. (Public performance of an unpublished play in England was deemed equivalent to publication in England, depriving the authors of their common law rights in England. Performance did not constitute publication in the United States and since the English copyright law could have no extraterritorial effect, the owners retained their U.S. common law copyright).

28. See M. WHITEMAN, 7 DIGEST OF INTERNATIONAL LAW 891 (1910) where the UNESCO Report on Penal Actions in Cases of Copyright Infringement, DACP/2/13 (1963) is reported. The right of a U.C.C. government to sue in a foreign court on behalf of one of its nationals is allowed in five countries (Canada, Italy, Norway, Spain and the United States) while fourteen countries specifically prohibit it (Austria, Bulgaria, Cam-
is unlikely that the courts would accede to Soviet demands for injunctions of publications of samizdat works within the United States. Under the Act of State doctrine, U.S. courts would be barred from examining the Soviet expropriation of the copyright existing within the Soviet Union.\textsuperscript{29} The courts, however, would not give automatic extraterritorial


Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.

In Sabbatino, an American commodity broker agreed to pay for a shipment of sugar expropriated in Cuba from an American-owned Cuban corporation by the Cuban government. After delivery in New York, the broker refused to pay the Cuban government's agent. The district court held that the Act of State doctrine did not bar review of the expropriation, since a violation of international law was involved. The court also took notice of two State Department letters as supposedly encouraging the court to review the expropriation (the "Bernstein" exception to the Act of State doctrine). The Supreme Court reversed the district court's ruling without passing on the issue of the Bernstein exception by finding that the State Department letters expressed merely a neutral executive position.

Neither would the Hickenlooper Amendment to the Foreign Assistance Act of 1964 require judicial inquiry into the expropriation in this situation, since the amendment is limited to cases involving claims of title to American-owned property confiscated in a foreign state in violation of international law and later found within the United States. Menendez v. Saks and Co., 485 F.2d 1355, 1372 (2d Cir. 1973); Banco Nacional de Cuba v. First Nat'l City Bank, 431 F.2d 394 (2d Cir. 1970), rev'd on other grounds, 406 U.S. 759, 780 n.5 rehearing denied, 409 U.S. 897 (1972). The Hickenlooper Amendment to the Foreign Assistance Act of 1961, 78 Stat. 1013, 22 U.S.C. § 2370(e)(2) (1970) reads in relevant part as follows:

\begin{quote}
(e) NATIONALIZATION, EXPROPRIATION OR SEIZURE OF PROPERTY OF UNITED STATES CITIZENS, OR TAXATION OR OTHER EXACTION HAVING SAME EFFECT; . . .

(2) . . . [N]o court in the United States shall decline on the ground of the federal Act of State doctrine to make a determination of the merits giving effect to the principles of international law in a case in which a claim of title or other right to property is asserted by any party including a foreign state (or a party claiming through such state) based upon (or traced through) a confiscation or other taking . . . by an act of that state in violation of the principles of international law, including the principles of compensation. . . .
\end{quote}

Since there was no majority opinion in the case of First National Bank v. Banco Nacional de Cuba, 406 U.S. 759 (1972), its value as precedent appears to be limited to the facts of the case. Occidental Petroleum Corp. v. Buttes Gas & Oil Co., 461 F.2d 1261 n.1 (1972). It is uncertain, therefore, as to whether a court would review the Soviet expropriation of its citizen's Soviet copyright if encouraged to do so by the State Department. Cf. Note, International Law—Act of State Doctrine, 49 Wash. L. Rev. 213, 216-19 (1973). In any event, the decision of a U.S. court as to the existence or non-existence of a Soviet citizen's copyright in the U.S.S.R. would have no extraterritorial effect. See note 30, infra.
rial effect to the Soviet confiscatory decree covering property outside the Soviet Union at the time of the decree's passage, even though directed against Soviet citizens. As Justice White stated in his dissenting opinion in *Sabbatino*:

> Foreign confiscatory decrees purporting to divest nationals and corporations of the foreign sovereign of property located in the United States uniformly have been denied effect in our courts, including this court.

To date, the Act of State doctrine has not been applied to attempts at confiscations by a foreign sovereign of property located outside its territory.

As a foreign confiscatory decree attempting to affect property located within the United States (a Soviet citizen's U.S. copyright), the Soviet decree would be recognized only if it were consistent with U.S. law and policy. United States courts are likely to

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30. *Baglin v. Cusenier Co.*, 221 U.S. 580 (1911) (the liqueur trademark "Chartreuse" was reserved to the exiled French monks who had registered it despite the confiscation of their vineyards in France); *Maltona Corp. v. Cavvy Bottling Co.*, 462 F.2d 1021 (5th Cir.), *cert. denied*, 409 U.S. 1060 (1972) (U.S. trademark of nationalized Cuban company held not affected by nationalization decree); *Tabacalera Severiano Jorge, S.A. v. Standard Cigar Co.*, 392 F.2d 706 (5th Cir.), *cert. denied*, 393 U.S. 924 (1968) (U.S. debt owed to confiscated Cuban corporation held to have a situs in the United States and therefore held not to have been affected by Cuban confiscatory decree); *F. Palicio y Compania, S.A. v. Brush*, 256 F. Supp. 481, 488, *aff'd mem.*, 375 F.2d 1011 (2d Cir.), *cert. denied*, 389 U.S. 830 (1967) (A Cuban decree confiscating a Cuban tobacco business so as to allow the Cuban intervenors to sue to enjoin infringements in the United States of the United States trademarks of the confiscated business was denied effect as in violation of public policy. The Act of State doctrine was held inapplicable since the situs of the trademarks allegedly infringed was in the United States at the time of the confiscation of the Cuban business); *Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena*, 293 F. Supp. 892 (S.D.N.Y. 1968) (attempted expropriation of all United States trademarks of nationalized East German company held ineffective in United States as against U.S. anti-expropriation policy); *Compania Ron Bacardi, S.A. v. Bank of Nova Scotia*, 193 F. Supp. 814 (S.D.N.Y. 1961) (Cuban nationalization decree held ineffective to terminate existence of Cuban corporation in New York); *Zwack v. Kraus Bros. & Co.*, 93 F. Supp. 963 (S.D.N.Y. 1950) *aff'd* 237 F.2d 255 (2d Cir. 1956) (members of a confiscated Hungarian partnership were allowed to sue for infringement of their U.S. registered trademark by the government's assignees).

31. 376 U.S. at 447. The *Sabbatino* majority recognized the territorial limitation in its ruling that "the courts of one country will not sit in judgment on the acts of another done within its own territory." *Id.* at 416 (emphasis added). Moreover, the court consistently referred only to United States property confiscated abroad and returned to the United States. *Id.* at 428, 431, 436.


(1) The [Act of State doctrine] does not prevent examination of the validity of an act of a foreign state with respect to a thing located, or an interest localized,
regard the determination of public policy as an "unruly horse" and may be tempted to include the vast body of international law on expropriation in discussing U.S. public policy.\textsuperscript{34} No violation of international law will be found, however, due to the settled doctrine that "acts of a state directed against its own nationals do not give rise to questions of international law."\textsuperscript{35} Even so, ample U.S. law exists to indicate that the Soviet decree providing for the compulsory purchase of copyrights violates forum policy. If it is found that the "purchase" provides inadequate compensation to the Soviet author, U.S. courts would find the decree to be confiscatory and a violation of the guarantee of due process embodied in the Fifth and Fourteenth Amendments, and of the specific prohibition of bills of attainder in Article I of the Constitution.\textsuperscript{36} Only in the case of an expropriation which is part of a "scheme of general social improvement" in which the "paucity of funds" in the government coffers makes it "impossible to carry out large-scale measures in the name of social welfare," would the court hesitate to brand such a confiscatory decree as against public policy.\textsuperscript{37} In the present case, enforcement of the Soviet decree would not only lack any bona fide social or economic purpose, it would violate the First Amendment of the Constitution in an attempt to muzzle dissent through suppression of samizdat works. Finally, it is hardly likely that the courts would allow a foreign government to practice eminent  

outside of its territory if the act has not been fully executed in accordance with applicable law.


domain on a United States copyright, when the U.S. government itself cannot compulsorily purchase a copyright.\textsuperscript{38}

The argument has been raised that if a state measure cannot be applied extraterritorially under normal conflict of laws rules, the fact that the measure is contrary to public policy is superfluous. Only if the court is uncertain as to whether the foreign law is applicable under the \textit{res sitae} rule, would it be necessary to consider domestic public policy in order to avoid applying the foreign law.\textsuperscript{39} Although early cases were decided in this manner, the trend in recent years has been toward basing the denial of relief to the foreign suitor on a finding that the decree was ineffective, due to its territorial limitation, and its conflict with public policy.\textsuperscript{40}

The recent reliance on this two-pronged attack in order to deny effect to a foreign confiscatory decree probably stems from the growing power of the Act of State doctrine. Mr. Justice White touched on this curious legal development in \textit{Sabbatino} when he noted that foreign

\textsuperscript{38} 17 U.S.C. § 8 provides that the "publication or republication by the Government . . . of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright . . . ." This clause does not sanction governmental practice of eminent domain, but assumes publication by the government will be with "the consent of the owner of the copyright." H.R. Rep. No. 2222, 60th Cong., 2d Sess. 10 (1909), quoted in J. \textsc{Baumgarten}, \textit{supra} note 5, at 93-94 n.262.

\textsuperscript{39} P. \textsc{Adriaanse}, \textit{CONFISCATION IN PRIVATE INTERNATIONAL LAW} 154 (1956).

\textsuperscript{40} In the 1912 copyright case of \textit{Ferris v. Frohman}, 223 U.S. 424, the English statute which would have negated the plaintiffs' U.S. common law copyright if applied, was deemed strictly limited in effect to the territory of England. In the case of \textit{Ingenohl v. Walter E. Olsen \& Co.}, 273 U.S. 541 (1927), the Supreme Court upheld a British court's ruling that the American Alien Property Custodian in Hong Kong lacked jurisdiction to transfer trademark rights secured under the English copyright laws. In neither case was any reference made to the public policy of either nation. The court in \textit{Zwack v. Kraus Bros. \& Co.}, 93 F. Supp. 963 (S.D.N.Y. 1950), aff'd, 237 F.2d 255 (2d Cir. 1956), a United States case dealing again with trademarks, stressed their concern that the public policy against expropriation would be emasculated were the confiscatory Hungarian decree to be given extraterritorial effect. The two-part defense of territoriality and public policy began to assume a more solid shape in the 1966 trademark case of \textit{F. Palicio y Compania, S.A. v. Brush}, 256 F. Supp. 481, 492 n.12 (S.D.N.Y. 1966), aff'd mem., 375 F.2d 1011 (2d Cir. 1967), where the court observed:

\begin{quote}
It has been said that "a disguised application of public policy may be involved in the court's treatment of an expropriation of intangible property, which has an ascribed rather than a physical situs. In such cases the court may strain to find that the property has a situs outside the taking state, and thus avoid the application of the foreign law, even if the [contacts] with some other jurisdiction are relatively slight."
\end{quote}

The modern version of the two-part defense of territoriality and public policy can be seen in the recent trademark case of \textit{Maltina Corp. v. Cary Bottling Co.}, 462 F.2d 1021, 1027 (5th Cir.), cert. denied, 409 U.S. 1060 (1972), where the court ruled that where the foreign decree purports to affect property located within the United States at the time of the decree's passage, the decree will be given effect only if it is compatible with the public policy of the forum.
penal and revenue laws are denied effect because territorially limited in scope—and this, without any examination as to their compatibility with public policy.\textsuperscript{41} The majority in \textit{Sabbatino} left open the question as to whether the doctrine applies to other public laws (e.g., copyright law), since the Act of State doctrine took precedence in \textit{Sabbatino} where the property was confiscated in the taking country.\textsuperscript{42} This question remains unanswered. The Soviet Union might well be denied relief purely on the basis that the copyright decree is a penal law designed to punish dissidents, and is consequently limited territorially, and ineffective within the United States regardless of the question of its compatibility with U.S. public policy.\textsuperscript{43} Recent trademark cases indicate, however, that the Act of State doctrine analysis has been extended to cases of intellectual and industrial property confiscation, and the two-pronged attack must be proved in order for the court to deny effect to the foreign decree.\textsuperscript{44}

Only in the instance in which the executive branch, under its power to conduct foreign relations, approves by compact or treaty, or otherwise ratifies the foreign decree, must the court give extraterritorial effect to the act of the foreign state, for the action of the Executive would then be considered to have made the Soviet decree consistent with the law and policy of the United States.\textsuperscript{45} In the unlikely event of an executive validation of the Soviet confiscatory decree, Congress, by

\textsuperscript{41} 376 U.S. at 450 n.11.
\textsuperscript{42} Id., at 414.
\textsuperscript{43} See Baglin v. Cusenier Co., 221 U.S. 580, 596 (1911), where the court cites with approval the opinion of Lord Macnaghten in the English companion case of \textit{Lecouturier v. Rey}:

\begin{quote}
But it is certainly satisfactory to learn from the evidence of experts in French law that the law of Associations is a penal law—a law of police and order—and is not considered to have any extraterritorial effect.
\end{quote}

On the territoriality of penal laws in general, see I. \textit{SEIDL-HOHENVELDERN}, \textit{INTERNATIONALES KONFISKATIONS-UND ENTNEIGNUNGSRECHT} 59 (1952); P. ADAIANE, supra note 39, at 85-86.

\textsuperscript{44} See note 40, supra. If the Soviet Union should attempt to enter foreign courts seeking injunctions of publications of \textit{samizdat} works, the foreign civil courts would likely reach the same result as American courts, but, unhampered by an Act of State doctrine as rigid as that of the United States, they would probably base their denial of an injunction on the Soviet decree's violation of both national public policy and international law. Banco Nacional de Cuba v. Sabbatino, 376 U.S. at 421 n.21, 449 n.1; P. ADAIANE, supra note 39, at 78-89. See especially Bessel v. Société des Auteurs et Compositeurs Dramatiques, [1932] Trib. civil de la Seine (Judgment of Feb. 14, 1931) in 59 \textit{JOURNAL DU DROIT INT'L} 114 (Cluerten 1932), where a French court refused to give effect to the Soviet decree of Nov. 26, 1918, the forerunner of article 106, confiscating the French copyrights of Rimsky-Korsakoff and Moussorgsky on the grounds that the decree offended French public policy.

passage of the proposed bill, could supersede the executive agreement and provide the courts with a legal basis for denying the decree any effect in the United States.

III

THE SOVIET ALL-UNION COPYRIGHT AGENCY (VAAP) AND THE POSSIBILITY OF SOVIET ADMINISTRATIVE CENSORSHIP

While the possibility of Soviet censorship by injunction will concern only the few samizdat works smuggled out of the U.S.S.R., administrative censorship by the Soviet All-Union Copyright Agency could be applied to the overwhelming majority of books sought by U.S. publishers from the Soviet publishing houses. Many of these published works may be slightly critical of aspects of Soviet life, causing the Soviet copyright agency to consider striking the offensive passages from the proposed American edition. As the sole contracting agent, the All-Union Copyright Agency will not find it necessary to become a copyright proprietor of the work in order to control its publication. It will merely withhold publishing rights from the Western publishers until one agrees to publish a censored version. With many publishers bargaining with a single state agency, the Soviet Union will possess a considerable bargaining advantage. The publisher most eager to gain publishing rights will make the most concessions to the Soviet censors.

If an American publisher attempted at this point to publish an

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46. N.Y. Times, Sept. 21, 1973, at 3, col. 1. When the Soviet Union announced the formation of the All-Union Copyright Agency (VAAP) to act as the authorized representative of the State publishing houses in dealings with the Western publishers, the new head of the VAAP made it clear that "[c]ontacts between authors and those using their works will be concluded through this agency." The following Soviet resolution formalized this procedure:

The functions of the All-Union Copyright Agency include, . . . acting as an intermediary during the conclusion of agreements (contracts) with foreign juristic persons and individuals on the use of works by Soviet authors abroad and of works by foreign authors in the U.S.S.R. . . .

The resolution provides that the right to use (publication, public performance or other type of use) outside the U.S.S.R. of works by Soviet authors previously published in U.S.S.R. territory can be transferred by the author or his assignees to a foreign user only through the All-Union Copyright Agency. . . . Works by a Soviet author that have not been published in U.S.S.R. territory nor abroad can be authorized for use abroad by the author or his assignees only through the All-Union Copyright Agency.

The violation of the procedures established by this resolution implicitly invalidates the transaction in question and entails other liability in accordance with existing legislation.

unauthorized edition of the Soviet work, the Soviet author or the VAAP could enter a U.S. court and enjoin the publication. Unlike the case of a samizdat work, in which authorization for a U.S. publication would be assumed by a court, since the work had been suppressed in the U.S.S.R. and smuggled out, in the case of non-controversial books published in the U.S.S.R. and offered through the VAAP, no facts would exist to indicate that the Soviet Union by enjoining an unauthorized U.S. edition was not protecting the Soviet author's rights.

The inferior bargaining position of U.S. publishers in negotiations with the Soviet copyright agency poses the central problem with respect to both the buying of publishing rights to Soviet works, and the sale of rights of U.S. works. Before accepting a book to be published in the Soviet Union, the Soviet copyright agency might request that the U.S. publisher substitute pro-Soviet editors for anti-Soviet editors, that particular prefaces be inserted, or that "offensive" passages be deleted. In the competition between U.S. publishers to land a Soviet contract, concessions on censorship requests might be the deciding factor.

The French-Soviet copyright experience in the early 1960's illustrates that Soviet administrative censorship is not just an empty fear. The French government unilaterally offered to treat the U.S.S.R. as if it were a member of the U.C.C., receiving in turn permission to sell French works in one bookstore in Moscow. As one U.S. editor concluded, France's renunciation of the agreement was inevitable, due to the continued Soviet use of a French-based copyright agency to achieve effective administrative censorship of Soviet works published in France.

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The Russians established a French organization, run by Communists and fellow-travelers, to deal with French publishers. This organization chose the translators and provided "suitable" editorial material: If one French publisher balked there was always another with an eye on the main chance. There was only one French edition of One Day in the Life of Ivan Denisovich (the sole country where this was the case) and it contained a preface by Pierre Daix, who—until Khrushchev's Secret Speech—had for years stoutly denied the very existence of concentration camps in the Soviet Union, and who edits a Communist literary journal. During the six months from January 1964 through June 1964, when "modernism" was under attack by the Soviet authorities, translations of Soviet "modernists" were not delivered to French publishers who had contracted for them. They were mysteriously delayed until the Party line had softened.

Under the French Law on Copyright of March 11, 1957, all foreigners enjoyed full protection with the exception of those rights taken away by special disposition. Tournier, A Reappraisal of the First Seven Years of Application of the French Law on Copyright of March 11, 1957, 11 COPYRIGHT SOC'Y BULL 295, 300 (1964). Tournier discusses other Soviet
IV
DEFENSES TO SOVIET ADMINISTRATIVE CENSORSHIP

Should the Soviet Union become intractable in an attempt to abuse the U.C.C. in order to enforce their tight domestic censorship on an international level, the U.C.C. itself provides a possible solution. The Soviet Union, in joining the U.C.C., bound itself in case of dispute with another member nation, to accept arbitration before the International Court of Justice. Relying on this condition of membership, the United States could attempt a diplomatic solution with the Soviet Union and, if that fails, charge the U.S.S.R. with failure to provide U.S. authors with "adequate and effective protection," and with a violation of the spirit of the U.C.C. No case has ever been brought before the International Court of Justice under this provision, however, and it is unlikely that it provides a feasible solution.

It is also possible to oppose extended Soviet censorship by resort to economic retaliation in the form of boycotts and refusals to deal. Although this type of defense would probably be ineffectual when applied by individual U.S. publishers, because of the imbalance in bargaining strength between such publishers acting independently and the All-Union Copyright Agency, it could be highly useful when applied by publishers acting collectively through a publishers' union. Such a union would afford U.S. publishers a more advantageous bargaining position and provide a convenient agent for collecting royalty payments, investigating copyright infringements, and filing suits to enjoin unauthorized publications of U.S. works. However, a publishers' union poses the difficult issue of whether its formation and conduct would violate United States antitrust laws.

A. PROPOSED PUBLISHERS' UNION AND THE ANTITRUST LAWS

The United States antitrust policy is grounded on three basic statutes: the Sherman Act, the Clayton Act, and the Federal Trade Commission Act. Of these three, only the Sherman Act would apply

abuses which eventually forced the French government to condition its former freely-granted protection on reciprocal treatment by the author's country. Id. at 301; Decree Conditioning Protection, in UNESCO, COPYRIGHT LAWS AND TREATIES OF THE WORLD, Item 6A [France] (Supp. 1964).
49. U.C.C. art. XV.
50. U.C.C. preamble, art. I.
to the proposed publishers' union. Under the Sherman Act, the courts have applied two tests: (1) the "rule of reason" which holds only undue restraints of trade illegal, and (2) the "per se" rule, which makes conduct such as price-fixing automatically illegal, without any showing of a restraint of trade.

1. Section 1 of the Sherman Act

Under the rule of reason, the publishers' union would violate section 1 of the Sherman Act only if ill effects resulted from its operation (e.g., price-fixing, limitation of production, deterioration of quality), and if the union intended to suppress competition. Given the presence of anticompetitive effects, an argument by the union that it was merely attempting to reduce the disastrous effect on business of cut-throat competition would not be accepted as a valid excuse.

The publishers' union should not cause any of the above effects. If the union bargains with the VAAP over the royalties for a particular work, without attempting to earn excessive profits through price differentials on the less competitive works, no price-fixing should be found.

54. The courts originally took the position that rights to a copyrighted work could be bought or sold and not constitute "trade and commerce" for purposes of the Sherman Act. 174th St. & St. N. Ave. Amusement Co. v. Maxwell, 169 N.Y.S. 895 (Sup. Ct. 1918). A later Supreme Court case overruled these decisions, holding that the Sherman Act aims at the "restraints" of trade and commerce and not at the "subjects" of trade and commerce. The Sherman Act therefore limits restraints of trade in "rights" as well as in commodities. Standard Sanitary Mfg. Co. v. United States, 226 U.S. 20 (1912). The Clayton Antitrust Act is inapplicable to the sale or purchase of publishing rights, since § 13(a) deals only with commodities and products with tangible existence, such as "goods, wares, merchandise, machinery and supplies." Tri-State Broadcasting Co. v. United Press Int'l, Inc., 969 F.2d 263, 271 (5th Cir. 1966); La Salle Street Press, Inc. v. McCormick & Henderson, Inc., 293 F. Supp. 1004 (N.D. Ill. 1968), modified, 445 F.2d 84 (7th Cir. 1971). The Federal Trade Commission Act would not apply to the hypothetical case, since its purpose is to enable the Federal Trade Commission to stop unfair methods of competition in their incipiency, not prosecute the formation of a monopoly. FTC v. Cement Institute, 333 U.S. 683, 693 (1948).


56. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

57. Chicago Bd. of Trade v. United States, 246 U.S. 231, 238 (1918):

But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restraints competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition.


59. In Buck v. Gallagher, 36 F. Supp. 405 (W.D. Wash. 1940), a state statute prohibited
By resisting Soviet attempts at censorship, the union would limit deterioration in the quality of the books purchased or sold. Some limitation of production might occur if the union refused to purchase the rights to a heavily censored work, but a court should not find this to be an unreasonable restraint of trade, since this conduct would not affect the domestic U.S. prices on other Soviet works purchased.\footnote{60} By forming the union, the American publishers certainly would hope to reduce competition among themselves in order to increase their bargaining power with the Soviets, but the members should continue to compete within the union to determine which of them will win the particular contract negotiated with the Soviet copyright agency.\footnote{61}

Although the publishers' union will not violate section 1 of the Sherman Act by bargaining as a unit, no exclusive dealing arrangements (where the VAAP is constrained to deal only with the union) would be allowed.\footnote{62} The union must be open to all U.S. publishers who separate copyright owners from pooling copyrights in order to fix prices, collect fees or issue blanket licenses, except where the licenses were assessing rates on a per-piece basis. \footnote{62}

The Buck court seemed concerned over monopolistic price discrimination where, through price differentials, the monopoly earns excessive profits on its noncompetitive articles. \footnote{60} See also United States v. United Shoe Machinery Corp., 110 F. Supp. 295 (D. Mass. 1953), aff'd per curiam, 347 U.S. 521 (1954). It was a practical necessity for ASCAP (American Society of Composers, Authors and Publishers) to grant blanket licenses for the use of its repertory, and later consent decrees concerning ASCAP recognized this. As one commentator analyzed the situation:

The licensing of individual pieces on individual occasions would be a hopeless task. The composers would suspect discrimination if this were done and the users would be put to intolerable inconvenience.

A. Neale, supra note 55, at 421-22. No such necessity exists for the publishers' union, and setting one price for all copyright licenses would constitute price discrimination by a monopoly similar to that in United States v. United Shoe Machinery, supra.

The publishers' union may not intentionally restrict purchases of Soviet works in order to raise U.S. market prices for them in the United States. United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940). The union must also be careful not to agree on a range within which purchases and sales will be made, scales of prices to be charged within the United States, or formulas by which to reach such a price. \footnote{62} Id. at 222. Minus an anticompetitive effect on domestic prices, the possible restriction on purchases of Soviet works should not violate section 1 of the Sherman Act:

Certainly the law has always attached predominant importance to restraints of trade which directly influence prices, even to the extent of dealing with other forms of restriction, such as output restriction, largely in terms of their effect on price.

A. Neale, supra note 55, at 38.

The publishers may decide to bid among themselves after the union has negotiated the best possible contract with the VAAP on a particular book, the highest bidder winning the contract. This system would tend to favor the big members of the union at the expense of the smaller publishers. One possible alternative would be to have the publishers bid on the contract before the union negotiates with the VAAP. Again the large firm would bid very high in order to win the contract, while actually expecting to pay the VAAP less when the contract is finally negotiated. This problem could be lessened by requiring the winning publisher to pay the union what it bid, any surplus to be distributed equitably among the union members.

wish to enter, since otherwise its superior bargaining power would constitute an illegal restraint of trade injuring independent U.S. publishers competing for Soviet business. A horizontal allocation of markets within the U.S., or agreement on a retail price maintenance system by the union members would constitute per se violations.

Possible collective boycotts by the union in refusing to deal with the VAAP on heavily censored books present a more challenging antitrust problem. Chief Justice Hughes' opinion in *Sugar Institute, Inc. v. United States* indicates that the provisions of the Sherman Act:

> ... do not prevent the adoption of reasonable means to protect interstate commerce from destructive or injurious practices and to promote competition upon a sound basis. Voluntary action to end abuses and to foster fair competitive opportunities in the public interest may be more effective than legal processes.

Justice Black rejected Hughes' position in *Fashion Originators' Guild of America*, but the facts in that case are distinguishable from those which would probably arise from the operation of a publishers' union. In *Fashion Originators',* the Guild was restraining interstate commerce in order to end an “abuse” (design piracy) which was not illegal under U.S. law, and thereby encroached upon the proper functions of the Congress. In the publishers' union situation, Soviet censorship would be a violation of both domestic public policy and international law, and only private action by the union could conceivably end the abuse. In contrast to the profit motive of the Guild, the union would refuse to deal only in the face of Soviet censorship. Since only commercial boycotts are illegal per se, the non-commercial refusal to deal in the publishers' union case should be treated under a “rule of reason” approach. Although the members of the publishers' union would be constrained from independent bargaining with VAAP, the resulting primary boycott would not be profit-motivated and is consistent with

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65. 297 U.S. 553, 598 (1936).
68. Bird, *Sherman Act Limitations on Noncommercial Concerted Refusals to Deal*, 1970 Duke L.J. 247, 276-77 (1970). Bird concludes favoring a per se approach to noncommercial refusals to deal, with only a minor exception for cases where access to a facility needs to be limited. *Id.* at 283, 287.
69. A primary boycott is a: ... trade pattern in which a number of economic actors at one level of the productive or distributive process discontinue economic relations with an actor
U.S. public policy and the U.C.C. goal of ensuring authors "adequate and effective protection."

2. *Section 2 of the Sherman Act*\(^7\)

Section 2 of the Sherman Act proscribes three separate and distinct offenses: 1) attempt to monopolize; 2) conspiracy to monopolize; and 3) monopolization.\(^7\) Although formation of a publishers' union, which included all publishers dealing with the Soviet Union, could conceivably violate section 2 on all three grounds,\(^7\) unless the union adversely affects competition within the United States, no violation of section 1 or 2 would occur. The Justice Department has indicated that it would not view such a monopoly as violating the antitrust laws,\(^7\) and no U.S. citizen could sue for treble damages absent a showing that he was within a sector of the economy threatened by the conspiracy, and that he was proximately injured because of the monopoly.\(^7\) Assuming no adverse effects on the U.S. market from the activities of the publishers' union, no proximate injury to a U.S. citizen could be shown.

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Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

71. Id.

72. An agreement between publishers to form a publishers' union satisfies the conspiracy provision and would probably satisfy the attempt provision since they possess enough power to have a reasonable probability of success. The present test for monopolization found in United States v. Grinnell Corp., 384 U.S. 563 (1966), would be satisfied since the publishers' union would have shown monopoly power, plus the willful acquisition and maintenance of that power. See Note, *Monopolizing Under Section 2 of the Sherman Act*, 30 U. Prr. L. Rev. 715-16 (1969).

73. In Comegys, *Antitrust and Foreign Commerce*, 5 TRADE REG REP. ¶ 50,129, twelve hypothetical cases illustrative of the Justice Department's position are discussed. The third and eighth cases closely parallel the publishers' union situation and are not viewed as antitrust violations by the Justice Department. The position of the Antitrust Division has been substantiated by Donald I. Baker in *Mercantilism and Monopoly-The Alternative to a Competitive America*, an unpublished paper given at a Symposium on Interrelationships Between Multinational Firms and Governments held at the University of California at Los Angeles on Nov. 16, 1973, at 7:

Antitrust does not prevent American firms from getting together to sell abroad, where their efforts do not raise prices in our domestic market. Nor does antitrust prevent American firms from getting together to buy abroad where their efforts lower prices in our domestic market (emphasis in original).

Since the Soviet Union would sustain the anticompetitive effects, an interesting question arises as to the standing of the Soviet copyright agency to sue for an injunction and treble damages in the U.S. courts. The primary purpose of sections 1 and 2 of the Sherman Act is to protect the public of the United States; the private remedy afforded under section 15 is only incidental. The injury complained of must involve interstate commerce, either in effect or purpose, and absent a showing of injury to commerce within the United States, even the VAAP, injured by the publishers' union collective boycott, could not sue under the Sherman Act.

B. Possible Exemptions From U.S. Antitrust Laws

Although it appears that the publishers' union would not violate the Sherman Act unless an indirect restraint of U.S. commerce resulted, the publishers might wish to secure an exemption from the antitrust laws before forming the union. The Webb-Pomerene Act provides a "carefully guarded exemption" for certain export associations, but it deals only with the export trade in "goods, wares and merchandise" which excludes sales in licenses (right to publish a book). The exclusion of rights to publish from the Webb-Pomerene Act has been explicitly affirmed by the proposed trade bill to amend the Act to include certain "services," but preserving exclusion of trade in "patents, licenses . . . ." The President lacks the authority to grant the union immunity from the antitrust laws, but the Congress could authorize the union as a

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77. A recent case, State of Kuwait v. Chas. Pfizer & Co., 338 F. Supp. 315 (S.D.N.Y. 1971), held that the sovereign of Kuwait had standing to sue as a "person" within the meaning of the Clayton Act. Since combinations not affecting the domestic commerce of the United States do not violate the antitrust laws, and since the Sherman Act deals only with injuries to interstate commerce, the value to the Soviet Union of the ability to sue under the Sherman Act should be negligible.
regulated monopoly along the lines of COMSAT. Valid legislative action resulting in a restraint of trade or monopolization of trade does not violate the Sherman Act and the publishers may petition the Congress to authorize the formation of their monopoly.

**CONCLUSION**

The greatest problem posed by Soviet adherence to the Universal Copyright Convention is the possibility of administrative censorship. The history of the French-Soviet agreement in the 1960's indicates that administrative censorship through a copyright agency is the probable Soviet response to a copyright treaty or convention. Although basically beyond solution until the Soviet leadership's need for internal censorship disappears, the problem may at least be ameliorated. American publishers interested in dealing with the VAAP should form their own agency to bargain on a more equal basis. It has been estimated by one authority that Soviet publishing houses will be busy with the translations of U.S. works published prior to the May 27, 1973 cut-off date for royalty-free translations, and that it may be "as long as one or two years before they will be looking for anything other than very exceptional new works." A similar situation presumably exists for American publishers. This period could best be spent concentrating on the difficult antitrust issues involved in the organization of an American Publishers' Union to deal with possible Soviet administrative censorship. U.S. legal experts have been tilting at the windmill of hypothetical Soviet injunctions of *samizdat* publications far too long.

Robert J. Jinnett

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82. COMSAT is a non-governmental for-profit corporation which is subject to the District of Columbia Business Corporation Act to the extent that act is consistent with the Communications Satellite Act, 76 Stat. 423, 47 U.S.C. § 731 (1962). In letters to the President pro tempore of the Senate and the Speaker of the House, President Kennedy outlined the need for a commercial communications satellite system to effectively represent United States private and governmental interests in forming a global communications satellite system. The President emphasized, however, that COMSAT would be a "government-created monopoly" and should be regulated by government. 1962 U.S. Code Cong. & Ad. News 2288, 2290.


86. BNA Patent, Trademark & Copyright Journal, No. 191, AA-5 (1974). [August, 1974 meeting of the American Bar Association Section of Patent, Trademark and Copyright Law in Honolulu, Hawaii, at which copyright experts still harbored the misconception that the U.S.S.R. need only confiscate a work to bar its publication in the United States].