Continuity and Change in Soviet Copyright Law: 
A Legal Analysis

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The first decrees of the Soviet government in the field of copyright did not bring about an automatic break with pre-revolutionary Russian legislation. The decree of 29 December 1917, issued by the RSFSR Central Executive Committee—the first Soviet text on copyright—in one section explicitly referred to authors “whose copyright had expired”, presumably that acquired under the Imperial Copyright Act of 1911. Even M. V. Gordon who had claimed (1955) that “...immediately after the Great October revolution, all pre-existing...legislation...on copyright has been abolished”, later admitted that the decree of 1917 did not affect acquired rights of living authors. Pre-revolutionary assignments of copyright to publishing houses “in full ownership” were expressly declared invalid only on 10 October 1919.

Although, in a series of decrees, Imperial legislation has been modified on a number of individual points, attempts at formulating a new concept of copyright were at first completely overshadowed by preoccupation with nationalisations and monopolisation of publishing rights. This is clearly reflected in the first “systematic” decree on copyright, issued on 26 November 1918 by the RSFSR Council of the People’s Commissars. In all questions not covered by this decree, Imperial legislation presumably continued to apply, at least to the extent to which it was not incompatible, in V. I. Koretskii’s words (1959), with the spirit of revolutionary justice. In contrast to the decree of 29 December 1917, the decree of 26 November 1918 applied not only to authors who were already dead, or whose copyright had expired, but to all authors, although the subsequent nationalisations, carried out on the basis of this decree, were in fact still restricted to deceased authors (excluding Upton Sinclair).

Nor did pre-revolutionary concepts disappear completely from Soviet legislation on copyright when the latter was finally codified, first in 1925 (RSFSR: 1926), and again in 1928. In protecting copyright from the moment of creation of the work, independently of registration, Soviet legislation continued to adhere to principles first proclaimed in Russian copyright law a century earlier, in 1828 and 1830. The Copyright Acts of 1925 and 1928 also followed Imperial precedent in granting the author “exclusive” rights, and in refusing to consider unauthorised translations as infringing the copyright of authors of the original works. But Soviet law stopped short of recognising an author’s right, expressly provided for under the Copyright Act of 1911, to “reserve”, under certain con-
ditions, exclusive translation rights; in other words, the "right of translation" was no longer a part of the legal contents of copyright.\(^{10}\)

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The Imperial Copyright Act of 1911 was the principal single source of the rules enacted in the Soviet federal Copyright Act of 1925,\(^{11}\) even though some of the original norms were either slightly or, less frequently, significantly modified before their incorporation into the new Act. The 1911 Act had dealt separately, in 38 Sections, with works of literature, music, drama, photography, and of art. An introductory chapter, in 26 Sections, contained provisions common to all works of authorship; and a concluding chapter, in 11 Sections, spelt out rules governing publishing contracts. The framers of the Copyright Act of 1925, as a first step, had carefully abstracted the principal provisions of the 1911 Act, re-arranging them systematically into a dozen Sections, to serve as "fundamental principles [osnovy]" of copyright. Thereupon, each Section selected was carefully reviewed: What changes were needed to reflect new political realities, or new developments in the field of intellectual creation? Some Sections were retained verbatim\(^{12}\) or merely shortened; those dealing with specific periods of protection, both during the author's lifetime and after his death, were amended to give expression to the new policy of shorter terms and of no autonomous protection post mortem auctoris; some Sections were expanded either to provide for protection of new categories of works (e.g. cinematography; choreography and pantomimes), or to afford a more systematic survey of applicable rules (e.g. detailed catalogue of protected works; systematic list of fourteen cases of free uses and compulsory licenses). Only in very few cases were brand new Sections added which had no equivalents in the Copyright Act of 1911 (e.g. Section 15 which permitted "compulsory purchase" of copyright from the authors).

It is remarkable that despite the editorial and substantive changes, the overwhelming majority of the provisions of the Copyright Act of 1925 can still be traced to their primary source in the Copyright Act of 1911, as illustrated in the following Table; traces of the original wording survived in most of them:

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