

IN DEPTH

Software copyright: Two views

Soviet Union: Opening new doors

BY LAWRENCE SAVELL

For U.S. companies looking to harvest the products of inventors and designers in the Soviet Union, imminent changes in the way the Soviet government views and protects the fruits of private efforts indicate the time to reap may be about to come.

Among the products of greatest potential interest to U.S. businesses is computer software designed by the virtually untapped and growing legion of Soviet programmers.

It is generally agreed that the level of copyright protection afforded in the Soviet Union has failed to keep up with changing technological and political realities and needs. This deficiency is a reflection of the long-standing Marxist philosophy that there is no such thing as private property. As a result, intellectual property has been viewed as being in the public domain and unprotected; therefore, copying of software has been legal and rampant.

Changing Soviet law

Although current Soviet copyright law does not expressly include protection for computer software, changes are on the horizon.

The U.S./Soviet Union "Agreement on Trade Relations" signed by President George Bush and President Mikhail Gorbachev on June

1 during their summit in Washington, D.C., represents the first normalizing of trade relations between the two superpowers since 1951. It includes extensive provisions on copyrights and other intellectual property.

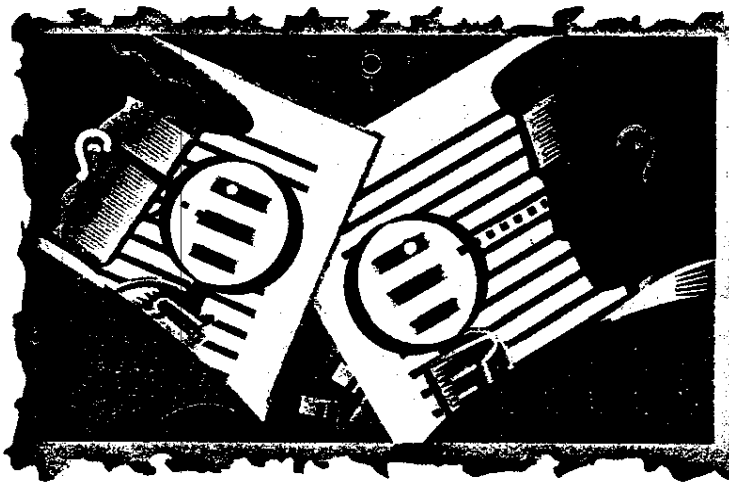
The agreement, which would become effective upon approval by Congress, reflects the Soviet government's promise to increase the level of protection afforded within their country. It therefore helps the Soviets re-

duce their economy's isolation while allowing Western investors interested in Soviet products and planning joint ventures with newly formed Soviet business cooperatives to obtain a greater measure of Western-style protection for their investments.

One article of the agreement provides for the "Protection of Intellectual Property." The two nations agreed to "ensure in accordance with the provisions of internal legislation, protection and implementation of intellectual property rights, including copyright on literary, scientific and artistic works such as computer programs and data bases . . ."

The parties agreed to "ensure that their international commitments in the field of intellectual property rights are honored." Thus, both nations "reaffirm[ed] the commitments made" in prior agreements, including those "made with respect to copyright in the

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Soviet Union

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Universal Copyright Convention of September 6, 1952 . . .

In the agreement, the parties also consented to provide "protection for computer programs and databases as literary works under the copyright laws . . ." The Supreme Soviet also directed the Council of Ministers to introduce this year for its examination draft legislation regarding intellectual property, creating conditions necessary for the USSR's participation in the International Berne Convention for the Protection of Literary and Artistic Works. The Soviet government agreed to introduce draft legislation in 1991 that will include the following:

- Extending copyright protection "to all types of computer programs, including application programs and operating systems that may be expressed in any language, whether in source or object code and regardless of their medium of fixation."

- Equating the "duration and level of protection for computer programs" to "that provided to other literary works."

- Allowing owners of a copy of a computer program to make or authorize the making of a single copy or adaptation of that program. The institution of more protective and progressive copyright legislation should help to foster the blossoming of the Soviet software industry — and its potential to eventually become the new Silicon Valley. •

The Tetris case

The vast financial potential of marketing Soviet-created products — as well as the pitfalls of dealing with a society where copyrights have historically been somewhat nebulous — are reflected in the experience regarding the game "Tetris."

Tetris is one of the hottest selling video and computer games in recent years. In Tetris, players manipulate descending geometric shapes to form solid rows at the bottom of the screen, using the available space as efficiently as possible. The shapes are combinations of four boxes (in Greek, "tetra" means "four"). The playing area is surrounded with changing pictures of Soviet scenes; catchy regional folk tunes play in the background.

Tetris was created in 1985 by Alexey Pajhitnov, a programmer and scientific assistant at the Soviet National Academy of Sciences in Moscow. The granting of rights by the Soviet government to import Tetris into the U.S. and elsewhere has been the subject of protracted and heated litigation between Atari Games Corp. and Tengen, Inc. on one side and Nintendo of America, Inc. and related entities on the other.

Andromeda strain

Atari and Tengen claimed rights to the game originating from the purchase of rights by Andromeda Software Ltd. from Electronorgtechnica (Elorg), a Soviet foreign trade agency. Mirrorsoft Ltd., a British company and division of Maxwell Communications, then acquired rights from Andromeda. Atari bought its rights from Mirrorsoft.

Nintendo, however, claimed ownership of certain specific rights relating to the Tetris game arising out of its own subsequent agreement with Elorg, allegedly conveying the world-

wide handheld rights and an option for the lucrative home video rights to the game.

Nintendo subsequently issued a press release giving Atari notice of its rights to Tetris, and brought Tetris out for its regular home video game system and handheld Game Boy machines. To date, Nintendo has sold more than 2.5 million copies of the game.

Injunction granted

Claiming superior rights, Atari and Tengen filed suit against Nintendo for copyright infringement. However, the United States District Court for the Northern District of California granted Nintendo's motion for a preliminary injunction, enjoining Atari and Tengen from making, copying or distributing the game or any works copied, derived from or substantially similar to it.

The court held that the evidence did not show that either Tengen or its predecessors in the licensing chain were ever granted the television video game rights to Tetris.

The court pointed to numerous communications between the Soviet agency and its licensee showing that Nintendo was likely to prevail on the merits of its claim. Nintendo subsequently was granted summary judgment on its claim to home video rights to Tetris because the court ruled that Andromeda had purchased only the personal computer rights to the game. Thus, according to the court, Mirrorsoft and Atari had paid for something — the home video rights — that Andromeda did not own. Atari is appealing the decision and accuses the Soviets of knowingly selling the same rights to Nintendo that they sold to Andromeda.

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