



OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

twentyyears
1994 - 2014



Guide to protection of
Intellectual Property Rights
in Russia
2014



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1. Introduction

This guide is written to provide basic assistance to intellectual property (IP) rights holders and their advisers, on the IP protection and enforcement system in the Russian Federation.

The guide is intended to provide simple guidelines on how rights holders can protect their IP assets and what to do if their rights are infringed.

2. Background

The World Investment Report 2012 conducted by the UNCTAD reports that in 2011 the Russian Federation continued to account for the lion's share of inward Foreign Direct Investment (FDI) to the region and saw FDI¹ flows grow to the third highest level ever. Developed countries, mainly EU members, remained the most important source of FDI. Robust IPR legislation and strong enforcement is therefore an important aspect of the environment for a growing and thriving market of EU businesses.

Russia is signatory to:

- The Paris Convention – which means that someone from another signatory state can apply for a patent or trade mark, claim priority of the original application and expect the same rights as a national rights holder.
http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html
- The Patent Cooperation Treaty - which allows someone to get a set of patent applications, in different countries, through a single application.
<http://www.wipo.int/pct/en/texts/articles/atoc.htm>
- Russia is a party to the Madrid Agreement with effect from July 1, 1976 (as the USSR successor) the Madrid Protocol with effect from 10 June 1997. The Madrid system allows the owner of an

¹ United Nations Conference on Trade and Development, World Investment Report 2012, available at: <http://www.unctad-docs.org/files/UNCTAD-WIR2012-Full-en.pdf>, p. 20.



application for or a registration of a trade mark and which is an entity in any of the other members of the Protocol a simple means of applying for registration of the trade mark in Russia. This is an alternative route for applying for registration of a Russian trade mark.

<http://www.wipo.int/madrid/en/>

- The Berne Convention – which ensures that parties to the convention give equal recognition to copyright holders from other convention member states.

http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html

- The Rome Convention – which protects the related rights of performers, producers of phonograms and broadcasting organization

http://www.wipo.int/treaties/en/text.jsp?file_id=289757

- In 2009 the Russian Federation joined the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), the so-called 'WIPO Internet Treaties' in the area of copyright and related rights.

http://www.wipo.int/wipolex/en/wipo_treaties/text.jsp?file_id=295166

http://www.wipo.int/wipolex/en/wipo_treaties/text.jsp?file_id=295578

- The UPOV Convention – which lays down a harmonized system for plant breeders' rights

<http://www.upov.int/upovlex/en/conventions/1991/content.html>

- On 22 August, 2012 the Russian Federation joined the World Trade Organisation (WTO) and became a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which includes rules governing the enforcement of IP rights, civil and administrative procedures and remedies, provisional measures, customs measures and criminal procedures.

<http://www.wto.org/>

http://www.wto.org/english/tratop_e/trips_e/trips_e.htm

Within the executive branch, the following agencies have primary responsibility for IP enforcement in Russia: the Ministry of Interior, the Prosecutor's Office, the Federal Antimonopoly Service, the Federal Customs Service and the Federal Service for Supervision in the Sphere of Telecom, Information

Technologies and Mass Communication (the 'Roskomnadzor'). The Federal Antimonopoly Service plays enforcement role when a case turns on "unfair competition" or related anti-competitive business practice. The Ministry of Mass Communication, together with the Ministry of Culture, have responsibility for internet regulation, including laws governing e-commerce and the liability of internet service providers, hosting services and other services for infringement.

As of 1 February 2013, a specialized court for IP rights (the IP Court) has been instituted within the system of commercial ('arbitrazh') courts of the Russian Federation. As a specialized court, the new IP Court has jurisdiction to adjudicate cases related to protection of industrial property as a court of first instance and cassation instance. The first hearing at the IP Court took place on August 6, 2013. The following link provides information on the IP Court in Russia:

<http://ipc.arbitr.ru/>.

For copyright cases, the 'arbitrazh' courts retain general jurisdiction, except for cases falling with the exclusive jurisdiction of the Moscow city court in relation to the online enforcement measures adopted in June 2013.

3. Russia's Legal Framework

Russia has a civil law system, which is formed on the basis of codified laws, both substantive and procedural. Russia's legislation on the protection of IP rights is based on the following legislative acts:

- Civil Code <http://www.wipo.int/wipolex/en/details.jsp?id=12785> -
- Civil Procedural Code <http://www.wipo.int/wipolex/en/details.jsp?id=12780>
- Code of Administrative Offenses <http://www.wipo.int/wipolex/en/details.jsp?id=12772>
- Criminal Code <http://www.wipo.int/wipolex/en/details.jsp?id=12779>
- Criminal Procedural Code <http://www.wipo.int/wipolex/en/details.jsp?id=12781>
- Arbitration Procedural Code <http://www.wipo.int/wipolex/en/details.jsp?id=12771>
- Federal Law on Customs Regulation <http://www.wipo.int/wipolex/en/details.jsp?id=12777>



- Federal Law on the Protection of Competition <http://www.wipo.int/wipolex/en/details.jsp?id=12776>
- Federal Law on Amendments to Certain Legislative Acts of the Russian Federation Concerning the Protection of Intellectual Rights in Information and Telecommunication Networks <http://www.wipo.int/wipolex/en/details.jsp?id=13200>
- Federal Law on Seed Culturing <http://www.wipo.int/wipolex/en/details.jsp?id=12786>

4. How to protect your IPR through registration (patents, trade marks, industrial designs, others)

Russian IP legislation covers a range of registration-based IP fields including trade marks, service marks, patents (inventions, utility models, industrial designs), appellations of origin, topographies of integrated circuits, computer programs and databases (at the right holder's option).

All of these rights can be protected through registration at the Federal Service for Intellectual Property (ROSPATENT): http://www.rupto.ru/en_site/index_en.htm

There are no differences in the requirements for registration for non-Russian applicants as compared with Russian applicants, save that foreign applicants must use a certified Russian trade mark or patent agent.

State Commission of the Russian Federation for Selection Achievements Test and Protection is responsible for the plant breeders' rights: <http://www.gossort.com/>

'IPeuropAware' has prepared useful guides giving information about IP and counterfeiting aimed at SMEs. These guides include basic information regarding the full range of IP rights and their registration in Russia (see p. 148): <http://www.innovaccess.eu/handbook.php>

For non-registration based IP rights, such as copyright and trade secrets, the only applicable protection is set out in the Civil Code, Part IV.

5. Administrative procedures for enforcement

Infringement of IP rights in Russia can give rise to administrative, civil or penal liability.

Administrative liability is a form of public liability for an administrative offence and is less severe than criminal liability.

The Code of Administrative Offences provides a range of fines for natural persons, the owners or managers of legal entities and on legal entities themselves as well as permits the confiscation and destruction of counterfeited goods.

Administrative cases are filed by the police but the levying of fines is done by the courts of general jurisdiction (for natural persons) and arbitration courts (for legal entities).

6. General criminal and civil law that can apply to IPR issues

In Russia the Civil Code, Part IV, is the main source of IP rules, including copyright and industrial property rights.

In accordance with the Civil Code, infringement of any IP right is subject to strict liability, entitling right holders to remedies through the courts. Before the courts the right holders may claim damages, destruction of counterfeit goods and, in some cases, liquidation of the equipment and of the legal entity.

Infringements of IP rights are also covered by the Russian Federation Criminal Code. In order to qualify for criminal prosecution, the infringement should cause significant damage or be recurrent. The Criminal Code punishes serious violations with fines and imprisonment. Providing sufficient damage and providing the title under the Russian procedural rules are major obstacles to getting criminal investigation started in most cases, especially those involving copyright infringements.



On 1 August 2013 the new legislative measures came into force which aim at strengthening copyright protection in online environment. The new law sets the liability of internet service providers in respect of any IP right, and foresees special judicial and administrative procedures of copyright enforcement against unauthorized distribution of audio-visual content (the new provisions are applicable to audio-visual content only).

Upon an application from an organization or a natural person, the Moscow city court has competence to order preliminary injunctions before the legal suit is filed. In future it will be possible to submit the application for preliminary injunctions and supporting documents online via the official site of the Moscow city court:

<http://www.mos-gorsud.ru/>

The legislation also entrusts the enforcement function to the federal executive authority for control and surveillance in the sphere of mass media, mass communication and information technology and network, which is the 'Roskomnadzor' established under the Ministry of Telecom and Mass Communication of the Russian Federation:

<http://www.rsoc.ru/eng/>

After the Moscow city court orders preliminary injunctions, the right holder can apply to 'Roskomnadzor' asking it to take measures to limit the access to the video content at issue. The 'Roskomnadzor' is mandated to identify the service provider that renders hosting services and send a notice of infringement in the electronic form in the Russian and English languages. When a hosting service provider receives such notice it is required to inform the owner of a website and request to take down the unlawfully distributed content and/or take measures to limit access to it. If either hosting service provider or the owner of website fails to take the required measure, the communication service provider is informed and required to "limit the access" to the website.²

² Intellectual Property Watch, Russia Adopts Measures Against Online Video Piracy, 24 July 2013, available at: <http://www.ip-watch.org/2013/07/24/russia-adopts-measures-against-online-video-piracy/>.

7. Customs Authorities

The Russian Federation Customs Code provides IP customs enforcement procedures.

Russian customs authorities keep a register of IP rights. Trade mark right holders are able to apply for their IP rights to be recorded on this register. Once a trade mark is entered into the database of the customs register, information on authorized importers and the relevant trade mark becomes available to local customs posts.

The advantage of registering IP rights with customs is that if the customs authorities suspect goods to be counterfeit, they may detain goods for a period of time (10 days extendible to another 10 days) during which they will notify the right holder.

A request can be lodged by a rights holder or a related party (e.g. a licensee, an authorised importer or exporter or a representative) which has been authorized by the rights holder to lodge such request by a power of attorney.

Customs is empowered to draw up statements of administrative offences for subsequent transfer to commercial courts. In case of criminal offence, customs acts as an investigative body and forwards all materials evidencing the offence to the supervising public prosecutor, who determines jurisdiction.

Where the right holder initiates administrative or criminal proceedings in order to protect its rights, it is entitled to file a written statement to extend the duration of suspension of release³.

It should be noted that Russian Federation is a member state of a Customs Union with Belarus and Kazakhstan therefore its enforcement is influenced by legislation agreed with Kazakhstan and Belarus.

³ Anti-counterfeiting 2013 – A Global Guide, available at: <http://www.worldtrademarkreview.com/issues/supplementarticles.aspx?g=fb-3c84ac-1215-488d-86b8-4cbb90605329&sp=countrychapters>.



8. Weak points in IPR enforcement legislation, administration systems etc.

The European Commission (DG TRADE)⁴ indicates the following concerns and areas for improvement:

- Piracy and counterfeiting remain a major concern.
- Insufficient commitment from the relevant authorities as illustrated, for example, by an apparent reluctance by enforcement authorities to take action against large infringers.
- Authorities and courts tend to interpret laws and regulations in a narrow way which can create loopholes for infringers.

9. Basic Advice

- Protect your industrial property rights through registration and by applying to customs.
- Seek advance professional advice from lawyers and investigators on how to protect supply chains, draft contracts and secure evidence.
- Seek advice from your sector trade association.
- Ensure colleagues, employees and business partners have substantial knowledge about your products and can easily identify counterfeits.
- Put protective measures in place in respect of confidential information and trade secrets.
- Engage lawyers and enforcement as quickly as possible and take appropriate action.

⁴ Anti-counterfeiting 2013 – A Global Guide, available at: <http://www.worldtrademarkreview.com/issues/supplementarticles.aspx?g=fb-3c84ac-1215-488d-86b8-4cbb90605329&sp=countrychapters>

10. Statistics

Statistics on registration of IPRs can be found at:

WWWhttp://www.wipo.int/ipstats/en/statistics/country_profile/countries/ru.html

11. Contact information (online and otherwise)

- Federal Service for Intellectual Property (ROSPATENT), located in Moscow. Holds competences in trade marks, patents (inventions, utility models and industrial designs) appellations of origin, topographies of integrated circuits, computer programs and databases (at the right holder's option). http://www.rupto.ru/en_site/index_en.htm
- Technology and Innovation Support Centres (TISCs)http://www.wipo.int/tisc/en/search/search_result.jsp?country_code=RU
- Federal Customs Service of the Russian Federation <http://www.customs.ru/>
- Federal Antimonopoly Service of the Russian Federation <http://en.fas.gov.ru/>
- State Commission of the Russian Federation for Selection Achievements Test and Protection <http://www.gosort.com/>
- Attorneys at Law - local law firms in Russia can offer you legal advice and services specific to your business. The Chambers and Partners website offers a search facility <http://www.chambersandpartners.com/Europe/Editorial/74273>
- The Chamber of Commerce and Industry of the Russian Federation <http://www.tpprf.ru/en/about/mission/>
- Russian – European Chamber of Commerce in Russia helps and supports contacts between businesses in some sectors based in EU Member States and Russia <http://www.ruscham.com/>
- Delegation of the European Union to Russia http://eeas.europa.eu/delegations/russia/index_en.htm



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