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**Council for Trade-Related Aspects of
Intellectual Property Rights**

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REVIEW OF LEGISLATION

RESPONSES FROM THE RUSSIAN FEDERATION TO QUESTIONS POSED BY THE EUROPEAN UNION

By means of a communication from the delegation of the Russian Federation, dated 19 September 2013, the Secretariat has received the following responses to questions posed by the European Union, as circulated in document IP/C/W/588.

IPR IN INFORMATION AND TELECOMMUNICATION NETWORKS INCLUDING THE INTERNET

We have been informed about a new legislative proposal by the Ministry of Culture titled "On Introduction of Amendments to Certain Legislative Acts of the Russian Federation for the Purpose of Elimination of Violations of Intellectual Property Rights in Information and Telecommunication Networks Including the Internet".

1. How will this proposal work together with the planned amendments to Part IV of the Civil Code?

2. What are the current intentions of the Russian government in respect of the liability of internet service providers? Do any of the measures notified or planned modify the commitment to take action against internet websites that promote illegal distribution?

1. On 24th May 2013 the President of the Russian Federation, Vladimir Putin, during the session of Presidential Council of cinematography said: "One of our topics is fighting internet piracy. We shall pay a serious attention to this topic. And I want to assure you that we will not forget it."

2. After receiving such kind of encouragement at the highest level, many experts started to work actively with the legal base of fighting internet piracy. One of the results of this work was an adoption of the law "on introduction of changes in acts of the Russian Federation in connection with protection of the intellectual property rights in the information and telecommunications networks" on 2 July 2013, with the adoption of The Federal Law No. 187-Φ3 (thereafter – the Law).

3. The new "Antipiracy Law" introduces the principle of liability of internet service providers and mechanisms of blockage of illegal content by a court decision. For the moment, the scope of the law is limited to films.

4. From the side of the Government, we will study attentively how the law will be implemented. Meanwhile, the Government will also work on a package of necessary amendments.

5. It is important to note that the adopted law has allowed us to make a real step forward in this direction. It makes possible to overstep through many contradictions, and to make a basis for the next development of the legislation for fighting internet piracy.

6. The adoption of the Law was a sign to start the work on improvement of Russian legislation in this area. Such process will be very fast.

7. It is expected that the main work will be on the:

- extension of scope of protection to all objects of intellectual property rights (phonograms, books, images, etc.);
- preventive and quick mechanisms which will restrict access to infringing content (interaction of right holder and service provider before going to the Court);
- improvement of law enforcement; and
- clarification of provisions on liability of such kind of providers as torrents.

COLLECTIVE RIGHTS MANAGEMENT

3. Do any of the measures notified or planned, modify the scope of rights that are subject to collective management as provided for in Article 1244 of the Civil Code?

8. Now the change of Article 1244 of the Civil code of the Russian Federation is not intended because of the following reasons:

- A practical realization of the legal institute of expanded collective management of rights has led to the stabilization of a system of collective management and to the increase of dues and payment of compensation to rightholders (including foreign). Bi-annual data from accredited organizations to the Ministry of Culture show that dues/payment of compensation on copyrights have increased by several times, and on related rights and dues on private copying by hundreds of times.
- Russian legislation realizes the form of activity of organizations on collective rights management, what is applied in Scandinavian countries, including WIPO's recommendations from 1991 on monopolization of activity of companies on collective management of copyrights and related rights.
- The legal institute of State accreditation on what was introduced in 2008 finished "legal" nihilism what was acted since 1993, when: (1) a few dozen organizations competing together existed, it was negative for the image of an institute of collective rights management; (2) was full user's ignoring of obligations to payment the compensation.
- The list of spheres of collective management, in which state accreditation are provided, are constricted to some spheres where rights management is not possible in individual order, or difficult.
- Now, the Russian Federation is a leader in due/payment of the compensation in all countries of the Post-Soviet states. According, to CISAC PAO (copyright legal organization) the Russian Federation has entered to triple of most dynamically developing countries at level of dues in 2012.
- In Post-Soviet states where the institute of accreditation does not exist (i.e. the Republic of Kazakhstan, and the Republic of Moldova) or where it has been abolished (Ukraine), a decline in dues/payment of the compensation has been observed. In the Ukraine a total breakup of all systems, that is main pretension from the United States of America what is marked in Report 301 in 2012.
- The change of legislation by non-monopolization of activity in collective management led to the decline of dues of the compensation (Italy).
- In the institute of state accreditation not only right holders, but also users who use right holder's objects of unlimited quantity (e.g. users who make daily unlimited broadcasting of objects of the intellectual property on radio and TV), are interested.

4. Do these measures envisage expansion of the mandate of collective management organisations?

9. The expansion of the mandate of collective management organizations in amendment in Part IV of the Civil Code of the Russian Federation is not provided.

5. Do any of the measures notified or planned, modify the right under Art 1244 of the Civil Code, which ensures that the rights holder without a contract with a collective management organisation has the right to refuse its services?

10. The amendments of Part IV of the Civil Code of the Russian Federation do not establish any changes in point 4 of Article 1244 of the Civil Code of the Russian Federation where a procedure of withdrawal rights from management of accredited organization is established.

6. Do any of the measures notified or planned involve those that would be intended to monitor and hold accountable organizations engaged in collective management of rights to ensure that right-holders receive remuneration that is due to them?

11. In the draft amendments of Part IV of the Civil Code of the Russian Federation, the responsibility of organizations engaged in collective management of rights about non-payment, the remuneration what is due to right holder is provided.

12. It is necessary to pay attention to the fact that the absence of an indicated provision in Part IV of the Civil Code of the Russian Federation does not deprive right holders of the right to apply to court with a demand about punishment from organization a pecuniary sums what are due to the right holder, and to use another way of protection provided in acting legislation.

7. Is the Russian Federation following up on its commitment to review its system of collective management of rights in order to eliminate non-contractual management of rights within five years after Part IV of the Civil Code entered into effect (2008)?

13. The Russian Federation complies with its liabilities in full regarding what it has taken on with entry to WTO. One such liability is building the system what protects copyright and related rights effectively.

14. The Ministry of Culture, as the federal organ of executive authority which authorized to carry out regulatory legal regulation in the sphere of copyright and related rights, control and supervision in indicated sphere, realized corresponding revision of system of non-contract management of rights and next results of the institute of state accreditation are:

- Payments of compensation to right holders about different kinds of use, rights are increased since the moment of introduction of the institute of state accreditation in comparison with period of realization the collective management of rights on basis of direct contracts from 1993 to 2008.
- At this moment, annual stable progress in the activity of accreditation is observed as the number of contracts are concluded with international organizations of management of rights in dynamics of growth of dues and payments in compensation, etc. It affirms that the possibilities of using the system of state accreditation still has not been exhausted and does not need to change existing system.
- In society, the understanding of compliance for users author's rights and other right holders with use the results of the intellectual activity is formed, what in future will exclude the Russian Federation from a list of countries which may not provide the effective protection of intellectual property.
- An acting system allows not only to pay compensation to right holders but also to decide other social problems with the rise in creative activity and a citizen's legal consciousness, ministrations to young musicians.

- Introduction of the institute of state accreditation has provoked a process of the formation of a uniform judicial practice for consideration of disputes about performance of accredited organizations, a functions of dues, distribution and payment of the compensations.
- All indicated allows to claim than cancel of non-contract management of rights and non-monopolization of the institute of collective management of copyrights and related rights will lead to lowering of level of legal security of right holder's rights and legal interests.

15. Considering that some foreign music in the territory of the Russian Federation is very big, the lowering of levels of legal security of right holders' rights and legal interests will affect foreign right holders, because it will be difficult to protect their rights on the territory of the Russian Federation as experience shows in the two previous decades.

16. It is necessary to note that inside the Customs Union between members – the Republic of Kazakhstan, the Russian Federation, and the Republic of Belarus project of Agreement about unified order of management of copyright and related rights on collective basis, is developing now. Indicated projects will contain: maximally allowable size of retention on necessary costs about dues, distribution and payment of the compensations; organization's duty to public annual reports about their activity in their official websites; and also duty to carry out annual independent audit for check and confirmation of reliability implemented due, distribution and payment of the compensations.

PRIVATE COPYING

8. Do any of the measures notified or planned modify the scope of "private copy" concept as defined in Article 1273 of the Civil Code?

17. In Article 1273 of the Civil Code of the Russian Federation cases are provided of withdrawal and restriction of the right holders' exclusive right in the case of reproduction of the results of the intellectual activity by individual person for personal purposes.

18. It is necessary to pay attention to the fact that, in Article 1273 of the Civil Code of the Russian Federation, positions correspond to the Berne Convention for the Protection of Literary and Artistic Works of 9th September 1886 (Berne Convention) of which the Russian Federation is a member since 1995 and of the TRIPS Agreement.

19. Herewith, in point 2 of Article 1273 of the Civil Code of the Russian Federation, the results indicate - in the intellectual activity (phonograms and audiovisual works) about reproducing them for personal purposes - that right holders have the right to receive compensation, in accordance with Article 1245 of the Civil Code of the Russian Federation.

20. System of dues, distribution and payment of compensation for free reproduction for personal purposes started to function in full from October 2010, since the moment of the adoption of the Decision of the Government of the Russian Federation, No. 829 on 14th October 2010, where it established the size of funds for payment of compensation and are governed order of due, distribution and payment of the compensations. In this connection, to pay attention to the fact that in this sphere of collective management activity, the compensation due may not realized in case if few organizations will lead it; now adoption of some steps that may change the concept of free reproduction for personal purposes is not provided.

THE MONETARY THRESHOLD IN CRIMINAL PROCEDURES AND PENALTIES REGARDING COPYRIGHT PIRACY

9. Do any of the measures notified or planned provide guidance on the application of the monetary threshold for application of criminal procedures and penalties with regard to copyright piracy, in order to reflect realities of the commercial market, notably regarding the internet market?

21. The application of the monetary threshold for application of criminal procedures and penalties with regard to copyright piracy was explained in the Resolution of the Plenum of the Supreme Court No. 14 of 26 June 2007. The Resolution indicates that in process of identification of the scale of a crime (large or very large scale), the decision should be based on the retail value of the original (licensed) copies of works or phonograms at the time of the crime, based on the number of them, including copies of works or phonograms, belonging to different right holders. It is important to add that if the infringer commits the copyright crime twice or more, his crime will be considered as a criminal case without taking in consideration the monetary threshold.

THE NEW DRAFT SEED LAW

It seems that a new draft seed law is being prepared in Russia. The issue is currently dealt with by the Federal Law on the Protection of Selection Achievements of August 6, 1993. This new law, regarding plant variety protection would introduce the so-called agricultural exemption which is an optional exemption under Article 15(2) of the UPOV 1991 Convention. Under such an exemption a farmer is allowed to use the product of his harvest for further propagating purposes of a protected variety without the authorization of the title holder but against a reasonable remuneration. Nevertheless, pursuant to the recommendation on Article 15(2), annexed to the UPOV Convention, such an exemption can be introduced only to the extent as such use has been common practice in the given country, i.e. only for certain crops and for one generation.

It appears that the plan is to introduce such an exemption without any limits, meaning that for all crops and for several generations. This seems not to be in line with the UPOV 1991 Convention to which Russia is a contracting party.

10. Could we receive a detailed explanation as to the rationale behind the new law?

22. The Russian Federation will be glad to organize bilateral consultations on this issue. The EU question needs more clarification. The Federal Law on the Protection of Selection Achievements of 6 August 1993 is not in force since 2008 when Part Four of Civil Code of the Russian Federation was introduced. It needs to be clarified what exactly EU partners consider the draft of law.

THE LAW ON THE CIRCULATION OF MEDICINES

11. Please explain how Article 18.6 of the Law on Circulation of Medicines is currently applied in Russia, e.g., is the six-year term of protection currently in force or does it require additional guidelines or other implementing measures?

12. If it is in force, could you explain the process used to provide this protection?

13. Please explain the relationship of Article 18.6 with Article 26 of the Law on Circulation of Medicines, which allows for the accelerated review of generic applications.

14. What are the measures being taken in order to avoid legal uncertainty that is created by lack of clarity regarding data protection?

23. Article 18 of Federal Law FZ-61d. of 12.04.2010 has been complemented with section 7 of the following content:

"It is prohibited to receive, disclose, commercially use and use for state registration any information on non-clinical research of medical products and clinical research of medical products, provided by the applicant for state registration of medical products without their permission for six years since the date of state registration of a medical product.

Non-observance of the prohibition stated by the above-mentioned section entails amenability in compliance with laws of the Russian Federation.

Turnover of medical products registered with violation of this section on the territory of the Russian Federation is illegal".

24. The above-mentioned section has applied since 22 August 2012.

25. To observe requirements of section 7 of Article 18 and prevent violations of exclusive rights of developers of medical products, the Ministry of Health of the Russian Federation in its draft bill "on amendments to Federal law, "on turnover of medical products" and to Article 333.32.1 of part two of the Tax Code of the Russian Federation" made an amendment to the composition of the registration dossier (Article 18, section 3) by including documents that verify:

"12) presence of intellectual rights

13) presence of consent of an applicant of an original medical product to use information about results of non-clinical and clinical researches of the original medical product in case less than six years has passed since the registration of the original medical product."

26. Article 26 FZ-61 d.d.12.04.2010 "on turnover of medical products" applies only to urgent production of expert's evidence but not to urgent registration. Since rapid production of expert's evidence may be applied to reproduced medical products, provision of information obtained during non-clinical and clinical researches of the original medical product and published in specialized publications is possible during such procedures, if the original medical product is not covered by patent protection.

27. At the moment, a series of amendments in the Law on Circulation of Medicines N61 is being considered by the Government. Different provisions related to Article 18 will be introduced to avoid any possible misunderstanding of the provision.

28. At the same time, the Russian Federation, according to the Doha Declaration (on the TRIPS Agreement and Public Health) of 2001, in which a concern about the impact of intellectual property rights on medical products prices was expressed and ultimately reserves the right to consider applying Article 8 of the TRIPS Agreement in terms of implementing the right to health, which states that during drafting or amending of national laws or regulations member states can take measures necessary in protecting population's health, as well as Article 30 of the TRIPS Agreement which contemplates some exclusions from exclusive rights granted by patents while barring unjustified limitations of rights of patent-holders and third parties. Particularly the right to "early usage" does not contradict this Article (the so-called Bolar provisions) which allows generic drugs producers to conduct all the procedures and trials necessary to registration of a generic drug before patent to the original drug expires (or exclusive research data regulations). As a result they are guaranteed the possibility of entering generic product to the market right after the stated period has expired.

29. At the moment, a series of amendments in the Law on Circulation of Medicines N61 is being considered by the Government.

GEOGRAPHICAL INDICATIONS (GIS)

15. Where does the Russian notion of appellations of origin (AOs) stand with respect the TRIPS concept of GIs?

16. Please explain, how the generic use of EU geographical indications in the draft Customs Union Technical Regulation on Safety of Alcoholic Products is in line with the protection provided to those terms under TRIPS rules?

30. Upon accession of the Russian Federation to the WTO, questions about concordance of the Russian legislation in intellectual property with the provisions of the TRIPS Agreement is analyzed including by other Members of WTO. Within the framework of preparation for accession to the WTO, no discrepancies in legislation were discovered. The legislation of the Russian Federation about appellations of origin corresponds to the Paris Convention for the Protection of Industrial Property and the provisions of the Geographical indications (GIs) part of the TRIPS Agreement.

31. It is necessary to mark that Section 3 "Geographical Indications" of Part 2 "Standards Concerning the Availability, Scope and Use of Intellectual Property Rights" of the TRIPS Agreement obliges the member countries to provide legal measures to secure legal protection of geographical indications on their territories. According to Article 1 "Nature and Scope of Obligations" of Part 1 "General Provisions and Basic Principles" of the TRIPS Agreement, countries are free to use the provisions of the TRIPS Agreement within the framework of their own legal systems.

32. The legal system of the Russian Federation provides a registration of appellations of origin which are part of geographical indications. Moreover, legal protection of geographical indications may be realized not only because of registration of geographical indications as appellations of origin in established law order, but within the framework of antitrust legislation, legislation about advertisement, and consumer rights protection.

33. As to the generic use of EU geographical indications in the draft Customs Union Technical Regulation on Safety of Alcoholic Products, it is important to note that in the August 2013 Draft of Customs Union Technical Regulation on Safety of Alcoholic Products there are no generic used of EU geographical indications.
