WORLD TRADE ORGANIZATION

IP/Q/RUS/1, IP/Q2/RUS/1
IP/Q3/RUS/1, IP/Q4/RUS/1

9 February 2016

(16-0839)

Page: 1/46

Council for Trade-Related Aspects of Intellectual Property Rights

Original: English

REVIEW OF LEGISLATION

RUSSIAN FEDERATION[1]

The present document records the introductory statement made by the delegation of the Russian Federation, and reproduces the questions put to it and the responses given in connection with the review of legislation initiated at the Council's meeting of 10-11 October 2013.[2] The review was concluded in February 2015.[3]

_____

1 INTRODUCTORY STATEMENT MADE AT THE MEETING OF THE COUNCIL FOR TRIPS ON 10-11 OCTOBER 2013

The Russian Federation has provided detailed answers to the questions from the United States, the European Union and Switzerland concerning implementation of Russian national legislation in the IP area, and it was quite a long list of answers and questions. We thank the Secretariat for their help which was provided, and was necessary for us. From our perspective, these answers give a clear understanding of the situation with IP protection in Russia and the situation is getting better, but we are not going to cease, and we expect some new changes in our national legislation which will provide more copyright protection, and we will notify these changes without delay.

2 RESPONSES TO QUESTIONS POSED BY THE EUROPEAN UNION[4]

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?

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."

[1] As regards laws and regulations notified by the Russian Federation under Article 63.2 of the Agreement, reference is made to documents IP/N/1/RUS/1, IP/N/2/RUS/1 and IP/N/6/RUS/1.
[2] Document IP/C/M/74.
[3] Document IP/C/M/78.
[4] Responses circulated in document IP/C/W/595 to questions posed in document IP/C/W/588.

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-ФЗ (thereafter – the Law).

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.

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.

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.

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.

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?

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 f 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?

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?

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?

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.

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)?

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.

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, ministration 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.

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.

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

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.

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.

Herewith, in point 2 of Article1273 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.

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?

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?

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?

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".

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

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."

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.

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.

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.

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?

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.

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.

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.

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.

3 RESPONSES TO QUESTIONS POSED BY SWITZERLAND[5]

GENERAL

1. Are the provisions of the TRIPS Agreement, as far as not implemented in national law, directly applicable in the legal system of the Russian Federation?

The Protocol of Accession of the Russia Federation to the WTO was ratified by the State Duma of the Russian Federation on 22 August 2012. Since this date, the TRIPS Agreement became part of the Russian legislation system. Obligations of the Russian Federation, taken during the accession process, were implemented through amendments to the national legislation.

PATENTS

2. Does the legislation of the Russian Federation grant patent protection for inventions relating to products and processes in all fields of technology? Are there any exceptions? If yes, please indicate these exceptions and explain how they comply with Article 27 of the TRIPS Agreement.

[5] Responses circulated in document IP/C/W/596 to questions posed in document IP/C/W/587.

In accordance with Article 1350 of the Civil Code of the Russian Federation, a technical solution in any area (we consider it as an invention in fields of technology) related to a product (including a structure, substance, micro-organism strain, or culture of cells of plants or animals) or a means (a process of conducting actions on a material object with the help of material means) shall be protected as an invention. An invention shall be granted legal protection if it is new, has an inventive level, and is industrially applicable.

The Article provides that legal protection for inventions shall not be granted to: varieties of plants, breeds of animals and biological methods of obtaining them, with the exception of microbiological methods and products obtained through the use of such methods.

We consider that these exceptions fully comply with Article 27 of the TRIPS Agreement.

3. Does the legislation of the Russian Federation, in accordance with Article 27.1 in combination with Article 31 of the TRIPS Agreement, consider importation as "working" a patent and therefore preclude compulsory licensing, if a product is being imported?

4. Does the legislation of the Russian Federation make the granting of a compulsory licence subject to all the conditions enumerated in Article 31 of the TRIPS Agreement? Please cite the relevant provisions of the legislation.

Article 1362 of the Civil Code of the Russian Federation is devoted to the detailed regulation of questions of compulsory licensing. Quotas regulating compulsory licensing are founded on the provisions of the Paris Convention for the Protection of Industrial Property (Article 5 item A(2)) and the TRIPS Agreement (Articles 31 and 40).

Semantic maintenance of the notion "conditions corresponding to established practice" used in Article 1362 of the Civil Code of the Russian Federation and the notion "reasonable commercial conditions" used in Article 31(b) of the TRIPS Agreement, are the same.

In the case of insufficient use of an invention or industrial design during the four years since the date of granting of the patent or utility model – during three years since the date of granting of the patent and a patent holder's refusal to conclude licence contract with interested person on conditions corresponding to established practice, this person shall have the right to go to court with a suit against the patent holder for the granting of a compulsory simple (non-exclusive) licence for the use of an invention, utility model, or industrial design. In the demand for the lawsuit, the interested person must indicate the proposed of the granting to him of such a licence, including the scope and conditions of use of the patented object, the amount, procedure, and times of payments. The Court makes a decision about the granting of the compulsory licence if the patent holder does not show that non-use or insufficient use by him of the patented object is based on valid causes. All cases of using of patented object are defined in the court decision. The right provided in conformity with the compulsory licence may not be transferred to third persons.

In a case where the circumstances that were the basis for the granting of the simple (non-exclusive) licence cease to exist and their reappearance is unlikely, then acting of the compulsory licence may be terminated by judicial procedure on a suit by the patent holder. This quota corresponds to Article 31(c) of the TRIPS Agreement. A duty of proof of absence of these circumstances is charged to patent holder. In this case, the terms and procedure of termination of the licence and termination of the right is arised with getting of this licence are established by the court.

Article 31(I)(ii) of the TRIPS Agreement foresees a "cross licence". Analogous quota is contained in item 2 of Article 1362 of the Civil Code of the Russian Federation. The present item establishes rules for a situation where the use of one patented invention is connected to the using of other patented invention or patented utility model. If other person have the patent to this other invention or utility model than using of first patented invention needs to get a permission from other patent holder. In case of refusal of other patent holder to get a licence, first patent holder shall have the right to go to court with a suit for the granting of the compulsory licence. Observation of conditions "an important technical achievement" and "a significant economic

advantage" is directed to the protection of hindering patent holder's interests and this quota provides some balance of interests for both patent holders and the society in full, as long as society is interested in the creation of an important technical achievement, patenting them and their use.

In the case of granting compulsory licence by court decision, the second patent holder acquires the right to get from the first patent holder an analogous licence for such invention to procure the use provided by the compulsory licence. It is necessary to note that positions in this item do not provide any possibility to demand submitting the compulsory licence for procuring the possibility to use patented utility model. Such limitation is stipulated because the patent of a utility model is distributed without verification it is its patentability.

The provisions of Article 1362 of the Civil Code of the Russian Federation about the compulsory licensing in case of insufficient use the industrial design during four years do not contradict to Article 5(B) of the Paris Convention for the Protection of Industrial Property so long as the submitting of the compulsory licence of a patented industrial design does not mean a cessation of his legal protection.

A reconsideration of court decisions is realized in conformity with the Civil Procedural Code of the Russian Federation and the Arbitration Procedural Code of the Russian Federation.

The procedure for the reconsideration of a court decision on compulsory licensing, based on Article 1362 of the Civil Code of the Russian Federation, is provided in Procedural legislation.

5. Does the legislation of the Russian Federation provide for the principle of the reversal of burden of proof in patent litigation? Please cite the relevant provisions of the legislation.

The principle of burden of proof in Russian patent legislation is incorporated in Articles 1350, 1351, and 1352 of Civil Code of the Russian Federation only on describing conditions of patentability of an invention, utility model and industrial design.

According to the provisions of these articles the burden of proof that the circumstances have taken place, by virtue of which the disclosure of information does not prevent the recognition of the patentability of the invention, utility model or industrial design, shall rest on the applicant.

PROTECTION OF UNDISCLOSED INFORMATION

6. According to Article 18.6 of Federal Law No. 61-FZ "On the Circulation of Medicines", in force since 22 August 2012, Russia implemented the obligation under Article 39.3 of the TRIPS Agreement to protect undisclosed information in marketing approval procedures against unfair commercial use by granting a term of protection of six years against reliance by a second applicant. Please explain how this protection is being implemented and enforced in practice, and whether a new administrative regulation addressing the practical aspects of the application of Law No. 61-FZ is going to be put in force.

7. Can you confirm that, despite an accelerated procedure for generic products registration as provided for in Article 26 of Law No. 61-FZ, the Russian marketing approval authorities do not allow reliance on the data submitted by their originator for the full term of protection of six years from the date of state registration of the medicinal product?

Article 18 of Federal Law FZ-61 d.d. 12.04.2010 has been complemented with section 6 of the following content:

> "It 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."

The above-mentioned section applies after 22 August 2012.

To observe the 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 "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.

Article 26 FZ-61 d.d. 12.04.2010 "On Turnover of Medical Products" applies only to urgent production of expert evidence but not to urgent registration. Since rapid production of expert evidence may be applied to reproduce 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 procedure if the original medical product is not covered by patent protection.

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

At the same time, the Russian Federation, according to the Doha Declaration of 2001 on the TRIPS Agreement and Public Health 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. In particular, the right to "early usage" does not contradict this Article (the so-called Bolar provisions) which allows generic drug producers to conduct all the procedures and trials necessary for the registration of a generic drug before the patent of 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.

PROVISIONAL MEASURES

8. Do the judicial authorities of the Russian Federation have the authority to adopt, on the request of a rightholder, a provisional measure inaudita altera parte before an action leading to a decision on the merits of the case has been lodged? Please cite the relevant provisions of the legislation.

According to Article 141 of Civil Procedural Code of the Russian Federations an application for providing for a claim shall be considered on the day of its arrival to the court, without notifying the defendant and the other persons taking part in the case. The judge or court shall issue a ruling on taking measures to provide for the claim.

According to Article 93 of Administrative Procedural Code of the Russian Federation an application for securing a claim shall be considered by an arbitration court trying the case. This is to be done

by a single judge, at latest, on the day following the date when the application comes to the court, without notifying the parties thereto of it.

Thus, the court of law and arbitration court have the right to accept provisional measures immediately without notifying the party of dispute on which measures are imposed.

9. Does the legislation of the Russian Federation provide for any restrictions for obtaining provisional measures? If so, what are these restrictions? Please cite the relevant provisions of the legislation.

The statement for acceptance security (provisional) measures can be submitted both simultaneously with the statement of claim and already in the course of judicial process.

By the general rule, an application for securing a claim shall be considered by an arbitration court trying the case. This is to be done by a single judge, at latest, on the day following the date when the application comes to the court, without notifying the parties thereto of it, including if the statement for claim maintenance is submitted simultaneously with the statement of claim (Article 93 of Administrative Procedural Code of the Russian Federation, Article 141 of the Civil Procedural Code of the Russian Federation). In that case, the question on acceptance of the statement of claim to consideration is examined by an arbitration court not later than the next day after the day of receipt of the statement of claim by arbitration court.

Upon the consideration of the statement for securing a claim, the arbitration court takes out a court decision on securing the claim or on refusal of claim securing.

Securing measures hold action for all periods of legal proceedings before their cancellation. In the case of satisfaction of the claim, securing measures hold the action upon execution of the judicial act which finalise this legal investigation. In the case of refusal of satisfaction of the claim, keeping the claim without consideration, cessation of case, securing measures hold the action upon the entering into force of the corresponding judicial act. After the entering into force of the judicial certificate the arbitration court, at the petition of the person participating in case, takes the decision on cancellation of measures on securing of the claim or specifies it in judicial act.

As measures of protection from the statement for securing a claim, the other party (respondent) can declare objections, in essence, in judicial session, when the specified petition is considered with a call of both parties. In other cases, the interested person has the right:

- To present counter security measures (Article 94 of the Administrative Procedural Code of the Russian Federation);

- to dispute imposition of security measures (Article 97 of the Administrative Procedural Code of the Russian Federation and Article 144, Civil Procedural Code of the Russian Federation);

- to request replacement of one security measure by another (Article 95 of the Administrative Procedural Code of the Russian Federation and Article 143, Civil Procedural Code of the Russian Federation);

- to file a suit on indemnification or payments of indemnification, caused by securing the claim (Article 98 of the Administrative Procedural Code of the Russian Federation and Article 146, Civil Procedural Code the Russian Federation).

According to Article 98 of Administrative Procedural Code of the Russian Federation, the respondent and other persons whose rights and/or legitimate interests are violated by securing a claim shall be entitled - after entry into legal force of the judicial act of an arbitration court on the refusal to allow the claim - to demand of the person that has applied for taking the precautionary measures, repair of damages in the procedure and in the amount provided for by the civil legislation or payment of compensation.

10. Please describe the provisional measures provided for in the legislation of the Russian Federation, including those for combatting counterfeiting and piracy.

Please describe the procedures that must be followed and cite the relevant provisions of legislation.

Security (Provisional) Measures - the measures directed on maintenance of the claim or property interests of the applicant (claimant). Security measures can be accepted at any stage of consideration of the dispute in an arbitration court or court of law if non-acceptance of these measures could complicate or make impossible the execution of the judicial act, including if such execution is supposed outside the Russian Federation, and also with a view to the prevention of causing considerable damage to the applicant.

Under the statement of the person participating in judicial proceedings, and in the cases provided by agrarian Administrative Procedural Code of the Russian Federation and Civil Procedural Code of the Russian Federation, under the statement of other persons the arbitration court and court of law can accept urgent time security measures (measures on claim maintenance).

According to Part 1 of Article 91 of the Administrative Procedural Code of the Russian Federation and Article 140 of the Civil Procedural Code of the Russian Federation, Security Measures (measures on claim maintenance) can be:

- Forbidding the respondent, or other persons, to commit certain actions concerning the subject of the dispute;

- placing on the respondent the duty to commit certain actions for the purpose of preventing damage to, or deterioration of the condition of, disputable property;

- transfer of disputable property to the claimant, or other persons, for keeping custody thereof;

- end over measures.

According to point 2 of Article 1252 of the Civil Code of the Russian Federation, in the arrangement of the provision of security for a claim in a case of infringement of exclusive rights, the material media, equipment and materials that are allegedly involved in an infringement of the exclusive right, to the result of intellectual activity or means of individualization, may be subjected to the security measures established by the procedural legislation, e.g. seizure of material media, equipment and materials.

According to Article 1302 of Civil Code of the Russian Federation, on cases of infringement of copyrights and related rights, a court may forbid a defendant, or a person believed on sufficient grounds to be an infringer of copyright, from carrying out certain actions (i.e., manufacture, reproduction, sale, hiring out, importation or other use envisaged by the present Code, and also the transportation, storage or possession of copies of a work for the purpose of using them in civil law transactions, if the copies are understood to be counterfeit.

The court may also order the seizure of all copies of a work that is assumed to be counterfeit, as well as materials and equipment used or intended for manufacture or reproduction/playback thereof.

11. Please describe the measures provided by the legislation of the Russian Federation to combat counterfeiting and piracy at the border. Please explain whether the competent authorities are empowered to act ex officio and, if so, please indicate the enforcement actions that may be taken. Please cite the relevant provisions of the legislation.

In accordance of Article 306 and Article 307 of the Federal Law, from 27 November 2010, No. 311-FZ a rightholder, having sufficient grounds to believe that his/her/it's right may be infringed, is entitled to file an application with the federal executive governmental body empowered in the area of customs affairs asking for inclusion of the relevant intellectual property item in the customs register of intellectual property items, in accordance with the legislation of the Russian Federation in connection with the import of goods into the Russian Federation, or the export thereof out of the Russian Federation, or when other actions take place involving goods being under customs control.

On behalf of the rightholder, the actions envisaged by the customs legislation of the Customs Union and the present federal law may be committed by his/her/it's representative.

The Customs Register of Intellectual Property Items is the main protecting instrument. The following may be included in the Customs Register of Intellectual Property Items (hereinafter referred to as "the register"): the copyright law items, subjects of allied rights, trademarks, service marks and appellations of origin of products in respect of which the federal executive governmental body empowered in the area of customs affairs has taken a decision on taking measures relating to the suspension of clearance of goods. Inclusion in the register is free of charge. The register shall be kept by the federal executive governmental body empowered in the area of customs affairs in the procedure established by this body.

The intellectual property items, in respect of which the federal executive governmental body empowered in the area of customs affairs has taken a decision on taking measures relating to the suspension of release of goods, shall be included in the register on the condition that the rightholder ensures the performance of the undertaking mentioned in Part 5 of Article 306 of the Federal Law, by the methods envisaged by the civil legislation of the Russian Federation. Instead of security for the performance of the undertaking, the rightholder is entitled to file a contract of insurance for the risk of liability for infliction of harm for the benefit of the persons specified in Part 5 of Article 306 of the present federal law. In this case, the sum of security for the undertaking, or the insured amount, shall be at least 300,000 rubles.

If within one month after the date of despatch of a notice on the decision taken on measures relating to the suspension of clearance of the goods the rightholder fails to file a document confirming security for the undertaking, or a contract of insurance for the risk of liability for infliction of harm, the federal executive governmental body empowered in the area of customs affairs shall take a decision on refusal to include the intellectual property item in the register.

The federal executive governmental body empowered in the area of customs affairs shall ensure that the data in the register is published in its official publications and placed on its official internet website, in the procedure established by it.

In accordance of Article 309 of Federal Law, from 27 November 2010, No. 311-FZ customs bodies' decisions on suspension of the release of goods; extension of the term of suspension of release of goods; revocation of a decision on suspension of the release of goods; and also on the granting of the right to information and to the taking of samples and specimens, shall be taken by a customs body not later than the next working day after the date of discovery of signs of a breach of intellectual property rights, receipt of a relevant written application, or of the commission of another action deemed grounds for taking the relevant decision.

In accordance of Article 331 of Customs Code of Customs Union if during realization of customs actions related to the placing under customs procedures goods containing objects of intellectual property included in the customs register kept by the customs body of the member-state of the Customs Union, the customs body finds signs of infringement of the rights for intellectual property, the release of such goods is suspended for ten working days.

If there is a request from the rights holder or the party representing his interests, this period may be prolonged by the customs body, however, not more than ten working days, if the mentioned parties applied to the authorized bodies for protection of the rights of the rights holder, in compliance with the legislation of the member-states of the Customs Union.

Decisions suspending the release of goods and prolonging the period of suspension of release of goods are adopted in writing by the head of the customs body or the person authorized by him.

No later than within one working day following the day of adoption of the decision suspending the release of goods containing objects of intellectual property, the customs body shall notify the declaring party and the rights holder or the parties representing their interests of such suspension, the reasons and periods of suspension, as well as report to the declaring party the name (full name) and the place of location (address) of the rights holder and/or the party representing his interests, and to the rights holder or the party representing his interests the name (full name) and place of location (address) of the declaring party.

Upon the expiry of the period of suspension of the release of goods containing objects of intellectual property, the release of such goods is renewed and is carried out according to the procedure specified in the Customs Code of the Customs Union, except for the cases when the customs body gets documents confirming the withdrawal of goods, their arrest or confiscation, or other documents in compliance with the legislation of the member-states of the Customs Union.

Customs bodies may suspend the release of goods containing objects of intellectual property not included in the customs register; kept by the customs body of a member state of the Customs Union and the joint customs register of objects of intellectual property of member states of the Customs Union, without application of the rights holder, according to the procedure specified in the legislation of the member-states of the Customs Union.

The rights holder shall be held liable, in compliance with the civil legislation of member-states of the Customs Union for property damage incurred on the declaring party, the owner, the recipient of the goods containing objects of intellectual property as a result of suspension of the release of goods in compliance with the present Chapter, if violation of the rights of the rights holder is not found.

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

12 Please describe how the legislation of the Russian Federation meets the requirements of Article 41 of the TRIPS Agreement. Please cite the relevant provisions.

Different provisions of following legislative acts: the Civil Code of the Russian Federation, the Code of the Russian Federation on Administrative Offences; the Criminal Code of the Russian Federation; the Arbitration Procedure Code of the Russian Federation; the Civil Procedure Code of the Russian Federation; the Criminal Procedural Code of the Russian Federation; the Federal Law from 27 November 2010, No. 311-FZ "On Customs Regulation in the Russian Federation"; the Federal Law from 26 July 2006, No. 135-FZ "On Competition Protection".

In order to increase the effectiveness of IPR litigations, in March 2013, an Intellectual Property Arbitration Court was created.

13. Please indicate the authorities responsible for the application of the measures provided by the legislation of the Russian Federation to combat counterfeiting and piracy. Please explain whether the competent authorities are empowered to act ex officio and, if so, please indicate the enforcement actions that may be taken. Please cite the relevant provisions of the legislation.

In the Russian Federation, the authorities responsible to combat counterfeiting and piracy are: the Ministry of Interior; the Investigation Comity, the Prosecutor, and the Federal Customs Service.

In accordance to the third part of Article 20 of the Criminal Procedural Code of the Russian Federation, criminal cases related to the illegal use of objects of copyright or related rights, as well as: the acquisition, storage or carriage of counterfeited copies of works or phonograms for the purpose of sale carried out on a large scale; illegal use of an invention, useful model, or industrial design; disclosure of the essence of an invention, useful model, or industrial design without the consent of its author or applicant, and before the official publication of information about them; illegal acquisition of authorship, or the compelling to co-authorship, are considered as criminal cases of the private-public prosecution and are initiated only upon application from the victim, or from his legal representative, but are not subject to the termination in connection with the victim's reconciliation with the accused, with the exception of the cases envisaged in Criminal Code of the Russian Federation.

In accordance to the third part of Article 20 of Criminal Procedural Code of the Russian Federation, the head of an investigative agency, the investigator, as well as the enquirer with the consent of the procurator, shall institute a criminal case on any crime indicated in parts two and three of this Article and in the absence of an application of the victim or his legal representative, if the crime has been committed with respect to a person who, due to his dependent or helpless state or for other reasons cannot defend his rights and legal interests. The other reasons shall also include the case of commission of a crime by a person the information about whom is unknown.

All other acts committed under Articles 146, 147 and 180 of Criminal Code of the Russian Federation are criminal cases of public charge and are raised in an order established by Article 146 Criminal Procedural Code of Russian Federation.

14. Please describe any new initiatives that are planned to improve the enforcement of intellectual property rights in the Russian Federation. Is there a particular action plan in place?

There is no particular action plan on intellectual property rights enforcement in the Russian Federation. Every competent body has a goal to promote end increase the protection of IPR.

However, some initiatives have recently been realized. First of all, the creation in March 2013 of the Intellectual Property Arbitration Court.

The second initiative is the fight against internet piracy. The first step was done in July with the adoption of Federal Law No. 187-ФЗ. The new "Antipiracy Law" introduces the principle of liability of internet service providers, mechanisms for blockage of illegal content by a court decision. For the moment, the scope of the Law is limited to films, but different amendments concerning the extension of scope of protection are in the stage of public discussions.

4 RESPONSES TO QUESTIONS POSED BY THE UNITED STATES OF AMERICA

4.1 Responses to Original Questions[6]

1. Article 1232 (IP/N/1/RUS/O/2 at 359): We are concerned that this may impose a formality. Do rightsholders have to register alienations of exclusive rights? Would a foreign author who sells or assigns a right have to register such sale/assignment in Russia?

According to Article 1232 of the Civil Code of the Russian Federation (hereinafter – CC RF) in cases when the result of intellectual activity or means of individualization is subject to state registration, alienation of the exclusive right to such result or such means by contract, pledge of this right, and grant of the right of use of such result or such means by contract, and likewise also the transfer of the exclusive right to such result or such means without a contract are subject to state registration.

Exclusive rights to such objects of intellectual property as inventions, utility models, industrial designs, trademarks and service marks (hereinafter – trademarks) shall be recognized on the condition of their state registration. Regarding computer programs, databasesand topology of integrated circuits state registration is conducted at the option of the rightholder.

Thus currently in the Russian Federation subjects to state registration are contracts for the alienation of the exclusive right to an invention, utility model, industrial design, computer program, database, topology of integrated circuit and contracts for grant of the right of use (including license contracts and franchise) and contract for the pledge of an exclusive right to invention, utility model, industrial design, trademark, topology of integrated circuit.

Order and terms of state registration of the four abovementioned types of juridical facts are established by the Government of the Russian Federation.

[6] Responses circulated in document IP/C/W/592 to questions posed in document IP/C/W/589.

In regard to objects of copyrights and related rights which do not need to make state registration, it is stipulated in Article 1259 of the Civil Code of the Russian Federation.

2. Article 1234 (IP/N/1/RUS/O/2 at 360-361): We have two concerns here. 1) Paragraph 1 seems to require a complete transfer of all the rights as the only type of exclusive license that an author can give. Can an author provide an exclusive license limited to only one right (i.e., reproduction) and maintain ownership of the other exclusive rights? 2) Paragraph 2 appears to impose a formality (*see* the term "subject to state registration."). Do rightsholders have to register the contract of alienation of exclusive rights? Would a foreign author who sells or assigns a right have to register such sale/assignment in Russia?

Article 1233 of the Civil Code of the Russian Federation provides two kinds of contract on the disposal of an exclusive right by rightholder: Contract for the Alienation of an Exclusive Right (Civil Code of the Russian Federation, Article 1234) and License Contract (License Contract, Article 1235).

License Contract provided in Article 1234 of the Civil Code of the Russian Federation Contract for the Alienation of an Exclusive Right provide author's (rightholder's) possibility to transfer (alienate) the exclusive right belonging to him to a result of intellectual activity or a means of individualization in full scope to the other party (the recipient) that means absence of the copyright to use transmitted the result of intellectual activity in any way subsequently. By a contract for the alienation this right shall pass to the recipient acquiring the result of intellectual activity.

In Article 1235 of the Civil Code of the Russian Federation stipulates that a license contract (on submitting of an exclusive license or nonexclusive license). Such kind of contract is widely used in all countries as the rightholder's method of disposal of exclusive rights whereby the licensor (rightholder) saves the exclusive right to a result of intellectual activity and the licensee may use the specific result of intellectual activity in stipulated ways on certain territory by certain terms. Conclusion of License Contract shall entail a transition of the exclusive right to the licensee.

In case the author (rightholder) concludes a contract about alienation of the exclusive right to the result of intellectual activity or to the means of individualization with whom provide a procedure of state registration, than this contract also needs to state registration.

Mandatory state registration are required only in the Patent Rights Object (CC RF, Chapter 72), Achievements of Breeding (CC RF, Chapter 73), Means of Individualization (CC RF, Chapter 76). According contracts about alienation of the exclusive right to the indicated result of intellectual activity shall be subject to state registration also (paragraph 2 of Article 1232 of the CC RF). Contracts about alienation of the exclusive rights to copyright or related right are not subject of state registration.

3. Article 1235 (2) (IP/N/1/RUS/O/2 at 361-362): We are concerned that this may impose a formality. Do rightsholders have to register license contracts? Would a foreign author who enters a license contract have to register the license contract in Russia?

If authors (rightholders) conclude License Contracts about granting right to use the result of intellectual activity which needs to state registration, this contract also needs to state registration.

Currently subjects of state registration are license contracts for the rights of use of an invention, utility model, industrial design, trademark, and topology of integrated circuit (paragraph 2 of Article 1232 CCRF).

That being said, it is worth noting that there is a pending project of Federal Law No. 47538-6 under consideration by the State Duma of the Federal Assembly « Introducing Amendments to the First, Second, Third and the Fourth Parts of the Civil Code of the Russian Federation and ndividual legislative acts of the Russian Federation», developed by the Presidential Council of the Russian Federation on codification and improvement of civil legislation (hereinafter – CC RF Project)

CC RF Project suggests radical changes to state registration of contracts for the disposition of the exclusive right to objects of intellectual property. In developing the CC RF Project, provisions of

the Singapore Treaty on the Law of Trademarks ratified by Federal Law No.98-FZ d.d. 23.05.2009 «On Ratification of the Singapore Treaty on the Law of Trademarks» were considered.

According to CC RF Project state registration of the grant of the right of use of an invention, utility model, industrial design, computer program, topology of integrated circuit, and trademark by a license contract can be conducted on the request of the parties without providing the contract itself.

4. Article 1240 (IP/N/1/RUS/O/2 at 363): We are concerned that this provision could nullify negotiated terms by authors of underlying works. For example, if a musical composition is used in a movie – either a pre-existing recording or one created for the movie – the author of the composition often maintains some rights, such as the right of public performance. Can a composer's contract require that a film incorporating her music only be shown in theaters/transmitted by broadcasters that are licensed to publicly perform musical compositions or would 1240(2) nullify such a contract?

A film (audiovisual work) is an independent complex object of author rights (Civil Code of the Russian Federation, Article 1259).

According to paragraph 1 of Article 1240 of the CC RF a person who has organized the creation of a complex object including several protected results of intellectual activity (e.g. the film) shall obtain the right of use of these films on the basis of contracts (for the alienation of the exclusive right or license contracts) concluded with the rightholders on the respective results of intellectual activity, which had been used in the process of creation of the film.

Herewith License Contract about granting right to use (e.g. a music in the film) recognized be invalid in case if such contract contains limiting to use music in the film.

Specified positions of the Civil Code of the Russian Federation correspond to positions of subparagraph (b) of paragraph 2 of Article 14 bis of the Berne Convention for the Protection of Literary and Artistic Works from 9th September 1886 (farther Berne Convention) which establishes that in the countries of Berne Union where legislation recognize authors as primary possessor of copyrights about author's cinematographic work who brought creative contribution in creation of this work; if they pledged to bring creative contribution in creation of cinematographic work and they have not some restrictive or special conditions, these authors may not prevent to use cinematographic work for reproduction, spreading, public presentation and performance, report along wires for general information, broadcast on the air or another public report the work, and also forbid a subtitling and a duplication text of cinematographic work.

Thereby author of music may conclude with a person who has organized the creation of a complex object License Contract about the use of his musical work in complex object, e.g. in the film, or contract for the alienation the exclusive right by created musical work.

In case when concluding License Contract with author of musical work are used in the film, author of music grant to producer of film right to use his musical work in the film in all methods of use the film including public performance (in case of use in cinema, for example), communication over the air or by the cable. Moreover in accordance with paragraph 5 of Article 1263 of the CC RF composer shall keep the exclusive right to his work and may use his work in any method not prohibited by law, if he hadn't transfer exclusive right to his work to the preparer in full.

The procedure of Conclusion a Contract for the alienation the exclusive rights of the musical work is use when a musical work is created spatially for being included in audiovisual work.

5. Article 1245 (IP/N/1/RUS/O/2 at 367): Please clarify what rightholders are covered by authors, performers and manufacturers in the sound recording context. Chapter 71 addresses the manufacturers of and performers on sound recordings, but there is no mention of their author. When you refer to the author of the sound recording receiving 40% of the fee collected, do you mean the author of the musical composition that is recorded? How is the musical composition encompassed on a sound recording compensated under Article 1245?

In Article 1245 of the Civil Code of the Russian Federation rightholders who have the right to compensation for free reproduction of phonograms and audiovisual works exclusively for personal purposes are authors (authors of musical works (music and text) fixed in the phonograms and authors of audiovisual works); performers (performers who fixed their performance in the phonograms and performers who fixed their performance in the audiovisual works); preparers of phonograms and preparers of audiovisual works who have the exclusive rights acting (have recognized) on the territory of the Russian Federation in accordance with Articles 1256, 1321 and 1328 of the Civil Code of the Russian Federation.

Rightholders have right to compensation in accordance with paragraph 2 of Article 1273 of the Civil Code of the Russian Federation.

Importers and manufacturers of equipment and storage devices used for reproduction for personal purposes shall pay compensation to indicated rightholders in accordance with Article 1245 of the Civil Code of the Russian Federation.

Chapter 71 of the Civil Code of the Russian Federation are mentioned in the question is dedicated to general questions of rights related with copyright.

6. Article 1249 (IP/N/1/RUS/O/2 at 369): We are concerned that this may impose a formality. Do rightsholders have to register computer programs or databases for those items to receive protection or need to register "legally-significant actions" regarding computer programs and/or databases? What must be registered under Article 1249?

As defined in paragraph 4 of Article 1259 CC RF for the protection of copyright, the registration of the work or other formalities is not required. With respect to computer programs and databases, registration is possible in accordance with subparagraph 2 of paragraph 4 of Article 1259 and Paragraph 1 of Article 1262 CC RF. Such registration is not right-establishing and is optional.

If the rightholder has registered a computer program or a database in the Federal body of executive authority for intellectual property, contracts for the alienation of the exclusive right to a computer program or database as well as passage of the exclusive right to such program or database are subject to registration in the Federal body of executive authority for intellectual property (Paragraph 5 of Article 1262 CCRF)

Article 1249 CC RF does not provide any provisions on registration of computer programs or database or connected legally significant actions being obligatory. The article considers fees collected for the taking of legally significant actions connected with state registration of computer programs, databases, contracts for the alienation of the exclusive right to a computer program or database as well as passage of the exclusive right to such program or database (paragraph 1 of Article 1249 CC RF)

Unlike other results of intellectual activity or means of individualization, registered in the Federal body of executive authority for intellectual property, fees for which are set by the Government of the Russian Federation, fees connected with computer programs, databases and topology of integrated circuits are established by the legislation of the Russian Federation on taxes and levies. The Tax Code of the Russian Federation establishes a list of legally significant actions for the taking of which state fees shall be collected, their amounts, procedure and times for payment, and also the bases for freeing from payment of the state fees, reduction of their amounts, postponement of payment or return of fees.

7. Articles 1273 and 1306 (IP/N/1/RUS/O/2 at 379 and 390): These articles appear to provide an overly broad permission for reproduction for personal use. Please explain how these articles address the 3-step test under TRIPS Article 13, including whether and how these provisions permit reproduction of only one copy for personal use, where that reproduction is made from a lawfully acquired copy.

Limitations and restrictions from rightholder's exclusive rights were formulated in Berne Convention for the Protection of Literary and Artistic Works from 9 September 1886 (Berne Convention). In accordance with paragraph 2 of Article 9 of Berne Convention members have right

to foresee in national legislation the restrictions of rights for reproduction of literary and artistic works on condition that in national legislation shall be indicated cases of such restrictions and it shall not cause harm to normal exploitation of works and infringe author's legal interests.

Provisions of paragraph 2 of Article 9 of Berne Convention reflected in Article 13 of the TRIPS Agreement as a quota about possible restrictions or limitations from the exclusive copyrights and related rights.

Paragraph 2 of Article 1229 of the Civil Code of the Russian Federation correspond to above-mentioned international contracts which determines that provided cases of free reproduction for personal purposes do not cause unjustified harm to the ordinary use of the results of intellectual activity and do not impair in an unjustified manner the lawful interests of the rightholders.

Article 1273 of the Civil Code of the Russian Federation establishes cases of free gratuitous reproduction of works (established provisions concern by related rights also in accordance with Article 1306 of the Civil Code of the Russian Federation), if it are realized with next conditions:

- individual person realize the reproduction;
- the reproduction are realized exclusively for personal purposes;
- a work lawfully made subject by the reproduction.

Herewith the indicate Article contains list of free gratuitous reproduction. These are cases when even intention to use corresponding work for personal purposes do not liberate a citizen from necessity to get rightholder's permission and to pay appropriate compensation. Herewith with a passing of Part 4 of the Civil Code of the Russian Federation such cases were complemented by two new limitations:

Video recording of an audiovisual work in case of its public performance at a please open for free attendance or at a place where there are a significant number of persons present not belonging to the usual circle of a family is not admitted even for personal purposes (subparagraph 5 of Article 1273 of the Civil Code of the Russian Federation);

Reproduction of an audiovisual work with the aid of professional equipment not meant for use in home conditions is not admitted (subparagraph 6 of Article 1273 of the Civil Code of the Russian Federation). Both indicated limitations allow to intensify fight with fabrication of a pirate production.

Accordingly in accordance with indicated quotas individual person have right to reproduce (means to manufacture for satisfaction of own, family, household and other needs are not connected with realization of entrepreneurial acting) a copy of the film from TV broadcast, to reproduce work are placed in Internet in memory of computer, to make copy of audio recording (phonogram) or magazine article on a tape-recording or on a copier. Herewith the reproduction shall be realized such person personal purposes of who taken in attention.

Provisions of Article 1273 of the Civil Code of the Russian Federation don't spread to legal person who may not refer to inner needs as to basic to reproduce work free even if such actions are not related with person's commercial activity or are made to individual person's order.

8. Article 1274 (1) (1 and 2) (IP/N/1/RUS/O/2 at 380): These copyright exceptions (IP/N/1/RUS/O/2 at 379) appear overly broad. Both Articles 10 (1) and (2) of Berne Convention, which are incorporated in Article 1274 (1 and 2), require that such use be compatible with fair practice. Please explain how this fair practice limitation is addressed by Article 1274 (1 and 2).

Provisions 1 and 2 of Article 1274 of the Civil Code of the Russian Federation provide the use of works without the consent of the rightholder and without the payment of compensation in case of citation in the original language or in translation for scientific, polemical/critical, or information purposes of works lawfully made public in an amount justified by the purpose of citation, including the reproduction of excerpts from newspaper and magazine articles in the form of press surveys and also in cases of use of works lawfully made public and excerpts from them as illustrations in

publications, radio and television broadcasts, and sound and video recordings of an instructional nature in an amount justified by the purpose thereof.

Necessary to note that provisions of Article 1274 of the Civil Code of the Russian Federation are not subjected to widened interpretation and apply in the relationship with paragraph 5 of Article 1229 of the Civil Code of the Russian Federation establishes that limitation from exclusive rights to results of intellectual activity shall be established on the condition that such limitation does not contradict to the ordinary use of the works or object of the related right and does not impair the lawful interests of the rightholders. Indicated provision corresponds to Article 13 of TRIPS.

9. Article 1274 (1)(6) (IP/N/1/RUS/O/2 at 380): We are concerned that this exception is overly broad. Would a non-profit entity be able to use this exception when the copyright owner has made the work available in the same format?

In accordance of provision 1 of Article 1274 CC RF right to use of work lawfully made public without the consent of the rightholder and without the payment of compensation in case of reproduction without the extraction of profit in dot-relief type or other special means for the blind. No matter organizational legal form of entity who use work for purpose of reproduction for the blind. In present case shall be observed next conditions: such reproduction shall be realized from work lawfully made public; such reproduction and further spreading of work shall be realized without extraction of profit.

Works representing the copy of work in any material form in quantity which enough for satisfaction of requirement of public from depending of character of work are admitted be made public.

Indicated provisions do not provide limitation of exclusive right of works to benefit of persons with limited possibility including disabled persons about hearing as it provided in legislation of United States of America, for example.

In some countries (e.g.in Article 37 of the Copyright Law of Japan from 1970) such limitation of exclusive right spreads by works lawfully promulgated (but not made public as in Russian legislation) that widen volume of this limitation.

10. Article 1274(3) (IP/N/1/RUS/O/2 at 380): This exception appears to be overly board. Please explain how the exception limits taking only the portion of the work necessary for the purposes of the parody.

The possibility of creation of works in the genre of a literary, musical, or other parody, or in the genre of caricature on the basis of work lawfully made public without the consent of the rightholder and without the payment of compensation and subsequent use of caricature or parody without the payment of compensation to author of original work are established in paragraph 3 of Article 1274 of the Civil CodeCivil Code of the Russian Federation.

Provisions of paragraph 3 of Article 1274 of the Civil CodeCivil Code of the Russian Federation on free creation and use in the genre of a literary, musical, or other parody, or in the genre of caricature on the basis of another (original) work lawfully made public without the consent of the author of such original work appeared in Russian legislation as a result of borrowed approach of Directive 2001/29/EC of the European Parliament and of the Council of 22/05/2001 "On the harmonization of certain aspects of copyright and related rights in the information society" according to sub point (k) of point 3 of Article 5 of the Directive what admit may provide for exceptions or limitations in case of use for the purpose of caricature, parody or pastiche.

Article 1274 of the Civil CodeCivil Code of the Russian Federation provides that parodies and caricatures shall be used in for Informational, Scholarly, Instructional, or Cultural Purposes, how it show name of Article.

In this way author of original work have not right to prohibit to use his work in indicated method on the basic of provisions of Part 4 of the Civil CodeCivil Code of the Russian Federation, but in case if parody or caricature denigrate honor, dignity or reputation of author of original work, he

have right to protect it in order are established in Article 125 of the Civil CodeCivil Code of the Russian Federation.

Should take in attention that creation of parody or caricature is not a recast of primary (original) work; it is creation of new, independent work. Parodies and caricatures are recognizable that is associated with primary (original) works because of likeness of maintenance (what is not copyrighted), but not because of likeness wit form (what is copyrighted).

11. Article 1280(4) (IP/N/1/RUS/O/2 at 382): This language appears to be overly broad. Please explain how this article addresses the requirements of the 3-step test under TRIPS Article 13.

The provisions of the Article 1280 explains in detail rights of the owner of a copy a computer program or a database. These rights are limited to some cases. The main condition of the article is that the person has the obligation to own the copy lawfully. Paragraph 4 of the article 4 implements the provision of Article 13 of the TRIPS Agreement, making an explanation that the application of the provisions provided by the Article must not cause unjustified harm to the normal use of a computer program or database and must not impair in an unjustified manner the lawful interests of the author or rightholder.

12. Articles 1285 and 1307 (IP/N/1/RUS/O/2 at 383 and 391): We are concerned that Articles 1285 and 1307 appear to limit a rightsholders ability to enter into exclusive licenses for a specific right and to require the rightsholders to transfer the "work in full." Can a rightsowner transfer one exclusive right, for example, e.g., the right to perform a work, and still maintain ownership of the other exclusive rights, e.g., reproduction, synchronization?

Author or subject of related right have right to conclude with other person contract of alienation (transmission) of the exclusive right to the concrete result of intellectual activity that is mean transmission of the exclusive right in full without author's possibility to keep right to use such result in accordance with Articles 1285 and 1307 of the Civil CodeCivil Code of the Russian Federation.

In this way in case if rightholder transferred the exclusive right to use result of intellectual activity to other person, he does not keep right to use such result.

Herewith the Civil CodeCivil Code of the Russian Federation provides also another model of disposal of the exclusive right when rightholder have right to grant for other persons right to use result of intellectual activity by means of conclusion License Contract are provided in Articles 1286 and 1308 of the Civil Code of the Russian Federation. Under the conditions of License Contract rightholder stay as holder of the exclusive right and the licensee acquires right to use object on the conditions established by a contract only (e.g. the reproduction only or the public performance only) on the definite territory in definite terms.

13. Article 1334(2) (IP/N/1/RUS/O/2 at 399): Any copyrighted work or object of related rights incorporated into a database must be subject to the rightholders' exclusive rights. Please explain how Article 1334(2) accounts for the rights of authors of works included in a database.

Paragraph 2 of Article 1334 stipulates that exclusive rights of the preparer of a database are recognized and are effective regardless of the rights of authors of works included in a database.

14. We have numerous questions to help us understand Section 6 of Chapter 71 and how the rights of a publisher of a scientific, literary or artistic work differ from the rights of the authors and the authors' assignees/transferees of those works, as set forth in Chapter 70:

(a) Please explain the relationship between the publisher protected here and the author/assignees protected in chapter 70. Specifically, how does this section relate to chapter 70, which gives these rights to the author and her assignees? Who has the rights to the work, the author/assignees under chapter 70, or the publisher under Chapter 71?

(b) Article 1337(1) (IP/N/1/RUS/O/2 at 400) appears to take works out of the public domain and give the publisher exclusive rights to that work. What works can be removed from the public domain?

(c) Article 1340 (IP/N/1/RUS/O/2 at 401) appears to override the copyright term provided Article 1281 and override any contract or agreement that an author may have entered with a publisher. Please explain.

Intellectual Rights to works of scholarship, literature, or art first made public after their passage into the public domain are rights neighboring on copyright (neighboring rights) according to Article 1303 of the Civil Code of the Russian Federation.

Section 6 of Chapter 71 of the Civil Code of the Russian Federation dedicated to publisher's right to works of Scholarship, Literature and Art.

According to Article 1337 CC RF publisher is the citizen who lawfully made public or organized the making public of a work of scholarship, literature, or art previously not made public and that has gone into the public domain (Article 1282 CC RF) or that is in the public domain by virtue of the fact that it is not protected by copyright.

Author or other person with author's consent have the right to make the work public according to Article 1268 of the Civil Code of the Russian Federation. In this case if author during the life did not made public his work himself or not gave consent to do such actions to other person (also in case if author did not lived any prohibition during his life) than such work may be made public by author's successor during the period of validity of exclusive right to work.

Upon the expiration of the time period of effectiveness of the exclusive right, a work including previously unpublished, shall enter the public domain and may be used freely by any person without any consent or permission and without payment of author's compensation in accordance with Article 1282 of the Civil Code of the Russian Federation.

For purpose of making public of previously unpublished works Division 6 of Chapter 71 of the Civil Code of the Russian Federation provides other persons possibility to make public of work after termination of guarding of exclusive rights in case of absence author's written prohibition such work.

In this way publisher is not author of work or successor, he is person who made public work previously unpublished and is entered the public domain.

Publisher has publisher's exclusive right to work made public by him and right to indicate his name on exemplar of work made public and in other cases of use (including translation or other recast of work). Publisher's exclusive right to work coincides with habitual copyright to use work in content, only with taking of right to translate, recast and realize an architectural, designer, town-planning landscape project. In this way publisher of work may not control of use of work in translated or reprocessed form.

Outside publisher's sphere of control is spreading of original or exemplars of work are imposed in civil use (principle of depletion of rights) lawfully.

Publisher's right in the Civil Code of the Russian Federation is right that not make damage to author's interests and to his successor. Publisher's right is made to protect the interests of investigator, allow to reward them for long or perennial search and further to open new creative results.

Need to mark that protection of right of persons who make public previously unpublished works and are entered the public domain are provided in provisions of Article 4 of Directive of European Union 93/98/EEC of 29/10/1993 harmonizing the term of protection of copyright and certain related rights, in accordance with it any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author.

The Civil Code of the Russian Federation establishes several important requirements about object of publisher's right:

- It shall be work of scholarship, literature or art;
- This work shall be recognized as object of copyright in accordance with acting Russian legislation;
- It shall not be made public previously;
- The work shall not be in state and municipal archives;
- The work shall be made public firstly on the territory of the Russian Federation or beyond the boundaries but by citizen of the Russian Federation.

Replacement of terms in comparison with Article 1281 of the Civil Code of the Russian Federation in Article 1240 indicated do not happen.

Introduction in Russian legislation of publisher's rights are stipulate for necessity of cultural development of society in relations with promulgation of work of Scholarship, Literature and art previously unpublished that is mean unknown till this event and for encouragement of persons who made these work are known for society (made them promulgation – public).

The work which have expired term of exclusive right enters to the public domain that is mean it may be used freely by any person without any consent or permission and without payment of author's compensation. But there is question about possibility to use unknown work is entered to the public domain.

In case of made public work is entered to the public domain on the condition that such publishing do not contradict the author's will, publisher have right to use such work (the publisher's exclusive right) effective for 25 years counting from January 1 of the year following the year of publishing, namely to use the work with methods are provided in subpoints 1-8 and 11 of point 2 of Article 1270 of the Civil Code of the Russian Federation.

15. We remain concerned that Russian law might not adequately protect foreign works and related rights, including pre-existing works and related rights. We have noted that there are numerous provisions dealing with this issue (Articles 1231, 1256, 1304, 1318, 1321, 1324, 1328 and 1341), but were unable to confirm the required coverage. Some of our concern may relate to translations issues or to the accuracy of IP/N/RUS/0/2.

Article 1256 of the Civil Code of the Russian Federation defines realization of the exclusive right to Works of Scholarship, Literature, and Art on the territory of the Russian Federation because of publishing on the territory of the Russian Federation or because of principle of author's citizenship of such works (or them successor).

Russian legislator proceeds from place of publishing of work (or his existence in objective form in case of absence of publishing) to give the exclusive right to work on the territory of the Russian Federation.

In case if work made public on the territory of the Russian Federation than the exclusive right to such work shall be recognized for authors (or their legal successors) regardless of their citizenship.

It concerns also cases when work not made public existing in some objective form on the territory of the Russian Federation.

A work also shall be considered first made public by publication in the Russian Federation if, in the course of thirty days after the date of first publication, it was published on the territory of the Russian Federation.

In case if work made public beyond the boundaries of the territory of the Russian Federation, need to take by attention author's citizenship (or his legal successor). If work made public beyond the boundaries of the territory of the Russian Federation author of work (his legal successor) being

citizen of the Russian Federation, Russian legislator keeps the exclusive right to work by such persons.

It concerns also cases when work not made public exists in some objective form beyond the boundaries of the territory of the Russian Federation at author or his legal successor who are citizens of the Russian Federation.

In other cases the exclusive right to works made public or existing in some objective form beyond the boundaries of the Russian Federation and shall be recognized, in accordance with international treaties of the Russian Federation, for authors (or their legal successors) who are citizens of other states. Herewith the time period of the exclusive right established in the country of origin of the work may not exceeds the time period of the exclusive right to these works in the Russian Federation. In case if the time period of the exclusive right in the country of origin of the work has expired and the exclusive right have entered the public domain than this work enters the public domain in the Russian Federation too. Moreover primary rightholder is determined in accordance with a law of state where was happened a fact which is basis for acquisition of the copyright.

According to point 3 of Article 1304 of the Civil Code of the Russian Federation the granting on the territory of the Russian Federation of protection for objects of neighboring rights in accordance with the international treaties of the Russian Federation shall be conducted in case if in the country of origin of the work it have not entered the public domain and have not entered the public domain on the territory of the Russian Federation.

In other articles of the Civil Code of the Russian Federation Russian legislator proceeds from principle of the citizenship/place of location or implementation (for the performance are not fixed in phonograms) / promulgation (phonograms) on the territory of the Russian Federation aside from the conditions of the international treaties of the Russian Federation for granting legal protection to some object of neighboring rights.

16. Please advise which specific Article requires coverage for:

(a) Authors who are nationals of a Berne country for published and unpublished works

The rights of the authors, who is a citizen of the Russian Federation – member of Berne Convention, are protected in accordance with subpoint 2 of point 1 of Article 1256 of the Civil Code of the Russian Federation.

The rights of the authors who are citizens of other states works of whom made public beyond the boundaries of the territory of the Russian Federation – member of Berne Convention, are protected on the territory of the Russian Federation on basis of subpoint 3 of point 1 of Article 1256 of the Civil Code of the Russian Federation (international-legal criterion) in accordance with provisions of Berne Convention.

Need to mark that national regime (are provided in Article 3 of Berne Convention) give the possibility to any citizen's work of any state who is member of Berne Convention to use protection in all countries of Berne Union including the Russian Federation.

(b) Authors who are not nationals of a Berne country for works first published, or published within 30 days, in a Berne country

The rights of a foreign author who made public his works on the territory of the Russian Federation – member of Berne Convention are protected in accordance with subpoint 1 of point 1 and subpoint 2 of Article 1256 of the Civil Code of the Russian Federation (criterion of the place of promulgation of work).

The rights of authors who are citizens of other states who made public works beyond the boundaries of the territory of the Russian Federation but in country – member of Berne Convention, are protected on the territory of the Russian Federation on basis of subpoint 3 of point 1 of Article 1256 of the Civil Code of the Russian Federation (international-legal criterion) in accordance with provisions of Berne Convention.

(c) Authors who are not nationals of a Berne country but who have their habitual residence in a Berne country

The rights of authors who are not nationals of a Berne country are protected on the territory of the Russian Federation on basis of subpoint 3 of point 1 of Article 1256 of the Civil Code of the Russian Federation (international-legal criterion) in accordance with international treaties of the Russian Federation.

However in indicated cases necessary to pass that in cases if foreign author made public his work on the territory of the Russian Federation (or his not made public on the territory of the Russian Federation work exists in some objective form) he have legal protection in accordance with point 1 of Article 1256 of the Civil Code of the Russian Federation.

The Russian Federation participated in following international treaties about copyright: the Universal Copyright Convention on 6th September 1952 (revised in Paris on 24th July 1971), The Agreement about collaboration in sphere of copyright and related right are concluded in Moscow at 24th September 1993, Berne Convention for the Protection of Literary and Artistic Works (in editing Parisian Statement at 24th July 1971) - since 13th March 1995, The World Intellectual Property Organization (WIPO) Copyright Treaty on 20th December 1996 – since 2009.

Moreover the Russian Federation as successor of the USSR is connected two-way international treaties about mutual protection of copyrights with some states, e.g. with Sweden (15th April 1986), with Armenia concluded Agreement about mutual protection of copyrights at 25th June 1993.

(d) Authors of an audiovisual works the maker of which has its headquarters or habitual residence in a Berne country

(e) Authors of works of architecture constructed in a Berne country or artistic work incorporated in a building or structure located in a Berne country

Answer to two previous questions: The rights the indicated category of authors are provided on the territory of the Russian Federation analogically as for cases are viewed above that is mean on basis of point 1 of Article 1256 of the Civil Code of the Russian Federation.

Herewith need to keep in mind that in point 3 of Article 1256 of the Civil Code of the Russian Federation are shown a peculiarities of acting of international-legal criterion on the territory of the Russian Federation. In indicated quota are shown that author of work or another primary rightholder is determined by the law of state on what territory happened fact of acquisition of copyrights at granting the protection to work on the territory of the Russian Federation in accordance with international treaties of the Russian Federation. These quota are provided for legislation about copyright of states where author or primary rightholder is a legal person.

17. Please confirm that Russian Law provides the owners of musical compositions a public performance right when that music is contained in audiovisual works and exhibited in theaters. What provision of the law provides this right?

According to point 5 of Article 1263 of the Civil Code of the Russian Federation the composer of created work keeps the exclusive right to use his work separately from creating film in which composition are concluded his musical work on condition that such author did not enter (on basis of Articles 1234 and 1285 of the Civil Code of the Russian Federation) the exclusive right to musical work full to person who organized the creation of film (the producer – Article 1240 of the Civil Code of the Russian Federation).

18. What is the term of protection for audiovisual works? The authors of the audiovisual work are defined in Article 1263. Is the term of protection 70 years from the death of the last surviving author under Article 1281 (1)? If not, what Article governs the term of audiovisual works?

The term of protection for audiovisual work is the term when the audiovisual work has protection in the territory of the Russian Federation. The term of protection for audiovisual work is provided in Article 1281 of the Civil Code of the Russian Federation according to what the exclusive right to

work created in coauthorship shall be effective for the whole life of the author outliving the other coauthors plus seventy years, counting from January 1 of the year following the year of his death.

Moreover the Civil Code of the Russian Soviet Federative Socialist Republic from 1964 what was acting before Law of the Russian Federation at 9th July 1993 № 5351-I "About copyright and related rights" provided legal person's copyright (herewith according to Article 498 of the Civil Code of the Russian Soviet Federative Socialist Republic from 1964 rights are arisen among legal persons primarily acted in perpetuity; in case of reorganization of such legal person copyright entered by legal successor, and in case of liquidation – by state). The copyright of legal persons what has raised before 3rd August 1993 stops after 70 years since the date of lawfully made public work, if work unpublished than since day of creation of work what provided in Article 6 of the Federal Law of the Russian Federation from 18th December 2006 No. 231-FL "About introduction by acting Fourth Part of the Civil Code of the Russian Federation".

19. Article 1252.1.4 (IP/N/1/RUS/O/2 at 370). Please clarify what is meant by "non-bona fide acquirer."

In case of breach of the exclusive right to the results of intellectual activity and to means of individualization rightholder have right in particular by the making of demand about the taking of the physical carrier are used or are destined for fulfillment of breach against the producer, importer, keepers, carrier, seller, other distributor, or bad faith recipient.

The bad faith recipient is a person who has acquired (with or without compensation) the physical carrier for fulfillment of breach from person who had not the right to alienate it about what acquirer knew or shall be known. Such definition of the bad faith recipient follows from Article 302 of the Civil Code of the Russian Federation.

20. Article 1252.5. Provision allows equipment and materials used for infringing to be withdrawn from circulation and destroyed at infringers expense, "except when being subject to be converted into the revenue of the Russian Federation." In light of Article 46 of the TRIPS Agreement, please explain the scope of this exception, and when it applies.

According to Article 46 of the TRIPS Agreement the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.

Legislation of the Russian Federation provides quotas govern that counterfeit copies of works and turn materials and implements the predominant use of which has been in the creation of the infringing of the intellectual rights shall be disposed of outside from commerce turn (point 5 of Article 1252 of the Civil Code of the Russian Federation).

Indicated actions may be realized by decision of court. Herewith legislation of the Russian Federation may comprise quotas allowing to exact to income of state materials and implements the predominant use of which has been in the creation of the infringing of the intellectual rights. In particular in cases when introduction in commerce turn such goods is necessary for public interests, rightholder shall have the right to demand removal at the expense of the infringer of counterfeit goods, labels, and packaging of the goods on which an unlawfully used trademark or indication similar to it to the point of confusion according to point 2 of Article 1515 of the Civil Code of the Russian Federation. In other words, in cases when goods on which counterfeit trademark are necessary for state in societal interests (e.g. on social need to children's community etc.) than counterfeit trademark are deleted and subject by recovery to income of the Russian Federation.

21. Article 1302 (and Art. 1312) (IP/N/1/RUS/O/2 at 389) The title of this article "Security for a claim in a copyright violation case," does not seem to match its contents which forbids "using [counterfeit copies of a work] in civil-law transactions." Please clarify, because as written it appears that the scope of the article is much larger than its title.

Article 1302 of the Civil Code of the Russian Federation establishes the right of court to forbid a defendant or other person with respect to whom there are sufficient bases to suppose that he is an infringer of copyright rights to take specific with the purpose of introducing into civil commerce copies of a work with respect to which it is supposed that they are counterfeit.

The court also may impose seizure on all copies of a work with respect to which it is suspected that they are counterfeit and also on materials and equipment used or meant for their preparation or reproduction.

In other words Article 1302 of the Civil Code of the Russian Federation corresponds to her name (Security for a Claim in Cases on the Infringement of Copyright) and provides the possibility of application of security remedy with respect to controversial copies of works and also corresponding materials and implements.

22. Paragraph 4 of Article 1349 (IP/N/1/RUS/O/2). The Objects of Patent Rights

> **4. The following shall not be objects of patent rights:**
> **1) human cloning techniques;**
> **2) the techniques for modifying the genetic integrity of human embryo cells;**
> **3) the uses of human embryos for industrial and commercial purposes;**
> **4) other developments inconsistent with the public interest and humane and moral principles.**

Does "inconsistent with the public interest and humane and moral principles" in paragraph (4) have the same meaning as "protect[ion of] *ordre public* or morality" as used in Article 27(2) of the TRIPS Agreement?

23. Paragraph 6 of Article 1349, provides:

> **6. No legal protection shall be provided to the following as inventions:**
> **1) varieties of plants, breeds of animals and the biological methods for producing them, except for microbiological methods and products produced by such methods;**
> **2) integrated circuit layout-designs.**

(a) Article 27(3)(b) of the TRIPS Agreement requires Members to provide for sui generis protection for plants, if patents cannot be granted for varieties of plants. How does the Russian Federation provide protection for plants? Decree No. 735 of 14/09/2009, the Russian Federation Government Approving the Regulation on Patent Fees and Other Types of Fees Related to Plant Variety Patents and State Registration of Agreements Assigning Exclusive Rights on Plant Variety, is noted, but has this decree been notified to the WTO?

(b) How does the Russian Federation provide protection for integrated circuit designs? Order No. 323 of October 29, 2008 of the Ministry of Education and Science of Russia (Approving the Administrative Regulations to Govern the Performance by the Federal Service for Intellectual Property, Patents and Trademarks of its Functions to Process and Examine Applications for the Registration of Topographies of Integrated Circuits as well as to Grant of Certificates of State Registration of Topographies of Integrated Circuits in accordance with Established Procedure) is noted, has this order been notified to the WTO?

Answers for three previous questions.

Paragraph 4 of Article 1349 CC RF as a whole establishes exclusions from patent rights of solutions contradicting societal interests and principles of humanity and morality, which are common exclusions from patent rights. Subparagraphs 1-3 of the abovementioned paragraph emphasize solutions recognized as subject to exclusion from patent rights. Similar approach is used on the European Union level: Additional Protocol on the Prohibition of Cloning Human Beings of 1998 to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine of 1997, Directive 98/44/EC.

It should be noted that provisions of 4quarter Article of the Paris Convention for the Protection of Industrial Property, according to which "The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law". Thus limitations or reductions of sales of a product in which the invention as well as utility model or industrial design applied for may be embodied, cannot serve as a basis for the recognition of the object of patent rights applied for as contradicting societal interests, principles of humanity and morality with the exception of the cases of direct prohibition of usage (sales) on the territory of the Russian Federation of such particular product as contradicting societal interests, principles of humanity and morality. The list of objects in Paragraph 4 of Article 1349 CC RF includes solutions commercial usage of which shall be prevented for the sake of public order maintenance and morality protection, including protection of life and health of the population as well as preventing extensive damage to the environment.

Seemingly provisions of Paragraph 4 of Article 1349 CC RF imply the same meaning as provisions of TRIPS Article 27(2).

Paragraph 6 of Article 1350 CCR F (in the question Article 1349 was named mistakenly): Legal protection as inventions shall not be granted to: varieties of plants, breeds of animals and biological methods of obtaining them, with the exception of microbiological methods and products obtained through the use of such methods; the topology of integrated circuits. Such objects are recognized as independent result of intellectual activity (Paragraph 1 of Article 1225 CC RF) and are provided by CCRF with a separate ("special"») legal protection.

Legal protection of varieties of plants and breeds of animals is granted by Chapter 73 CC RF as to achievements of breeding.

Legal protection of integrated circuit layouts is explained in Chapter 74 CC RF. CC RF retains the principles of protection and use of integrated circuit layouts established in Law of Russian Federation № 3526-I d.d. 23.09.1992 "On legal protection of topology of integrated circuits" in force prior to Part 4 CC RF. The legal protection granted by the present Code shall extend only to an original integrated circuit layout created as the result of the creative activity of an author and/or specialists unknown to the author in the area of integrated circuit layout development on the date of its creation (Paragraph 2 of Article 1448 CC RF).

According to Article 1452 CC RF the rightholder, during the time period of effectiveness of the exclusive right to the layout may at his option register the layout with the Federal agency of executive authority for intellectual property. The rules of such optional state registration of topology of integrated circuits are determined by the Administrative Rules of Procedure of execution by the Federal agency of executive authority for intellectual property, patents and trademarks functions of receiving applications for state registration of topology of integrated circuits and of their consideration and issuance in accordance with the established procedure of a certificate on state registration of an integrated circuit layout, approved by Order № 323 d.d. 29.10.2008 of the Ministry of Education and Science of the Russian Federation.

24. Article 1359 (IP/N/1/RUS/O/2). Actions Not Deemed an Infringement of the Exclusive Right to an Invention, Utility Model or Industrial Design

> **The following are not deemed an infringement of the exclusive right to an invention, utility model or industrial design:**
> **2) the carrying out of scientific research of a product or method in which the invention or utility model is used or of scientific research of an article in which the**

industrial design is used or the carrying out of an experiment in respect of such product, method or article;

Would experiments using protected inventions or designs to experiment on other things infringe a protected invention or design? For example, if a medical instrument is patented or protected as an industrial design, would use of a copy of that instrument in medical testing infringe the patent or industrial design right?

25. Article 1359, continues, providing:

3) the using of the invention, utility model or industrial design in emergency circumstances (natural calamities, disasters, accidents), with the patent holder being notified of this use as soon as possible and with commensurate compensation being paid henceforth to the patent holder;

According to Article 31(a) of the TRIPS Agreement, each use without authorization of the rights holder shall be considered on its individual merits. Furthermore, Article 31(b) of the TRIPS Agreement clarifies that the requirement to make reasonable efforts to obtain permission may be waived by a Member if certain conditions apply. How does Article 1359 provide for a decision on a case by case basis?

26. Article 1359, continues, providing in paragraph 4:

4) which provides the use of the invention, utility model or industrial design for meeting personal, family, household or other needs other than entrepreneurial activity, unless profit-making or making earnings is the purpose of the use;

This provision may conflict with a normal exploitation of the patent and encroach on the legitimate interests of the patent owner, where the invention or design is intended for household use. Please explain how the provision addresses these concerns.

Answers for three previous questions.

Paragraph 2 of Article 1359 CC RF: the conduct of scientific study of a product or method in which the invention or utility model is utilized, or scientific study of a manufacture in which an industrial design is utilized or the conduct of an experiment on such a product, method, or manufacture; thus third parties without infringing the exclusive right can only study a patented object, but cannot utilize it as a mean o conducting a research.

Not considered as infringing the exclusive right: the conduct of scientific study of a product or method in which the invention or utility model is utilized, or scientific study of a manufacture in which an industrial design is utilized or the conduct of an experiment on such a product, method, or manufacture. This rule allows any person to make sure of the actual properties and characteristics declared in the description to the patent or in the rightholder's advertisement prior to contacting the rightholder and only after doing so to make a decision on reasonability of entering negotiations with the rightholder on purchasing the right of use of the invention.

This only refers to experiment or scientific research conducted on the patented product, method or manufacture themselves but not to experiment or scientific research conducted with their help. Thus the abovementioned rule does not imply commercialization of a patent-protected invention during the conduction of scientific experiment on an object containing the invention by third parties.

Paragraph 3 of Article 1359 CC RF: Not considered as infringing the exclusive right: the utilization of an invention, utility model, or industrial design in extraordinary circumstances (natural disasters, catastrophes, accidents) with notification of this use to the patent holder as soon as possible and with subsequent payment to him of proportionate compensation. The legislator does not limit scope of persons authorized to utilize patented objects without rightholder's pemit should the abovementioned circumstances arise, however such persons shall notify the rightholder about the utilization as soon as possible with subsequent payment to him of proportionate compensation.

This exclusion from the exclusive rights of a patent holder is attributed to the importance of an urgent use of an invention in public interest in case of extraordinary circumstances which should the necessity of preventing or recovering the consequences of natural disasters, catastrophes and other accidents. Also this exclusion from the exclusive rights concerns only extraordinary circumstances and does not extend to other accidents and disasters. Extraordinary circumstances are declared by public authorities of a particular country or by international organizations providing aid in such circumstances.

However the patent holder shall be notified of such use as soon as possible with subsequent payment of proportionate compensation to him. That regulation corresponds with Article 31 of the TRIPS Agreement. Russian jurisdiction lacks precedents on that matter at present. Also the legislator does not determine notification procedure of the patent holder of such use of an invention, utility model, or industrial design and does not declare neither the way of paying the compensation nor its time limitations.

Paragraph 4 of Article 1359 CC RF: Not considered as infringing the exclusive right: the utilization of an invention, utility model, or industrial design for the satisfaction of personal, family, home, or other needs not connected with entrepreneurial activity if the purpose of such utilization is not the receipt of profit or income. As defined in Paragraph 1 of Article 2 CC RF business activity shall be an independent activity, performed at one's own risk, aimed at systematically deriving a profit from the use of the property, the sale of commodities, the performance of work or the rendering of services by the persons, registered in this capacity in conformity with the law-established procedure. Also a citizen, engaged in business activities without forming a legal entity with the violation of the requirements of Item 1 of the present Article, shall have no right to refer, with respect to the deals he has thus effected, to the fact that he is not a businessman. That means that the primary criteria of an activity not recognized as infringing exclusive rights is it being non profit-seeking.

Thus the legislator protects the interests of those members of society who use the patented object without gains.

For example, a person can legally assemble and use a fishing tent the patent on which is held by another person, moreover the person's family and friends can also use the tent. However, selling such tent, even secondhand, with profit shall be recognized as infringement of the exclusive right of the patent holder.

When applying Article 1359 CC RF one should bear in mind that according to Paragraph 5 of Article 1229 CC RF the limitations on exclusive rights to results of intellectual activity are established on the condition that they do not cause unjustified harm to the ordinary use of the results of intellectual activity or means of individualization and do not impair in an unjustified manner the lawful interests of the rightholders.

27. Article 1360 (IP/N/1/RUS/O/2). Using an Invention, Utility Model or Industrial Design in the Interests of National Security

In the interests of national security the Government of the Russian Federation is entitled to permit the use of an invention, utility model or industrial design without the consent of the patent holder, with the patent holder being notified as soon as possible and with a commensurate compensation being paid to the patent holder.

According to Article 31 of the TRIPs Agreement, each use without authorization of the rights holder shall be considered on its individual merits. Please explain how this Article addresses consideration on the individual merits. Also, the term "National Security" appears overbroad and not well defined. Was "national emergency or other circumstances of extreme urgency" intended?

Article 1360 of the Civil Code of the Russian Federation regulates relationships about use of an Invention, Utility Model, or Industrial Design in the Interests of National Security. According to this Article the Interests of National Security are interests of defense and security. In conformity with Item 1 of Article 1 of the Federal Law №61-FZ of 31st May 1996 "About Defense" the Defense is system of politic, economic, military, social, legal and other measures for preparation by armed protection and armed protection of the Russian Federation, integrality and untouchability of the

territory. In conformity with Item 6 of the Strategy of National Security of the Russian Federation until 2020 ratified by Decree of President of the Russian Federation №537 of 12 May 2009 a notion "National Security" is condition of security of personality, society and state from home and foreign threats what give to secure constitutional the rights, freedoms, worthy quality and standard of living of citizens, sovereignty, territorial integrality and stable development of the Russian Federation, the defense and security of the state. In conformity with Article 1 of the Federal Law №390-FZ of 28th 2010 "About Security" the main subjects of guarantee of security are federal state authorities, state authorities of subjects of the Russian Federation, municipal authorities in range of security and the Security Council of the Russian Federation also.

According to Article 1360 of the Civil Code of the Russian Federation in the interests of national security the Government of the Russian Federation as an executive authority assignee to ensure the security is entitled to permit the use of an invention, utility model or industrial design. That is mean the legislator has endowed the Government of the Russian Federation the right to give to other persons right to use patented Invention, Utility Model or Industrial Design in certain conditions and without the consent of the patent holder. Herewith the legislator has established that the patent holder may be notified about use of his invention, utility model or industrial design as soon as possible and with payment of proportionate compensation to him. But Article 1360 of the Civil Code of the Russian Federation do not define an order and term of notification by patent holder about use of invention, utility model or industrial design and does not provide a method of calculation of compensation.

28. Article 1362 (IP/N/1/RUS/0/2 at 408): The Compulsory License for an Invention, Utility Model or Industrial Design

> **1. If an invention or industrial design is not used or is insufficiently used by the patent holder within four years after the issuance of the patent, and a utility model within three years… or industrial design -- if the patent holder refuses to conclude a licence contract with this person on terms meeting the prevailing practices -- is entitled to file a claim with the court …..**

In paragraph 1, does "terms meeting the prevailing practices" have the same meaning as "reasonable commercial terms" as used in Article 31(b) of the TRIPS Agreement?

29. The article also provides "A compulsory simple (non-exclusive) licence may be terminated in a judicial procedure at a claim of the patent holder, if the circumstances due to which the licence has been issued are no longer existing and it is unlikely that they are going to appear again. In this case the court shall establish a term and procedure for termination of the compulsory simple (non-exclusive) licence and of the rights that have come into being due to the receipt of the licence."

Article 31(c) of the TRIPS Agreement states that the scope and duration of such use shall be limited to the purpose for which it was authorized. This article appears to require the patent holder to sue for termination of the compulsive license. Is this correct?

30. Furthermore, the article provides "If the patent holder having an exclusive right to such dependent invention manages to prove that it is an important technical achievement and that is has significant economic advantages over the invention or utility model of the holder of the first patent, the court shall take a decision on granting a compulsory simple (non-exclusive) licence thereto. The right of using the invention protected by the first patent obtained under such licence shall not be assigned to other persons, except for the case of alienation of the second patent."

Article 31(l)(ii) of the TRIPS Agreement provides conditions for when a patent owner is entitled to a cross license. Please explain how this situation is addressed in the Russian system.

31. Article 1362, compulsory licenses. This article makes the provisions of compulsory licenses equally applicable to industrial designs as patents, and results in compulsory licensing (forfeiture) of rights if the patented invention or design is not used or worked within a set time. Paris Convention Article 5(B) provides that the protection of industrial

designs, "shall not, under any circumstances be subject to any forfeiture, either by reason of failure to work or by reason of importation of articles corresponding to those which are protected." Article 2(1) of the TRIPS Agreement requires compliance with Article 5, among other parts, of the Paris Convention. Please explain how Article 1362 addresses the requirements of Article 5(B) of the Paris Convention.

32. Finally, as to Article 1362, Articles 31 (i) and (j)of the TRIPS Agreement requires that judicial review by a distinct higher authority be available. How does the Russian Federation provide for such judicial review?

Answers for five previous questions.

Article 1362 of the Civil Code of the Russian Federation is devoted to detailed regulation of questions of the compulsory licensing. Quotas regulating the Compulsory licensing are founded on the provisions of the Paris Convention for the Protection of Industrial Property (Article 5 item A(2)) and the TRIPS Agreement (Articles 31 and 40).

Semantic maintenance of the notion "conditions corresponding to established practice" is used in Article 1362 of the Civil Code of the Russian Federation and the notion "reasonable commercial conditions" is used in Article 31(b) of the TRIPS Agreement are same.

In case of insufficient using of invention or industrial design during four years since the date of granting of the patent or utility model – during three years since the date of granting of the patent and a patent holder's refusal to conclude license contract with an interested person on conditions corresponding to established practice, this person shall have the right to go to court with a suit against the patent holder for the granting of a compulsory simple licence (non-exclusive license) for the use of an invention, utility model, or industrial design. In the demand in the lawsuit, the interested person must indicate the proposed the terms of a license, including the scope and the conditions of use of the patented object, the amount, procedure, and times of payments. The court makes decision about the granting of the compulsory license if the patent holder does not show that nonuse or insufficient use of the patented object is based on valid causes. All cases of using of the patented object are defined in the court decision. The rights which are is provided in conformity with the compulsory license may not be transferred to third persons.

If the circumstances that were the basis for the granting of simple (nonexclusive) license cease to exist and their reappearance is unlikely, then acting of the Compulsory license may be terminated by judicial procedure on a suit by the patent holder. This quota corresponds to Article 31(c) of the TRIPS Agreement. A duty of proof of absence a/n circumstance is encharged to patent holder. In this case the term and procedure of termination of distributed license and termination of right is arised with getting of this license are established by court.

Article 31(I)(ii) of the TRIPS Agreement foresees a "cross license". Analogous quota is contained in item 2 of Article 1362 of the Civil Code of the Russian Federation. Present item establishes rules for situation when the using of one patented Invention is connected with the using of other patented Invention or patented Utility Model. If other person have the patent to this other Invention or Utility Model than using of first patented Invention needs to get a permission from other patent holder. In case of refusal of other patent holder to get license, first patent holder shall have the right to go to court with a suit for the granting of the Compulsory license. Observation of conditions "an important technical achievement" and "a significant economic advantage" is directed to protection of hindering patent holder's interests and this quota provides some balance of interests of both patent holders and the society in full so long as the society interested in creation of an important technical achievement, patenting them and use. In case of the granting the Compulsory license by court decision second patent holder acquires the right to get from second patent holder analogous license to such Invention for procuring of use which is provided the Compulsory license. Necessary to mark that positions in this item do not provide a possibility to demand a submitting the Compulsory license for procuring of possibility to use patented Utility Model. Such limitation stipulated for the fact that the patent to Utility Model is distributed without a verification of her patentability.

The provisions of Article 1362 of the Civil Code of the Russian Federation about the Compulsory licensing in case of insufficient use the Industrial Design during forth years do not contradict to Article 5(B) of the Paris Convention for the Protection of Industrial Property so long as the

submitting of the Compulsory license to patented Industrial Design does not mean a cessation of his legal protection.

A reconsideration of court decisions is realized in conformity with the Civil Procedural code of the Russian Federation and the Arbitration Procedural code of the Russian Federation.

The procedure of reconsideration of court decisions about the Compulsory licensing on basis of Article 1362 of the Civil Code of the Russian Federation is provided in procedural legislation.

33. Article 1508: (IP/N/1/RUS/0/2 at 463): Article 1508 (1) states that a trademark may be considered generally-recognized in the Russian Federation as the result of intensive use. Can the GOR clarify whether "intensive use" includes knowledge in the Russian Federation which has been obtained as a result of the promotion of the trademark?

The main conditions for an acknowledgement of designation as generally known in the Russian Federation trademark are his intensive use, wide known of this designation in the Russian Federation among the corresponding consumers, and wide known with respect to goods of person who think his trademark is generally known (Article 1508 of the Civil Code of the Russian Federation).

The intensity of use is estimated proceeding from concrete situation, kind of trademark, goods and amount of advertising campaign, speed of mastering of market and other factors.

For confirmation of the intensive use of trademark on the territory of the Russian Federation may be shown in particular: date of starting of use the trademark, the list of populated locality where realization of goods are marked with trademark is made, the amount of realization these goods, methods of use the trademark, average annual amount of consumers of good, position of manufacturer on the market in certain economic sector etc.; countries where trademark have wide known, the expenditure to advertisement of trademark (e.g. annual financial reports), cost (value) of trademark in conformity with data in annual financial reports, the results of interrogation of consumers in question of generally-known of trademark is produced by specialized independent organization.

34. Article 1515 Second sentence (IP/N/1/RUS/O/2 at 466): "If the placing of the goods in transactions is required for the public interest the right holder is entitled to demand removal at the infringer's expense of the illegally used trademark...." The provision appears to allow for a broad exception. Article 46 of the TRIPS Agreement allows for the removal of infringing marks only in "exceptional circumstances." (Article 46 of the TRIPs Agreement: "In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.") Please explain how proposed Article 1515, which allows for removal of infringing marks for claims of "public interest," addresses Article 46 of the TRIPS Agreement.

Article 46 "Other Remedies" of the TRIPS Agreement provides that the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Part 2 of Article 1515 of the Civil Code of the Russian Federation corresponds to shown provision of the TRIPS. In conformity with this Article two main methods of protection to trademark are provide:

- The rightholder's demand of removal from commerce and destruction of counterfeit goods on which an unlawfully used indication;
- The payment of compensation instead of indemnity of damage.

The possibility of presentation of demand about removal of indication is exception from the general rule and it may be shown instead of demand about removal from commerce and destruction of counterfeit goods, and in case only when "the introduction of such goods into commerce is necessary in societal interests". Herewith there is talk about valid social significancy of the

introduction of certain kind of good in civil commerce and about possible negative consequence of destruction for customers what will have make a breach of social interest (e.g. foodstuffs).

Other laws (which seem not to have yet been notified)

35. Article 18.6 of the Law on Circulation of Medicines (as last amended on June 25, 2012) states: "The results of the nonclinical trials of medicinal products and clinical trials of medicinal products submitted by the applicant for state registration of the medicinal products shall not be obtained, disclosed, used for commercial purposes and for purposes of state registration without applicant's permission within six years from the date of the state registration of the medicinal product. Violation of the prohibition specified by this Clause shall entail the responsibility in accordance with the legislation of the Russian Federation. The circulation of medicines in the Russian Federation registered with violation of this Clause shall be prohibited."

How this provision is implemented? Is the six-year term of protection in force? Are there any implementing regulations that would explain (1) what procedures the MOH would follow in order to protect originator's data from both disclosure and from reliance by generic companies and (2) what procedures would generic companies follow to obtain state registration for medical products. Please explain the relationship of Article 18.6 with Article 26 of the same law, which allows for the accelerated review of the marketing authorization applications for generic drugs.

Article 18 of Federal law FZ-61d.d. 12.04.2010 has been complemented with section 7 of the following content: «It 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 abovementioned 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»

The abovementioned section applies after 22 August 2012.

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."

Article 26 FZ-61 d.d.12.04.2010 «On turnover of medical products» applies only to urgent production of experts evidence but not to urgent registration. Since rapid production of experts 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 procedure if the original medical product is not covered by patent protection.

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.

Actually a series of amendments in the Law on Circulation of Medicines N61 is considered by the Government.

4.2 Responses to Follow-Up Questions[7]

Follow-Up to Question 1: We would like to confirm our understanding of your response: Article 1232 does not apply to works protected by copyright and related rights, and that although certain types of copyrighted works may register under this Article (i.e. computer programs and databases), such registration is voluntary and not required to receive copyright protection. The phrase "means of individualization" is used a few times throughout this document and we would appreciate an explanation, perhaps just in different words, of what this phrase means. We imagine it may be simply a translation issue and may relate to original authorship but would be grateful for clarification.

We confirm that the provisions of the Article 1232 of the Civil Code of the Russian Federation do not apply to works, protected by copyright and related rights. Regarding such copyright objects as computer programs and databases state registration is conducted at the option of the right holder and may be made at the Patent Office. Such registration is voluntary. Computer programs and databases are copyright-protected regardless of the fact that the registration has been made or not by the right holder (subparagraph 2 paragraph 4 of Article 1259 and paragraph 1 of Article 1262 of the Civil Code of the Russian Federation (hereinafter - CC RF)).

The term "means of individualization" is used in the CC RF as generalized and systematic (paragraph 1 of Article 2; Article 128; paragraph 4 of Article 129; paragraph 1 of Article 1225 of the CC RF etc.). It includes types of an intellectual property intended for individualization of legal entities, goods, works, services and enterprises.

Means of individualization include:

(1) Trade names
(2) Trade marks and service marks
(3) Appellations of origin
(4) Commercial names

The means of individualization are described in chapter 76 of the CC RF.

Follow-Up to Question 2: We would like clarification regarding the first concern raised: Can an author provide an exclusive license limited to only one right (i.e., reproduction) and maintain ownership of the other exclusive rights? And could you confirm that there is no requirement to register a transfer or assignment of exclusive copyright rights? We understand your last paragraph here to mean that Article 1234 does not apply to works protected by copyright or related rights; and that "result of intellectual activity" is a patent-related activity or other non-copyright activity. Is that correct?

Yes, an author can provide an exclusive license limited to only one right (i.e., reproduction) and maintain ownership of the other exclusive rights.

For example, the author of the literary composition can provide an editor with an exclusive license to reproduction and distribution of the copies, while maintaining other rights (particularly the right to the translation into other languages, film right, stage right and right to bringing to the public etc.).

[7] Responses circulated in document IP/C/W/592/Add.1 to questions posed in document IP/C/W/589/Add.1

We confirm that that there is no requirement to register a transfer or assignment of exclusive copyright and related rights.

A state registration of an exclusive copyright transfer is required only in case when a computer program or database has been registered at the wish of the right holder at the Patent Office. Such registration is required only in case of alienation of an exclusive copyright for computer program or database, or in case of an exclusive copyright transfer under the procedure of universal legal succession (inheritance, legal entity reorganization). A state registration of a license contract for such computer program is not required.

Article 1234 of the CC RF establishes general rules regarding the contract on the exclusive right alienation as special type of civil law contract. This article applies to all the law-protected types of intellectual property, including copyright and related rights objects. A question of a state registration of an exclusive copyright alienation (paragraph 2 of Article 1234) shall be resolved pursuant to the paragraph 2 of Article 1234 of the CC RF. It provides that a state registration of an exclusive copyright transfer or assignment is required only in case when according to the law an exclusive right arises on the ground of mandatory state registration. An exclusive right for copyright and related rights objects arises from the moment of its creation. The registration of the copyright and related rights objects or compliance with other formalities is not required for origin, realization and protection of the copyright and related rights (paragraph 4 of Article1259 and paragraph 2 of Article 1304 of the CC RF). The requirements of the paragraph 2 of Article 1234 regarding state registration are not applied to the exclusive copyright and related rights alienation contracts (except for contracts of alienation of exclusive right for a registered computer program or database – paragraph 5 of Article 1262 of the CC RF).

The term "the results of intellectual activity", is used in the CC RF as generalized and systematic as well as term "means of individualization" (paragraph 1 of Article 2; Article 128; paragraph 4 of Article 129; paragraph 1 of Article 1225 of the CC RF etc.). Results of intellectual activity includes objects of copyright and related rights, inventions, utility models, industrial designs, breeding achievements, topographies of integrated circuits, secrets of production (know-how).

Follow-Up to Question 3: We would like to confirm our understanding of your response: is it true that, like Article 1234, Article 1235 does not apply to works protected by copyright and related rights?

No. Article 1234 and Article 1235 of the CC RF are located in Chapter 69 «General provisions» and thus apply to all the objects of intellectual property, including works protected by copyright.

Follow-Up to Question 4: Paragraph 3 of Article 14*bis* of the Berne Convention provides that "unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof." Does Article 1240 or another Article of Russian law provide that the provisions of Berne Article 14*bis* be applied to authors of scenarios, dialogues and musical works created for the making of the cinematographic work? We would also like clarification of how Article 1240 impacts an author's contract with a film producer. In other words, could you describe what rights an author retains in his work when that work is part of a film? And could you specify where those rights are provided for in Russian law? For example, can an author's contract maintain some rights, such as the right of public performance?

The provisions of paragraph (2)(b) of the Article 14*bis* of the Berne Convention are provided by the Articles 1240 and 1263 of the CC RF.

Under paragraph 2 of Article 1263 of the CC RF the authors of an audiovisual work are:

(1) the director
(2) the author of the script
(3) the composer being the author of a musical work (with or without a text) specifically created for the audiovisual work

If an author of the film (a producer) makes contracts with these three persons on the alienation of theirs exclusive rights, the exclusive right on film will transfer to him in general. The other authors

of the works that are incorporated in an audiovisual work, either existing before (the author of the work that underlies the script, and others) or created in the course of working on it (photography director, art director and others) have their exclusive rights to their works (but not to a film in general). These rights shall be also acquired by a film producer on the grounds of a contract.

Article 1240 of the CC RF establishes that if an object of intellectual property is created specially to be included in the film, such contract shall be deemed an exclusive right alienation contract, except as otherwise envisaged by agreement of the parties. Thus, this rule applies to all three authors of a film (paragraph 2 of Article 1263 of the CC RF), and to any other authors, whose works have been specially created for this film (for example to a dialogues author, art director, photography director).

The transfer of an exclusive right from an author to a producer is a subject to the contract. Under paragraph 1 of Article 1240 of the CC RF this contract is considered as an exclusive right alienation contract. This provision is defined as dispositive, so the parties of a contract have a choice to conclude a license contract or an exclusive right alienation contract.

Paragraph 2 of Article 1240 of the CC RF provides that the terms of a license contract are invalid when they limits the use of the intellectual property when this property is a part of a complex work. This rule reflects the content of Article 14*bis* of the Berne Convention as it aimed to prevent the refusal of an author to entitle a person who has created a complex object (inter alia, a producer) to use his works which are necessary to dispose the rights to use complex works in general.

So, director, author of the script, composer, dialogue writer and any other person who created a work specifically for its use in a film in accordance with Article 1240 of the CC RF are covered by a general rule of para.2(b) Article 14*bis* of the Berne Convention which complies with a provision of paragraph 3 Article 14*bis* of the Berne Convention which allows to establish in national legislation the rules which are different from those set in paragraph 2(b) of the named Article.

The list of rights conferred to authors of any copyright objects is contained in paragraph 2 of Article 1270 of the CC RF. If the contract on the alienation of the exclusive right is concluded, all the rights conferred to authors entirely transfer to a producer. Exception to this rule is the right of a composer for «a fair compensation» for use of his work as a part of an audiovisual work which is charged when this audiovisual work is publicly performed and also when it is broadcasted or cable transmitted (paragraph 3 of Article 1263 of the CC RF). Composer reserves this right even it has been alienated unless otherwise is expressly provided by his contract with a producer.

Entering into a license contract the parties establish themselves a list of rights which are transferred from an author to a producer for using its work. However, this list cannot be narrower than it is necessary for a film use in general (paragraph 2 of Article 1240 of the CC RF). Since a producer needs a right of pubic performance in order to use the film in general, this right could not be reserved by the author.

<u>Follow-up to Question 6</u>: In the second paragraph, could you further explain the different actions one must take to transfer or assign ownership depending on whether a computer program or database is registered or unregistered?

In accordance with paragraph 5 of Article 1262 of the CC RF contracts for the alienation of the exclusive right to a registered computer program or database as well as the transfer of the exclusive right to such a program or database to other persons without a contract shall be subject to state registration.

In accordance with Article 1241 of the CC RF the transfer of an exclusive right to a registered computer program or database to another person without a conclusion of a contract with the right holder is admissible in the cases and on the grounds established by law, for instance, in line of universal succession (inheritance, the reorganization of a legal entity) and in the event of the levy of execution on the right holder's property.

The license contracts on the granting of the right to use registered computer programs and databases are not required to be registered.

Regarding unregistered computer programs and databases there is no requirement to register transfer or granting the rights to such programs and databases.

Follow-Up to Question 7: Is there 1) a limit on the number of copies that can be made by an individual as a free reproduction under Article 1273, and/or 2) a requirement that such copies be made from a lawfully acquired copy of the work? And in reference to your penultimate paragraph, we do not see a definition of "household" within the civil code; is this meant to be understood as one's immediate family (as opposed to a dormitory housing fifty students, for example)

1) The CC RF doesn't contain any indications on a limit on a number of copies that can be made by an individual as a free reproduction. However, the CC RF clearly defines boundaries within which an individual is entitled to make a free copy of the work:

Firstly, subparagraph 2, paragraph 5 of Article 1229 of the CC RF stipulates that the provided cases of free reproduction for personal use should not cause unjustified harm to the ordinary use of the results of intellectual activity and impair in an unjustified manner the lawful interests of the right holders.

Secondly, paragraph 1 of Article 1273 of the CC RF states that the free reproduction is limited to a necessity of an individual and exclusively for personal purposes, which Article 1273 defines as the subsequent non-commercial use of such copy in order to satisfy personal needs or the needs of its family.

2) In accordance with Article 1273 of the CC RF only legally promulgated works may be subject to free reproduction for personal purposes.

Highest judicial bodies of the Russian Federation - the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation – also indicate such matter by stipulating in the paragraph 34 of the Resolution of Plenum of the Supreme Court of the Russian Federation No.5, Resolution of Plenum of the Supreme Arbitration Court of the Russian Federation No.29 dated on 26 March 2009 «On certain issues arisen in connection with coming into effect of the Part IV of the Civil code of the Russian Federation», that while applying the Article 1273 of the CC RF, the courts should take into consideration the fact, that the reproduction should not be considered as a violation of the exclusive rights for reproduction only if at the moment of making the copy the work itself is used legitimately.

Thus, reproduction, made with counterfeit copies of work or at unlawful bringing the work to the public (including the unlawful placement on the Internet) shall be considered as a violation of the exclusive rights to the work.

The term «household» is taken not from the CC RF, and was used in our explanation to describe «the use for personal proposes».

Follow-Up to Question 9: We remain concerned that this exception might be broader than the 3-step test permits and would like clarification. For example, would a non-profit entity be able to use this exception to reproduce a work in dot-relief type (which we understand to be Braille) when the copyright owner has made the work available in dot-relief type?

No, it wouldn't. If the author published the work in dot-relief type or in any other special type intended for persons with visual impairment, the provisions of the subparagraph 6 paragraph 1 of Article 1274 of the CC RF are not applied. If the work was published for the first time in a legal way in any other type (not in a special type), it may be used in special type by any person in accordance with the provisions of subparagraph 6, paragraph1 of Article 1274 of the CC RF.

Follow-Up to Question 10: We are not concerned about the ability to provide exceptions for the purposes of parody and caricatures; rather, we remain concerned about the breadth of the specific exception itself. Is this exception limited to taking only the portion of the work necessary for the purposes of the parody? In other words, we are interested in how the parody exception itself complies with the three-step test.

It would be rather difficult to formulate such provisions in a law. For example, paragraph 4 of Article L122-5 of French Intellectual Property Code does not contain any details regarding the possible scope of work use for the purposes of a parody creation. These questions are resolved by a judicial practice. The courts are also guided by three-step test.

In the ruling of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 11 November 2013 № 5861/13 on a claim of "Pervoe muzykalnoe izdatelstvo" (English: "First music publishing company"), LLC to "MTF Production", LLC to recover a compensation for violation of exclusive rights for a musical work with lyrics, the Court satisfied claims of the plaintiff and reversed a judgments of courts of inferior jurisdiction. The Supreme Arbitration Court specified that the courts of inferior jurisdiction considered the music video as a subject of parody but did not take into account that it was accompanied with the music works which had not been arranged for parody. So, since music works themselves were not subjects of parody, it was necessary to obtain the permission for their use and it means that exclusive rights for these works were infringed. It seems that such ruling of the court shows that judicial practice forms a right approach to such adjudgements.

Follow-Up to Question 13: This answer seems to indicate that this Article impermissibly usurps the exclusive rights of the authors whose works are incorporated into a database. Please explain how Article 1334(2) accounts for the rights of authors of works included in a database.

Wording of a paragraph 2 of Article 1334 of the CC RF provides only that related rights arising for author of a database, whose creation requires significant financial, material, organizational or other costs, regarding the retrieval of data from such database don't affect copyrights on data, which constitutes this database, itself and also copyrights of author of such database. For example, similar provision is contained in paragraph 4 of Article 1260 of the CC RF. This rule allows to consider exclusive rights for works from a database and rights for a database in general as separate, not creating a co-authorship, not absorbing each other, requiring the protection individually.

Rights of the authors of materials included into the database are protected under paragraph 3 of Article 1260 of the CC RF, which states that any author of derivative or complied work (database is considered as a complied work – paragraph 2 of Article 1260 of the CC RF) exercises his copyrights provided that the rights of authors of works, used in derivative or complied work creation, are respected.

The Federal Law dated 12 March 2014 No.35 "On amending Parts I, II and IV of the Civil Code of the Russian Federation and certain legislative acts of the Russian Federation" supplemented the Article 1303 of the CC RF by paragraph 3. In accordance with this paragraph «related rights are exercised with observance of the author rights to the works of science, literature or art, used while creating objects of related rights. Related rights are recognized and exercised regardless of the existence and operation of copyrights for these works». This provision comes into force from October 1, 2014 and applies to all the cases when the related rights objects may contain objects of copyrights, including to the provisions of section 5 Chapter 71 of the CC RF.

Follow-Up to Question 14: We would like further clarification. Do we correctly understand that Chapter 71 protects scientific, literary and artistic works after the copyright term has expired and those works have fallen into the public domain and Chapter 70 applies to those works while they are protected by copyright?

No, this understanding is not correct.

Firstly, First, Chapter 71 of the CC RF regulates the relationships of the use of all the objects of related rights. The rights of the publisher are regulated by only one section (section 6) of the Chapter 71 of the Civil Code of the Russian Federation.

Secondly, the right of the publisher can arise not only in case when protection of an exclusive right to work expired and this work has fallen into public domain but also in case when the work has never been protected by copyright. As an example of the second case could be the publication of the work unknown before, whose author had created this work prior to the beginning of legal copyright protection in Russia (till 1828).

Provisions of section 6 Chapter 71 of the CC RF are formulated by analogy with the Article 4 of the Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (the codified version).

Follow-Up to Question 14: What type of works could be protected under Chapter 71?

Chapter 71 of the CC RF protects the objects of related rights. Section 6 of Chapter 71 of the CC RF protects scientific, literary or artistic work (music works, works of art, literary works, etc.), previously not made public and that have fallen into the public domain or that are in the public domain by virtue of the fact that they are not protected by copyright.

Follow-Up to Question 14: Paragraph 3 of the answer notes that "Article 1337 CC RF publisher is the citizen who lawfully made public or organized the making public of a work of scholarship, literature, or art previously not made public and that has gone into the public domain (Article 1282 CC RF) or that is in the public domain by virtue of the fact that it is not protected by copyright." Could you further explain what types of rights this would confer, and to whom?

The publisher is a citizen who has legally promulgated or organized the promulgation of a work that was in the public domain and was unknown for the public. Such citizen could be, for example, someone from descendants of the dead author, but also could be any citizen who found somebody's manuscripts or illustrations at his attic or dustbin, provided that such works correspond to the provisions of paragraph 1 of Article 1337 of the CC RF and a such citizen made an effort to promulgate these works.

The provisions of Article 1337 of the CC RF provide the following rights to the publisher:

(1) exclusive right to: reproduction of the work, distribution, public show, import, hiring out, public performance, radio or television broadcasting, cable communication, bringing the work to the notice of the public. Exclusive right of publisher covers almost all the authorities as the exclusive right of the author, except for the translation or other processing of the work as well as the practical implementation of an architectural, design, town planning or landscaping project;

(2) the right to indicate his name on copies of a work which he made public and in other cases of its use including translation or other processing of a work (of course this right by no means doesn't except the necessity to indicate the name of its author at this work).

Follow-Up to Question 14: Also, does this Chapter protect publication of works that are outside the scope of copyright (i.e., "not protected by copyright"), such as ideas, procedures, methods of operation or mathematical concepts? This may be a translation problem, but we remain unclear about whether/how non-copyrightable works are protected and why they would be protected here.

According to paragraph 2 of Article 1337 of the CC RF the rights of the publisher extend to works that, irrespective of the time of creation thereof, could be deemed objects of copyright in accordance with the rules of Article 1259 of the CC RF.

In accordance with Article 1259 of the CC RF copyright does not extend to ideas, concepts, principles, methods, processes, systems, manners or the resolution of technical, organizational or other problems, inventions, facts, programming languages.

Thus, ideas, procedures, methods of operation and mathematical concepts are not covered by Chapter 71 of the CC RF.

Follow-Up to Question 14: Finally, we would like to confirm understanding that the 25-year term set forth in Article 1340 only applies to publications of unpublished works that occur after the term of the exclusive right set forth in Article 1281 has expired.

Yes, it's true. 25-year period establishes for the earlier unpublished works if the general term of

copyright, established by Article 1281 of the CC RF, had already expired. Thus, protection of publisher rights doesn't rival the copyright for the work, but establishes in addition to such protection.

Follow-Up to Question 15: **We understand in your response that the Russian Federation uses the "rule of the shorter term," a familiar concept permitted under the Berne Convention for works. We would like some further clarification, however. Would a US work published in the US in 1975 be protected under Russian law? In the United States, for example, a work published here in 1975 would initially be protected under the 1909 US Copyright Act and would be protected from the date it was published with a copyright notice. That work would initially have been protected for a term of 28 years from that date for the first term and then, due to amendments to US law, automatically extended another 67 years for the second term for a total of 95 years from 1975. Would a US sound recording published in the US in 1975 be protected under Russian law? (keeping in mind that a sound recording in the US is a "work" but under Russian law a sound recording receives neighboring rights protection, and the Rule of the Shorter Term only applies to Berne works).**

The term of protection granted by Article 7 of the Berne Convention doesn't depend on the date of accession to this Convention and by general rule shall be no less than 50 years after the death of the author (paragraph 1 of Article 7 of the Berne Convention).

According to paragraph 4 of Article 1256 of the CC RF the legal protection to the works on territory of Russian Federation according to international treaties of Russian Federation is granted to works which have not fallen to the public domain in the country of origin due to the expiration of such exclusive right validity term for these works and have not fallen to the public domain of Russian Federation due to the expiration of exclusive right validity term for them in accordance with the CC RF. At the same time validity term of an exclusive right on territory of Russian Federation cannot exceed an exclusive right validity term set out in a country of origin of a work.

In accordance with the provisions of the CC RF the principle of calculating the term of protection depending on the date of death of the author is set as a general rule for calculating the exclusive right validity term: the exclusive right to a work shall be effective for the whole lifetime of the author and 70 years from January 1 of the year following the year of the author's death (subparagraph 1. Paragraph 1 of Article 1281 of the CC RF).

The exclusive right in a work created by co-authors shall be effective for the whole lifetime of the author who survives the other co-authors and 70 years from January 1 of the year following the year of his death (subparagraph 2, paragraph 1 of Article 1281 of the CC RF). At the same time, if the work is promulgated after the author's death the exclusive right for such work shall be effective for 70 years after the promulgation thereof from 1 January of the year following the year of the promulgation, provided the work is promulgated within 70 years of the death of the author (paragraph 3 of Article 1281 of the CC RF).

Thus the work which received the protection in the US since 1975 for a general term of 95 years, will be protected under Russian legislation from 1975 for a term of the author's life and 70 years after his death, if the 95-years term under US legislation is expired earlier this term (in such case the protection will be expired on the base of shorter term rule).

Slightly different conditions of legal protection are provided in respect of solely sound recordings (phonograms) - objects of related rights.

In the Russian Federation recognition of foreign right holders' exclusive rights for phonograms is conducted in accordance with the international treaties of the Russian Federation provided that two conditions are respected, that is: with respect to phonograms that (1) have not passed into the public domain in their countries of origin due to the expiry of the effective term of exclusive rights to such object established in those countries, and (2) have not passed into the public domain in the Russian Federation due to the expiry of the effective term of exclusive right envisaged by the CC RF (paragraph 3 of Article 1304 of the CC RF).

Thus, if the phonogram falls into the public domain in the country of its origin, it will not be protected in the Russian Federation, even if the term of protection of such phonogram has not

expired in the Russian Federation.

Both the Russian Federation and the US are the members of the WIPO Performances and Phonograms Treaty. In accordance with Article 17 of this Treaty the term of protection to be granted to performers shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed in a phonogram; the term of protection to be granted to producers of phonograms shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the fixation was made.

Regarding the term of validity of the exclusive right to a phonogram, Article 1327 of the CC RF also fixes a 50 year term from January 1 of the year following the year in which the recording took place. However if the phonogram is promulgated before the end of this 50-years term, the exclusive right validity term will be expired after 50 years from the moment of its promulgation but not from the moment of its recording.

Thus, a sound recording, promulgated in the US in 1975, will be protected in accordance with the Russian law as an object of related rights for 50 years from the date of its promulgation.

Follow-Up to Question 15: Could you also clarify what is meant by a work "made public" in the third paragraph of your response? More precisely, do you mean "published?" "first published" and/or "simultaneously published"?

In accordance with Article 1268 of the CC RF making the work public means an action which opens the work to the public for the first time by means of publication, public show, public performance, broadcast or cable or in any other manner.

In such case the publication (release to the world) is the release for circulation of copies of the work which are copies of the work in any material form in a quantity sufficient for meeting the public's reasonable needs depending on the nature of the work.

Thus, publication (release to the world) of the work is one of the means of making the work public (promulgation of a work).

Follow-Up to Question 16(a): Because of the manner in which it was translated, we would like to confirm that subpoint 3 of point 1 of Article 1256 grants protection for US authors for published and unpublished works. ("the works promulgated outside the territory of the Russian Federation or non-promulgated but located in any objective form outside the territory of the Russian Federation, and it is recognized on the territory of the Russian Federation to be held by authors (their successors) being citizens of other states or stateless persons in accordance with international treaties of the Russian Federation.")

Yes, subparagraph 3, paragraph 1 of Article 1256 of the CC RF in accordance with the Berne Convention, both Russian Federation and the US are its members, grants protection to US authors for published and unpublished works.

Follow-Up to Question 16(b): We would like to confirm that subpoint 3 of point 1 of Article 1256 grants protection to non-Berne authors for works first published in the US

Yes, subparagraph 3, paragraph 1 of Article 1256 of the CC RF in accordance with the Berne Convention, both Russian Federation and the US are its members, grants protection to non-Berne authors for works first published in the US

Follow-Up to Question 16(c): We would like to confirm that subpoint 3 of point 1 of Article 1256 grants protection to authors who are not nationals of a Berne country but who have their habitual residence in the US

Yes, subparagraph 3, paragraph 1 of Article 1256 of the CC RF in accordance with the Berne Convention, both Russian Federation and the US are its members, grants protection to authors who are not nationals of a Berne country but who have their habitual residence in the US

Follow-Up to Questions 16(d) and (e): We would like to confirm that subpoint 3 of point 1 of Article 1256 grants protection to 1) authors of audiovisual works the maker of which has its headquarters or habitual residence in the US and 2) authors of works of architecture constructed in the US and 3) authors of artistic works incorporated in a building or structure located in the US

Yes, subparagraph 3, paragraph 1 of Article 1256 of the CC RF in accordance with the Berne Convention, both Russian Federation and the US are its members, grants protection to: (1) authors of audiovisual works the maker of which has its headquarters (in case of legal entities)or habitual residence (in case of individuals) in the US and (2) authors of works of architecture constructed in the US and (3) authors of any other artistic works incorporated in a building or structure located in the US

Follow-Up to Question 17: We would like clarification, specifically when a work is not used separately but within an audiovisual work. Since authors of musical compositions contained in audiovisual works are considered authors of the audiovisual work under Article 1263, does the author of the musical composition have a public performance right when that music is contained in the audiovisual works and communicated to the public via television broadcasting or exhibited in theaters under Article 1263, point 3?.

Paragraph 3 of Article 1263 of the CC RF assigns to the composer who is the author of a musical work (with or without lyrics) used in the audiovisual work only the right for "fair" remuneration for public performance, as well as for communication by wireless means or by wire of an audiovisual work. This right is not in any way connected to the right for public performance, including exhibition in theaters or communication to the public via television broadcasting.

The authors of an audiovisual work on the base of the exclusive right alienation contract (Article 1234 of the CC RF) or on the base of a license contract (Article 1234 of the CC RF) transfers to the producer (creator of the audiovisual work) the right to use their work in the composition of a complex audiovisual work.

Furthermore as we already mentioned, in accordance with Article 1240 of the CC RF the provisions of the license contract restricting the right to use an audiovisual work shall be invalid. Please note that we are talking about the use of an audiovisual work.

Thus, by concluding contract with producer (the creator of an audiovisual work), authors transfer or grant him the rights for such a work as a whole, and therefore the producer has an exclusive right for public performance, including exhibition in theaters or communication to the public via television broadcasting.

Follow-Up to Question 18: We would like to confirm our understanding. For audiovisual works created after August 2, 1993, the term of protection is 70 years following the death of the last surviving author (counting from January 1 of the year following the year of her death), and for audiovisual works created before August 3, 1993, the term of protection is 70 years after the date of publication.

In accordance with paragraph 2 of Article 1263 of the CC RF the authors of an audiovisual work are: 1) the director; 2) the author of the script; 3) the composer being the author of a musical work specifically created for the audiovisual work. Taking to account this provision, if an audiovisual work is created after August 2, 1993 the term of its protection is 70 years following the 1 January of the year following the year of death of the last surviving author

At the same time, if an audiovisual work created after 2 August 1993 was published after the death of author (authors), the exclusive right to such work shall be effective during the course of 70 years after the work was made public, counting from 1 January of the year following the year of its publication, provided that the work was made public within the course of 70 years after the death of the author (paragraph 3 of Article 1281 of the CC RF).

Regarding the works created before 3 August 1993 the term of protection is 70 years from the date of its legal publication, and 70 years from the date of its creation if it was not published.

Follow-up to Question 20: We understand this to be a question related to TM-counterfeit goods but would like clarification about what "societal interests" would be considered appropriate for counterfeit goods to be recovered; what would happen to those goods; and who might benefit from that recovery (We do not understand the meaning of the phrase "subject by recovery to income of the Russian Federation.")

The provisions of clause 2 of article 1515 of the CC RF establish a removal from circulation of goods at the expense of an infringer. The exception is made for cases when commercialization of such goods is necessary for public interests. In this case a trademark which is being illegally used must be erased from goods, labels and packages at the expense of infringer. The public interest may be determined only by the Court or Governmental authority. For example, in the case of natural catastrophe or disaster.

Expression «to the state revenue» according to the Article 1515 of the CC RF is not used. The «commercialization» term is used in CC RF regarding not only for questions connected with commercial benefit, but in general sense regarding possibility of making a deal with such goods (including free deals) (Article 129 of the CC RF). In case a Court or any Governmental authority sets a necessity of use of goods for the public benefit, so in these cases there is no way to get commercial benefit.

Follow-up to Question 21: Article 1312 refers back to Article 1302 and we therefore understand this Article to amount to an injunction. Is that a correct reading? Could you describe what Article 1312 adds to 1302 that is not inherent in Article 1302?

Article 1302 of the CC RF refers to measures to secure a claim for copyright infringement, including court injunction for a person to take specific actions (e.g. reproduction, sale, import) with the purpose of introducing into commercial circulation copies of a work suspected to be counterfeit.

Article 1312 of the CC RF extends the provisions of Article 1302 of the CC RF with relations in the field of related rights, which means the possibility of a court injunction for a person to take specific actions listed in Article 1302 of the CC RF, not only in relation to works protected by copyright but also in relation to objects of related rights.

Provisions of Article 1312 of the CC RF do not add new or limit any provisions of Article 1302 of the CC RF.

4.3 Responses to Additional Follow-Up Questions[8]

Additional Follow-Up to Question 3: This is likely a translation problem, but we would like to confirm our understanding of your explanation of Article 1232 and therefore will restate our previous question: Would a foreign author who enters a license contract have to register the license contract in Russia? If a foreign author does not register the license contract in Russia, what consequences, if any, would the failure to do so have on the validity of the license?

If in question 3 author is considered as citizen who created a work of science, literature or arts (object of copyright) by his creative work, it is necessary to take into consideration that the Civil Code of the Russian Federation (hereinafter – CC RF) does not require the state registration of the license contract under which the author or other rightholder of work provides or undertakes to provide the right to use this work to the other party.

At the same time it should be borne in mind that the in CC RF the term "author" is used not only in relation to the authors of works (objects of copyright). The CC RF also establishes provisions for the authors of other results of intellectual activity, for example, the authors of Topographies of Integrated Circuits (Article 1450 of the CC RF).

According to para 2 of Article 1460 of the CC RF, if the topology of integrated circuits has been registered in the Federal executive authority on intellectual property (Article 1452), a granting of

[8] Responses circulated in document IP/C/W/592/Add.2 to Additional Follow-Up Questions posed in document IP/C/W/589/Add.2.

right to use topology under a license contract shall be subject to state registration in the manner prescribed by Article 1232 of the CC RF. In this case, it is necessary to take into account para 6 of Article 1232 of the CC RF. This para stipulates that if the requirement of state registration of granting of right to use an integrated circuit layout to another person under a license contract was not met, the granting of right to use is considered invalid.

Additional Follow-Up to Question 4: The Russian Federation notes that portions of the Russian Civil Code correspond to Article 14bis of the Berne Convention. Article 14bis permits countries to establish, by legislation, ownership of cinematographic works. If a country has established among the copyright owners in the cinematographic work the authors who have brought contributions to the making of the cinematographic work, such country may provide that authors who contribute to cinematographic works cannot object to certain uses of the works (e.g., reproduction, distribution, public performance) in the absence of any contrary or special stipulation. The Russian Federation's answer to our question does not appear to address the specific language of Article 14bis "in the absence of any contrary or special stipulation." The Russian Civil Code appears to prohibit contrary and special stipulations (which 14bis(2)(c) permits a country to require in writing). As an example: In the U.S., music composers maintain the right of public performance in their contracts when their musical works are used in motion pictures, and then license the public performance of their music when the motion picture is communicated to the public via television or cable. This does not appear to be a possibility under your law. Please explain how Russian law complies with Article 14bis(2)(b).

The provisions of Part 4 of the CC RF contain the references to the "contrary or special conditions" as provided by Article 14 bis (2) (b) of the Berne Convention. According to subpara 4 of para 2 of Article 1263 of the CC RF the producer of audiovisual work shall be entitled to an audiovisual work as a whole, unless otherwise follows from the contracts concluded by him with the authors of an audiovisual work (director, script writer and composer).

In this case, the right to use audiovisual work will oblige the user to obtain the consent not only from the producer of an audiovisual work, but also from the author of such work.

Additional Follow-Up to Question 10: We would like to confirm our understanding of the application of the three-step test to exceptions for parody and caricatures. The Russian Federation's response noted that courts are generally guided by the three-step test when considering parodies and caricatures. Please confirm our understating that in Russian law, parodies and caricatures are generally considered to comprise exceptions to copyright law, but that courts must apply the three step test when considering whether the parody or caricature exception is applicable in any particular case. Also, please confirm our understanding of the Russian case referenced in the Government's response. It appears that the court decided that the defendant's use of the musical work was an infringement because the musical work was not a subject of parody even though the music video itself was a parody.

We confirm your understanding of three-step test applied to exceptions for parodies and caricatures.

In relation to the case on the claim of "Pervoe muzykalnoe izdatelstvo" (English: "First music publishing company"), LLC to "MTF Production", LLC the court concluded that the subject of parody was certain elements (dances) of music band performance, recorded by technical means. It was dancing at the center of stage number. Musical works (with text) accompanying the parody performance are not the subject of parody and thus their use resulted in a violation of the copyrights of right holders.

Additional Follow-Up to Question 13: The Russian Federation's response explains that under the Russian Civil Code exclusive rights for works from a database and rights for a database itself are separate and "not absorbing each other." Please confirm our understanding that a copyrighted work that happens to be included in a database retains its separate copyright and that the right in the database only protects the overall selection, coordination and arrangement.

According to Article 1260 of the CC RF the author of database owns the copyright in the selection or arrangement of materials (compilation).

The inclusion of the work in the database requires the consent of the author or other right holder of the original work.

Author of the work, included in a database, has the right to use his work, regardless of the database, unless otherwise provided by the contract with the author of the database.

Additional Follow-Up to Question 17: As explained in the further follow up to Question 4, the Russian Federation notes that portions of the Russian Civil Code correspond to Article 14bis of the Berne Convention. Article 14bis permits countries to establish, by legislation, ownership of cinematographic works. If a country has established among the copyright owners in the cinematographic work the authors who have brought contributions to the making of the cinematographic work, such country may provide that authors who contribute to cinematographic works cannot object to certain uses of the works (e.g., reproduction, distribution, public performance) in the absence of any contrary or special stipulation. The Russian Federation's answer to Questions 4 and 17 does not appear to address the specific language of Article 14bis "in the absence of any contrary or special stipulation." The Russian Civil Code appears to prohibit contrary and special stipulations (which 14bis(2)(c) permits a country to require in writing) and the response suggests that such provisions would be invalid. As an example: In the U.S., music composers maintain the right of public performance in their contracts when their musical works are used in motion pictures, and then license the public performance of their music when the motion picture is communicated to the public via television or cable. This does not appear to be a possibility under your law. Please explain how Russian law complies with the provision in Berne Convention Article 14bis(2)(b) which allows authors who contribute to cinematographic works to make a special stipulation retaining the right to object to certain uses of their work (e.g., public performance).

The provisions of Part 4 of the CC RF contain the references to the "contrary or special conditions" as provided by Article 14 bis (2) (b) of the Berne Convention. According to subpara 4 of para 2 of Article 1263 of the CC RF the producer of audiovisual work shall be entitled to an audiovisual work as a whole, unless otherwise follows from the contracts concluded by him with the authors of an audiovisual work (director, script writer and composer).

In this case, the right to use audiovisual work will oblige the user to obtain the consent not only from the producer of an audiovisual work, but also from the author of such work.

Additional Follow-Up to Question 20: Please provide examples, if any, of instances when courts or other governmental authorities determined that counterfeit goods should be recovered for societal interests.

There are no any court decisions providing that counterfeit goods should be recovered for societal interests.

However, in the enforcement practice of customs authorities there are cases when counterfeit goods seized in the framework of administrative proceedings, after the court decision to confiscate the subject of an administrative offense, are not destroyed, and passed with the consent of the right holder to the social institutions (orphanages, hospitals, nursing homes, etc.), provided that these products are not dangerous for life and health of consumers.

_____