

Copyright

In 23 jurisdictions worldwide

Contributing editors

Andrew H Bart, Steven R Englund and Susan J Kohlmann



2015

GETTING THE
DEAL THROUGH 

GETTING THE
DEAL THROUGH 

Copyright 2015

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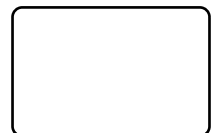


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Legislation and enforcement

1 What is the relevant legislation?

The primary source of law in relation to copyright is the Civil Code of the Russian Federation (Civil Code), Part IV of which is devoted exclusively to the regulation of intellectual property.

In the light of Russia's ongoing battle with internet piracy, an important addition to Part IV of the Civil Code is the Federal Law on information, information technologies and protection of information of 2006 (the Law on Information), discussed in more detail in question 3.

2 Who enforces it?

Part IV of the Civil Code is enforced by the courts of the Russian Federation, and the Law on Information is enforced by Russia's media watchdog, Roskomnadzor.

Disputes between legal entities are typically referred to Russia's regular commercial courts, while disputes involving individuals are tried in general courts. Following the establishment of Intellectual Property Court in 2014, qualifying cases are being referred to it.

3 Are there any specific provisions of your copyright laws that address the digital exploitation of works? Are there separate statutory provisions that do so?

As of 1 May 2015, the Law on Information allows the rightholder in respect of any copyrighted work (except photographic works) to obtain a preliminary injunctive relief that may result in the disabling of access to the website making available the infringing content.

Having obtained the court's approval for the relief, the copyright holder should refer to Roskomnadzor with a request to have unauthorised content taken down, or access to it limited. A corresponding notice in Russian and English is then forwarded by Roskomnadzor to the relevant service provider, which in turn forwards it to the administrator of the website. Should the infringement continue three days after the day of the initial notice by Roskomnadzor, then access to the entire website will be disabled.

The Law of Information also makes it obligatory for a website to disclose its owner's name, address and e-mail account and to maintain a web application form for submission of claims from rightholders.

4 Do your copyright laws have extraterritorial application to deal with foreign-owned or foreign-operated websites that infringe copyright?

Russian copyright laws are applicable within the territory of the Russian Federation. If a defendant who infringes copyright is not permanently located in Russia, Russian courts will not be competent in resolving a dispute. Thus, from the perspective of Russian law, a relevant foreign court may consider whether Russian copyright laws are applicable.

Agency

5 Is there a centralised copyright agency? What does this agency do?

There is no centralised copyright agency in Russia. However, Russian law recognises copyright collecting societies. Currently, the accredited collecting societies are the Russian Authors' Society (RAO) and, as far as performers' and phonogram producers' rights are concerned, the Russian Organisation for Intellectual Property (VOIS).

Subject matter and scope of copyright

6 What types of works are copyrightable?

While Russian legislation does not contain an exhaustive list of copyrightable works, it acknowledges that any work of art, science or literature, and other objects created by the creative labour of an individual, can enjoy copyright protection. Among works expressly mentioned as copyrightable are literary works, software and databases, musical, photographic, choreographic and pantomime works, audiovisual works, works of art, sculptures, graphic and design works, graphic novels, comic books, geographic and geological maps, plans and drawings.

According to the Decree issued on 26 March 2009 by the joint Presidium of the Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation, a work is presumed to be creative in nature until the opposite has been proven. The absence of novelty or originality in the work does not in itself indicate that the work is not copyrightable.

7 What types of rights are covered by copyright?

Copyright encompasses two main components: the exclusive proprietary right, as explained below – and moral (non-proprietary rights), namely:

- the right of attribution;
- the right to have a work published pseudonymously or anonymously;
- the right to the integrity of the work; and
- the right of first publication.

The list of exclusive rights contained in Part IV of the Civil Code is not exhaustive, yet the most widespread uses of copyrighted works are mentioned. These are:

- the right to reproduce the work;
- the right to distribute the work;
- the right of public display of the work;
- the right to import the work;
- the right to rent the work;
- the right to publicly perform the work;
- the right to broadcast the work via cable network or otherwise;
- the right to translate or otherwise process the work;
- the right of practical implementation of an architectural, town planning, design or park project; and
- the right of making the work available.

Certain additional rights are only available to selected copyrighted works, such as works created in the course of employment, right of access, right of recall and droit de suite (the right to receive payments on the resale of works of art).

8 What may not be protected by copyright?

Copyright does not apply to ideas, concepts, methods, processes, systems and techniques, solutions for technical, organisational and other tasks, discoveries, facts and programming languages. The following objects are also excluded from the copyright domain:

- official documents and any legislative acts;
- documents made by international organisations and their official translations;
- court rulings;
- state symbols;

- works of folk art without known authors (folklore); and
- reports on facts and events of informative nature, such as news, TV programmes and transport schedules.

9 Do the doctrines of 'fair use' or 'fair dealing' exist?

Russian law permits the use of copyrighted objects without the rightholder's consent and free of charge in certain cases, including:

- creation of parodies;
- limited reproduction of works for personal use (this is not available in relation to databases, architecture, software, audiovisual works and full texts of books and musical notation works);
- reasonable quotation;
- reproduction and subsequent distribution in mass media of mass media articles on current political, economic, religion and social affairs;
- reasonable reproduction and subsequent distribution in mass media of publicly delivered political speeches and addresses;
- public, not-for-profit performance of copyrighted objects in social institutions such as hospitals, schools and prisons;
- public performance of musical works during an official or religious ceremony, or a funeral;
- non-profit reproduction of the work in Braille or another method for the blind, excluding works that were originally created to be used for these purposes;
- use of works for law enforcement purposes;
- short-term reproduction of a work by broadcasting organisations; and
- making changes to software or a database with the purpose of ensuring the functioning of the program or database on a specific computer, as well as the reproduction of a single copy of software or database for a personal archive or for use in case of the failure of the original copy.

10 What are the standards used in determining whether a particular use is fair?

There is no uniform rule applying to all instances of 'fair use' in Russia, with Part IV of the Civil Code describing the preconditions for each type of 'fair use' instead. See question 9.

11 Are architectural works protected by copyright? How?

Yes, architectural works are protected by copyright in Russia. An exception would be made in case a piece of architecture is broadcast or made available other than for commercial purposes, as part of a video recording or a photograph, provided that the architectural work in question is not the principal object of the image.

12 Are performance rights covered by copyright? How?

Intellectual property rights of performers fall within a different category of rights, namely neighbouring rights, and enjoy a similar level of protection, although the term of legal protection is shorter as compared with copyrighted works.

13 Are other 'neighbouring rights' recognised? How?

Russian law recognises the intellectual property rights of phonogram producers, performers, database compilers, broadcasting organisations and first publishers under the same badge of rights, ie, neighbouring rights. These objects enjoy similar levels of protection and for different periods ranging from 15 to 50 years.

Rights in other intellectual property objects such as integrated circuit layouts, achievements in selective breeding, know-how, corporate identity (including company names and trademarks) and patents are treated as separate categories of rights. All of them include the exclusive proprietary right and, with the exception of know-how and corporate identity cases, limited moral rights.

14 Are moral rights recognised?

Moral rights are recognised, and their exact scope differs from one type of intellectual property to another. Moral rights of the authors of copyrighted objects are described in question 7.

Copyright formalities

15 Is there a requirement of copyright notice?

It is explicitly stated in Part IV of the Civil Code that there is no precondition for the existence, exercise or protection of copyright. However, a rightholder is entitled to complement its copyrighted work with '©', the rightholder's name, and the year of first publication of the copyrighted work.

16 What are the consequences for failure to display a copyright notice?

There are no legal consequences.

17 Is there a requirement of copyright deposit?

There is no such requirement. However, a rightholder may choose to deposit its work, as described in question 19.

18 What are the consequences for failure to make a copyright deposit?

There are no legal consequences.

19 Is there a system for copyright registration?

There is no system for obligatory registration of copyright in Russia. There exist, however, options for the voluntary registration of software and databases in the Russian Federal Service for Intellectual Property (Rospatent) and other works. For instance, musical works may be deposited with RAO.

20 Is copyright registration mandatory?

No, as it is explicitly stated in Part IV of the Civil Code that there is no precondition for the existence, exercise or protection of copyright.

21 How do you apply for a copyright registration?

Typically, an application form is completed and submitted, along with the relevant supporting documents and proof of state duty payment, to the applicable registrar.

22 What are the fees to apply for a copyright registration?

The state duty payable to Rospatent for the registration of software or a database is 4,500 roubles for legal entities and 3,000 roubles for individuals. The cost of depositing a work with RAO varies from 1,000 roubles to 4,600 roubles.

23 What are the consequences for failure to register a copyrighted work?

None, as it is explicitly stated in Part IV of the Civil Code that there is no precondition for the existence, exercise or protection of copyright. It may, however, facilitate the verification of a person's copyright in the case of a dispute if the right has been registered.

Ownership and transfer

24 Who is the owner of a copyrighted work?

Generally, the author of a literary or scientific work or a work of art is its owner. Persons other than the author of the work can be regarded as its owners in the following situations:

- if the creation of the work was commissioned by this other person, and the agreement does not specifically vest ownership rights in the author;
- if the work was created in the course of employment and the employment agreement does not specifically state otherwise, the exclusive right is vested in the employer; and
- any subsequent acquirer of a copyrighted work by way of alienation or inheritance of an exclusive right is regarded as the work's new legal owner.

It should be noted that moral rights can only belong to the person who created the copyrighted work and cannot be alienated.

25 May an employer own a copyrighted work made by an employee?

Yes, the employer's ownership is automatic by virtue of the employment relationship, unless this endowment is modified in the employment agreement. The exclusive right reverts to the employee who has created the work if, in the three years following its creation, the work has not been declared to be kept secret or put to use by the employer, and if the right to it has not been transferred to a third party. From the moment any of these three events takes place, the employee enjoys a statutory right to remuneration, the exact amount of which is to be determined by mutual agreement or by the court.

26 May a hiring party own a copyrighted work made by an independent contractor?

As from 1 October 2014, a hiring party owns a copyrighted work made by an independent contractor (if the contractor is not the author him or herself) automatically by virtue of the hiring relationship, unless this endowment is modified in the agreement with the author of the work. The default rule for an agreement made directly with the author is that the author retains the exclusive right to the copyrighted work, unless the agreement states otherwise. The agreement need not be in writing.

27 May a copyrighted work be co-owned?

Yes, a copyrighted work can be co-owned if it was created by two or more authors, and as a consequence of subsequent partial transfers of the exclusive right. While only natural persons can be authors, both natural persons and legal entities can be the owners of a copyrighted work.

28 May rights be transferred?

Yes. There are no restrictions on the transfer of unencumbered exclusive rights.

29 May rights be licensed?

Yes. There are no restrictions on the licensing of unencumbered exclusive rights.

30 Are there compulsory licences? What are they?

There is no compulsory licensing in copyright, yet it may be available for inventions, achievements in selective breeding, utility models and industrial models if the rightholder refuses to license after three (in the case of selective breeding achievements) or four (in other cases) years since the granting of the registration.

31 Are licences administered by performing rights societies? How?

Accredited performing rights societies are entitled to license copyrighted works over which their rightholders have granted the societies the right of management.

32 Is there any provision for the termination of transfers of rights?

The transfer of rights can be terminated, that is to say the alienation of an exclusive right can be undone if:

- the agreement transferring the exclusive right in a copyrighted work is set aside; or
- a court order declares a will or other cause of legal succession under which exclusive copyright was transferred (eg, following reorganisation of a legal entity) invalid.

33 Can documents evidencing transfers and other transactions be recorded with a government agency?

Yes, documents evidencing transfers and other transactions subject to an obligatory registration (ie, agreements on the transfer of copyright for computer programs and databases) shall be registered with Rospatent, which acts as a registration authority.

To register an agreement, a copyright owner must submit an application and a notarised copy of the agreement, as well paying a state fee.

Duration of copyright**34 When does copyright protection begin?**

The author's rights are protected from the moment the work is created.

35 How long does copyright protection last?

Exclusive proprietary right for copyrighted works remains in force for the lifetime of the author and for 70 years starting 1 January of the year following his or her death, or the death of the last surviving co-author, if applicable.

If an author was working during the Great Patriotic War (the conflict on the Eastern Front during World War II) or took part in the war, the period of exclusive copyright is extended by four years.

If an author was a political prisoner and was rehabilitated post-mortem, the period of exclusive copyright is extended and the 70-year period starts on 1 January of the year following the year of rehabilitation of the author.

Once the exclusive copyright period is over, the work becomes available in the public domain, making it possible for anyone to use it without the author's permission.

Authorship, the author's name and the integrity of the work are protected indefinitely.

36 Does copyright duration depend on when a particular work was created or published?

A work is protected as an object of copyright regardless of the date of creation or publication. However, exclusive copyright for a work published after the author's death is effective for 70 years following its publication. The work must be published within 70 years of the author's death.

37 Do terms of copyright have to be renewed? How?

No. Terms of copyright do not have to be renewed.

38 Has your jurisdiction extended the term of copyright protection?

The term of copyright protection was extended in Russia in 2004, to 70 years after the author's death. Previously, copyright remained in effect for 50 years.

Copyright infringement and remedies**39 What constitutes copyright infringement?**

Anyone who is not a copyright or licence owner but uses the work in any way listed under question 7, without the copyright owner's permission, is violating the exclusive copyright. Some cases of permitted use without the copyright owner's permission are listed under question 9 (exceptions).

Moral rights can also be violated by, for example, appropriating authorship, not quoting the name of the author of the work despite his or her instruction to the contrary, mutilating the work, etc.

40 Does secondary liability exist for indirect copyright infringement? What actions incur such liability?

An employer would usually be liable for the actions of its employee who, in the course of employment, infringes copyright.

41 What remedies are available against a copyright infringer?

The following means of protection can be used against violation of copyright:

- a ban on illegal use of a work;
- recognition of copyright to a work;
- expropriation of storage devices, equipment or other materials used for the violation of an exclusive right;
- damages or monetary compensation; and
- in cases where moral rights were violated, compensation for moral damage or damage to the reputation or dignity of a person or business can be claimed.

Update and trends

Part IV of the Civil Code of Russia is undergoing significant changes within the framework of civil law reform. From 1 January 2015 copyright owners were able to publicly announce the terms of use of their work, allowing any person to use the work within the territory, terms and under conditions specified by the owner in its announcement. The announcement should be placed on the website of the relevant government body (which remains to be specified by the government). Once published, the announcement cannot be revoked and its terms cannot be limited.

Similarly, since 1 October 2014 copyright owners are permitted to grant the right to use their work by publication of online terms, which shall be viewed and agreed before usage of respective object. The licensee may agree with the terms, for example, by clicking the button 'agree' online.

The amendments also concern joint ownership of copyright. As a result of the reform, any disposition (eg conclusion of licence agreements and other agreements in respect of the copyrighted object) of the exclusive right in such cases shall be effected jointly, but may be otherwise regulated by the agreement between the owners. The income from the joint disposition can now be distributed between them in equal shares or otherwise according to their agreement.

As mentioned above, the current version of the Law on Information

allows the rightholder to obtain preliminary injunction measures facilitating blocking access to the website with any infringing content, except photographic works.

The amendments have extended the previously effective provisions, which provided preliminary injunction measures in respect of the infringing films only. The amendments also provide for a nonjudicial procedure which allows the copyright owner to apply to the owner of the website and obtain removal of the infringing content without the need to apply to the court. However, the procedure is not obligatory and the copyright owner may apply directly to the court in order to obtain preliminary injunction measures.

In a case where content is placed on the website illegally twice or more (ie, after once ordered by the court to remove the content), then access to the website may be permanently blocked (ie, with no possibility of unblocking the access; the relevant site under the relevant domain name will no longer function) under the court order.

As opposed to a permanent block, a standard temporary block (which is ordered for the first time under the first claim of the relevant right owner) may be lifted upon proper removal of infringing content. Application of the new measures is subject to further clarification from court precedents.

42 Is there a time limit for seeking remedies?

A request to protect an infringed exclusive copyright can be made within three years of the date on which the copyright owner learnt or should have learnt of the infringement and who is the proper defendant. However a request to protect the right shall be made within 10 years of the date of infringement. Requests to protect personal non-proprietary rights are not subject to the above time limits.

43 Are monetary damages available for copyright infringement?

Yes, if an exclusive right is infringed, the copyright owner may request the reimbursement of losses caused by the infringement, or monetary compensation of between 10,000 and 5 million roubles, regardless of whether any losses were caused.

If moral rights were infringed, a court may rule that monetary compensation for moral damages must also be paid.

44 Can attorneys' fees and costs be claimed in an action for copyright infringement?

Yes, attorneys' fees and costs can be claimed in an action for copyright infringement. The amount of reimbursement is defined by a competent court at its own discretion.

45 Are there criminal copyright provisions? What are they?

Yes, there are a number of provisions in the Russian Criminal Code establishing criminal liability related to copyright violations. Thus, article

146 of the Russian Criminal Code imposes criminal liability for plagiarism in the form of a fine of up to 200,000 roubles or up to six months' detention. It also establishes criminal liability for the illegal use of works and for the purchase, storage and transportation of counterfeit copies for sale, in the form of a fine of up to 200,000 roubles or up to two years' imprisonment.

46 Are there any specific liabilities, remedies or defences for online copyright infringement?

Yes. See question 3 on preliminary injunction relief that may result in the disabling of access to the website making available infringing content.

A website owner qualifying as an 'information intermediary' may not be liable for copyright infringement provided that the conditions specified in the law are complied with. Nevertheless, such an owner would still have to remove or block the infringing material.

The term 'information intermediary' includes the following categories of individuals or legal entities, participating in online usage of copyrighted work:

- individuals or legal entities, transferring content on the internet;
- individuals or legal entities, providing content hosting on the internet; and
- individuals or legal entities, providing the possibility to access content on the internet.

Therefore, the term 'information intermediary' relates to a wide circle of online services, including file hosting services and social networks.

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An information intermediary transferring content on the internet is not liable for copyright infringement occurring as a result of such transfer, if all the following conditions are met:

- it is not an initiator of transfer and does not determine the receiver of the content;
- it does not revise or transform the content, except such technical transformations required for the transfer of the content; and
- it did not know and could not know that a third party – the initiator of the content transfer – is transferring content illegally. An information intermediary, providing the opportunity to host content, is not liable for copyright infringement as a result of hosting content by a third party, if:
 - it did not know and could not have known about the illicit use of copyrighted work; and
 - in due time it took all necessary and sufficient measures to stop violation of copyright after receiving a written notice from the rights holder of violation of his or her copyright with an indication of the site's page or network address in the internet, where the disputed content is posted.

47 How may copyright infringement be prevented?

It is recommended to display the copyright notice on every copy of the work and use protective software that prevents copying or is based on 'fingerprint' technology.

Relationship to foreign rights

48 Which international copyright conventions does your country belong to?

The Russian Federation has joined the following international conventions and treaties:

- the Berne Convention for the Protection of Literary and Artistic Works;
- the Universal Copyright Convention (Geneva);
- the Universal Copyright Convention (Paris);
- the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations;
- the Convention for the Protection of Producers of Phonograms;
- the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite;
- the World Intellectual Property Organization (WIPO) Copyright Treaty;
- the WIPO Performances and Phonograms Treaty; and
- the Moscow Collaboration Agreement on Copyright Protection.

49 What obligations are imposed by your country's membership of international copyright conventions?

According to article 15 of the Constitution of the Russian Federation, if there is a conflict between the legislation of the Russian Federation and provisions of international treaties, provisions of international treaties prevail.

Getting the Deal Through

Acquisition Finance	Distribution & Agency	Life Sciences	Restructuring & Insolvency
Advertising & Marketing	Domains & Domain Names	Mediation	Right of Publicity
Air Transport	Dominance	Merger Control	Securities Finance
Anti-Corruption Regulation	e-Commerce	Mergers & Acquisitions	Securities Litigation
Anti-Money Laundering	Electricity Regulation	Mining	Ship Finance
Arbitration	Enforcement of Foreign Judgments	Oil Regulation	Shipbuilding
Asset Recovery	Environment	Outsourcing	Shipping
Aviation Finance & Leasing	Foreign Investment Review	Patents	State Aid
Banking Regulation	Franchise	Pensions & Retirement Plans	Structured Finance & Securitisation
Cartel Regulation	Fund Management	Pharmaceutical Antitrust	Tax Controversy
Climate Regulation	Gas Regulation	Private Antitrust Litigation	Tax on Inbound Investment
Construction	Government Investigations	Private Client	Telecoms & Media
Copyright	Insurance & Reinsurance	Private Equity	Trade & Customs
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