

Copyright 2014

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and Susan J Kohlmann
Jenner & Block LLP**

Getting the Deal Through is delighted to publish the fully revised and updated ninth edition of *Copyright*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 24 jurisdictions featured. New jurisdictions this year include Belgium, Brazil, Greece and Singapore.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editors Andrew H Bart, Steven R Englund and Susan J Kohlmann of Jenner & Block LLP for their assistance with this volume.

Getting the Deal Through

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Overview	3	Greece	54
Andrew H Bart, Steven R Englund and Susan J Kohlmann Jenner & Block LLP		Alkisti-Irene Malamis Malamis & Associates	
Argentina	4	India	60
Natalia Pennisi Moeller IP Advisors		Pravin Anand and Rahul Ajatshatru Anand and Anand	
Australia	11	Israel	66
Kristin Stammer and Helen Macpherson Herbert Smith Freehills		Tony Greenman Tony Greenman Law Offices	
Austria	16	Japan	72
Isabella Hoedl PMSP Rechtsanwälte GmbH		Chie Kasahara Atsumi & Sakai	
Belgium	21	Malaysia	77
Karel Nijs NautaDutilh BVBA/SPRL		Benjamin J Thompson and Hannah Ariffin Thompson Associates	
Brazil	28	Nigeria	82
Joaquim Goulart, Attilio Gorini and Fernando De Assis Torres Dannemann Siemsen Advogados		Tolushuwa Oyebokun Bloomfield Advocates & Solicitors	
Canada	34	Poland	87
Keri AF Johnston, Alpesh Patel, Karol Pawlina and Mekhala Chaubal Johnston Law		Dorota Rzażewska JWP Patent & Trademark Attorneys	
Chile	41	Portugal	93
Claudio Magliona García Magliona & Cía Limitada Abogados		Manuel Durães Rocha PMBGR – Trocado, Perry da Câmara, Durães Rocha & Associados	
Dominican Republic	48	Russia	99
Jaime R Ángele Angeles & Lugo Lovatón		Elena Ivanova, Yuriy Korchuganov and Alexander Yurchik MGAP Attorneys at Law	
		Singapore	104
		Tan Tee Jim, SC and Zechariah J H Chan Lee & Lee	

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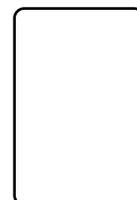
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CONTENTS

Slovenia 110

Tjaša Drgan

Law Office Drnovšek LLC

Switzerland 115

Brendan Bolli, Sven Capol and Barbara Gehri

E Blum & Co AG

Turkey 120

Sıdika Baysal Hatipoglu, Gökhan Uğur Bağcı and Benan İlhanlı

B+B Law Firm

United Kingdom 125

Paul Joseph, Jeremy Drew and David Cran

RPC

United States 133

Andrew H Bart, Steven R Englund and Susan J Kohlmann

Jenner & Block LLP

Venezuela 140

Matías Pérez Irazabal and Jessica Borges

Hoet Pelaez Castillo & Duque

Russia

Elena Ivanova, Yuriy Korchuganov and Alexander Yurchik

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Legislation and enforcement

1 What is the relevant legislation?

From 1 January 2008 a single regulatory act has been in effect, regulating copyright in the Russian Federation: Part IV of the Civil Code of the Russian Federation (CC).

2 Who enforces it?

Part IV of the CC is enforced by Russian courts.

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?

Federal Law No. 187-FZ of 2 July 2013 on Amendments to Certain Laws of the Russian Federation Related to Intellectual Rights Protection in Information and Telecommunication Networks establishes a procedure for the owner of the rights to a cinema movie or telemovie to apply to a Russian court to obtain preliminary injunctive relief for protection of his or her exclusive rights to the above objects on the internet. The owner should then address a competent Russian authority (Roskomnadzor) requesting that access to the internet site infringing the exclusive rights of the owner be limited. Roskomnadzor will forward a notice (in Russian and English) to the provider of the hosting, requesting that they remove the cinema movie or telemovie whose use violates the exclusive rights of the owner. The provider should then contact the owner of the respective internet page and notify them of the infringement. If no measures are taken by the provider/owner of the respective page, Roskomnadzor will limit access to it.

Liability lies with the company or individual that transferred the respective content to be published on the internet. No liability is established for a provider unless it independently provided content that infringes the owner's rights. End-users of the internet content are not liable for any infringements.

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. The activity of organisations related to the collective management of copyright, including entering into licensing agreements with members of the public, collecting royalties and protecting owners' copyright, is recognised within the territory of the Russian Federation.

Subject matter and scope of copyright

6 What types of works are copyrightable?

According to article 1259 of the CC, any work of art, science or literature, and objects created by the creative labour of an individual, can be regarded as copyrightable.

Russian legislation explicitly lists copyrightable works, which include, inter alia:

- literary works;
- software and databases copyrighted as literary works;
- musical works with or without lyrics;
- dramatic and scripted works;
- choreographic and pantomime works;
- audio-visual works;
- works of art, sculptures, graphic and design works, graphic novels, comic books and other fine art works;
- photographic and similar works;
- works of decorative, applied and scenographic arts;
- pieces of architecture, town planning and garden art;
- geographic and geological maps, plans and drawings; and
- sketches and plastic works relating to geography, topography and other sciences.

At the same time, according to the Decree of Presidium issued on 26 March 2009 by the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation (two supreme judicial authorities of the judiciary system 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?

Articles 1226 and 1255 of the CC set forth three types of copyright: exclusive rights (proprietary rights), personal (non-proprietary) rights and a range of other rights including inheritance rights, access rights and rights of recall.

Exclusive rights incorporate the right to use a work in any way that does not contradict the law (paragraph 1, article 1270 of the CC), including:

- playback of work;
- distribution of work;
- public display of work;
- broadcasting of work including via a satellite or cable;
- translation or another type of processing;
- practical realisation of an architectural, town planning, design or garden project; and
- publicising the work.

8 What may not be protected by copyright?

Copyright does not cover ideas, concepts, methods, processes, systems, techniques, solutions for technical, organisational and other objectives, discoveries, facts and programming languages.

The following are also excluded from the list of copyrightable objects:

- official documents and any legislative acts;
- court rulings;
- documents made by international organisations and their official translations;
- state symbols;
- works of folk art without known authors (folklore);
- reports of events; and
- facts of an informative nature.

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

No, Russian law and case law on copyright-related cases do not follow the 'fair use' or 'fair dealing' doctrines.

Cases of free use of works are defined by the CC, namely:

- reproduction of works for personal use (article 1273);
- use of works for information purposes including use in press, radio and TV programmes, etc (paragraph 1 of article 1274);
- 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 (paragraph 1 of article 1274);
- quoting for scientific, educational, polemic or critical purposes (paragraph 1 of article 1274);
- lending of works by libraries to the public for free of charge temporary use (paragraph 2 of article 1274);
- using the work to create caricatures and parodies based on it (paragraph 3 article 1274);
- reproduction with the purpose of preserving a copy of a work, as well as for educational or scientific purposes, excluding digitising (article 1275);
- use of works that are permanently available to the public free of charge, apart from cases where the works are the principal object of use (article 1276);
- use of musical works during religious ceremonies (article 1277);
- use of works for law enforcement (article 1277);
- use of works by broadcasting organisations during a period of six months from the day of legitimate broadcasting (article 1279);
- making changes to PC software or a database with the purpose of ensuring the functioning of the program or database on a specific PC (article 1280);
- reproduction of a single copy of a PC program or a database for a personal archive or for use in case of the unusability of an original copy (article 1280); and

- decompilation of a PC program or a database to secure the interaction of the decompiled PC program or database with PC programs or databases developed independently by a user, provided the following conditions are met:
 - information required for interaction with programs is unavailable to a user from other sources;
 - decompilation only affects the parts of the program that assist interaction between programs; and
 - information obtained in the course of decompilation will not be transferred to third parties.

In addition, the proprietor of an original work of art who does not hold the exclusive copyright to the work has the right to display the original work that was purchased without the author's consent. He or she also has the right to reproduce the work in exhibition catalogues and editions dedicated to collections without paying royalties, as well as to transfer the original work to third parties for display at exhibitions.

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

All types of free use specified by the CC are listed under question 9. There are no other rules of fair use or fair dealing under Russian law.

11 Are architectural works protected by copyright? How?

Yes, architectural works are protected by copyright in Russia. Pieces of architecture are specifically listed as copyrighted works. It is prohibited to reproduce (construct a similar piece) or broadcast pieces of architecture via cable if the piece is a principal object of use or the image of a piece of architecture is used for commercial purposes without the copyright owner's consent.

12 Are performance rights covered by copyright? How?

No, rights of persons performing a work belong to a different category of rights (related rights).

13 Are other 'neighbouring rights' recognised? How?

Yes, rights of performers, producers of soundtracks, broadcasting organisations, creators of databases and publishers are protected.

14 Are moral rights recognised?

Yes, personal non-proprietary rights cannot be alienated or transferred in any other way. These rights include:

- the right of authorship;
- the right to a name;
- the right of integrity; and
- the right to publish a work.

Copyright formalities

15 Is there a requirement of copyright notice?

No, this requirement is not established by Russian law.

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

No consequences are established by Russian law.

17 Is there a requirement of copyright deposit?

No, this requirement is not established by Russian law.

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

No consequences are established by Russian law.

19 Is there a system for copyright registration?

There is no system for obligatory registration of copyright in Russia. Article 1262 of the CC establishes a procedure of optional registration of PC programs and databases. The Russian Federal Service for Intellectual Property (Rospatent) acts as a registration body.

It is worth noting that any subsequent agreements on the transfer of rights for PC programs and databases will be subject to obligatory state registration.

20 Is copyright registration mandatory?

See question 19.

21 How do you apply for a copyright registration?

To register a PC program or a database the copyright owner shall submit the relevant documents confirming its right to register a PC program or a database and also pay a state fee. After the documents have been reviewed by Rospatent, the copyright owner will be issued with a certificate for the state registration of a PC program or a database. Registration details of the PC program or database will be entered into the public register.

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

A state fee of 1,700 roubles (for individuals) and 2,600 roubles (for companies) is established for the registration of a PC program or a database.

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

No consequences are established by Russian law.

Ownership and transfer

24 Who is the owner of a copyrighted work?

According to Russian law, the following categories of companies and individuals can be copyright owners:

- the author of a literary or scientific work or a work of art. The author of a work is the individual who created the work. The person indicated as the author on the original or a copy of the work is considered such unless proven otherwise. Generally, a company cannot be regarded as the author of a work. Russian law establishes two cases where a person other than an individual who created a work can be considered its author:
 - if the work was created outside Russia; or
 - if a company acquired the rights for a work created on the territory of the Soviet Union prior to 3 August 1993. Personal non-proprietary rights for the work can only belong to the person who created it;
- the person who commissioned the work to be created. A commission agreement can specify that a customer will be the original owner of exclusive proprietary rights to the work that was created under the agreement;
- an employer, via an employment contract with an employee. If an employee created a work while performing his or her work-related activities, exclusive copyright belongs to the employer; and

- a purchaser, via an agreement. The owner of the copyright is a person or company that has acquired the exclusive copyright to a work via an agreement with the author or any other copyright owner.

It should be noted that personal non-proprietary rights can only belong to the person who created the copyrighted work and cannot be transferred to a third party.

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

Yes, an employer is considered to be the owner of the copyright if all of the following conditions are met:

- an employment contract does not specify the opposite;
- the work was created while an employee was performing his or her work-related activities;
- remuneration separate from the salary is quoted in the employment contract or additional agreement to compensate for the creation of the work and alienation of copyright in favour of the employer; and
- within three years of the work's submission, the employer performs at least one of the following actions: starts using the work; transfers the exclusive copyright to another company; or informs the author (employee) that the work must be kept secret. Otherwise, the exclusive copyright is returned to the employee.

The agreement between the employer and the employee must be in writing.

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

Yes, if the customer and the author concluded a written agreement that specifies that the exclusive copyright for future work will be alienated in favour of the customer.

27 May a copyrighted work be co-owned?

Yes, a copyrighted work may be co-owned by any persons (individuals and companies).

28 May rights be transferred?

Yes, copyright may be transferred via an agreement on the alienation of exclusive rights, an employment contract (see question 25) or a commission agreement (see question 26), or by an agreement of a pledge of exclusive copyright when claiming the pledged assets.

An exclusive right can be transferred as part of an inheritance, via legal succession or via claiming the pledged assets of the copyright owner. In this case no agreement is concluded.

Personal non-proprietary rights cannot generally be transferred.

29 May rights be licensed?

Rights can be 'licensed' via licensing (including sub-licensing) agreements. Personal non-proprietary rights cannot generally be licensed.

Note that Russian law establishes the general concept of a licence as meaning an official document issued by a state authority allowing a person or a company to perform certain activities. Thus, copyright cannot be a licence in the sense established by Russian law.

30 Are there compulsory licences? What are they?

Yes, if a work is commissioned by the Russian Federation (including constituent units of the Russian Federation and municipal authorities) and, according to the agreement between the Russian Federation and the author, the author of the work continues to hold the exclusive copyright, he or she must provide a free non-exclusive licence for the Russian Federation to use the work for state or municipal needs.

31 Are licences administered by performing rights societies? How?

No, licences are not administered by performing rights societies.

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

Yes, the following actions would terminate the transfer of rights:

- concluding of an agreement where the transfer of the exclusive copyright was acknowledged to be invalid or void;
- terminating of an agreement which establishes the reverse transfer of an exclusive copyright;
- cancelling of a legal act that established the provision of copyright;
- obtaining a court order to hold a will invalid or to hold other cases of legal succession (eg, following reorganisation of a legal entity) invalid if they triggered the transfer of an exclusive copyright; and
- enforcing a legal act under which an exclusive copyright is transferred back to a copyright owner due to the recipient's failure to pay an agreed amount of compensation to the copyright owner.

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 PC 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?

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

35 How long does copyright protection last?

Exclusive copyright for works remains in force for the lifetime of the author and for 70 years after his or her death.

If a work was created in co-authorship, an exclusive right for the work remains in force while at least one of the co-authors is alive. Exclusive copyright remains until 70 years after the last remaining co-author's death.

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, a work becomes available in the public domain, meaning that anyone can 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.

Update and trends

A draft law aiming to amend the existing regulations concerning the infringement of rights on the internet has been prepared and is being discussed by the Russian legislative authorities. Currently, the respective legislation only covers cinema and telemovies. The legislative authorities plan to extend the regulation to all intellectual property objects. There are also discussions regarding making internet service providers responsible for the placement of any intellectual property objects that infringe the rights of respective owners.

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. The cases of legitimate use without the copyright owner's permission are listed under question 9 (exceptions).

Personal non-proprietary rights can also be violated by, for example, appropriating authorship, not quoting the name of the author of the work, mutilating the work, etc.

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

Secondary liability is not established by Russian law.

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 mediums, equipment or other materials used for the violation of an exclusive copyright;
- recovery of damages or claims for monetary compensation; and
- in cases where personal non-proprietary rights were violated, compensation for moral damage or damage to the reputation or dignity of a person or business can be claimed.

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 fact of infringement. Requests to protect personal non-proprietary rights are not subject to the above time limit.

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 personal non-proprietary 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?

See question 3.

47 How may copyright infringement be prevented?

It is recommended to display the name of the copyright owner, the year of first publication and the '©' sign on the work.

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.

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