



TERRALEX®

# CROSS-BORDER COPYRIGHT GUIDE 2018



# Russia

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## 1. Legislation and regulation

### 1.1 What are the main sources of copyright law?

The basic provisions of copyright law in Russia are established by international conventions to which the Russian Federation is a party and by the Constitution of the Russian Federation. However, the main source of copyright legislation in Russia is the Civil Code of the Russian Federation (the Civil Code); specifically part IV of the Civil Code, which was enacted in 2008. In addition, there are a number of governmental regulations and Presidential orders that have been adopted to implement the provisions of Federal laws and are tailored to make provision for specific copyright-related matters and to designate a regulatory regime for such matters.

The Russian Federation is a continental law legal system. However, for the purposes of uniformity of judicial practice, courts usually take into consideration certain relevant rulings of Russia's Higher Courts. Among them are a joint resolution of plenary sessions of the Russian Supreme Court and Supreme Commercial (Arbitration) Court issued on 26 March 2009, entitled *On Certain Issues Caused by the Entry into Force of Part Four of the Civil Code* (Resolution

No.5/29) and the *Review of judicial practice in cases related to the resolution of disputes on the protection of intellectual property rights* (approved by the Presidium of the Russian Supreme Court on 23 September 2015).

The Criminal Code and the Administrative Offences Code of the Russian Federation regulate relations concerning liability for infringements in the sphere of copyright law.

## 2. Subsistence of copyright

### 2.1 Author's rights and related rights

Russian legislation directly provides for two categories of copyright: the rights of an author of the product (author's rights) and related rights. An author's right is the right to something created by an original author, provided that the product is a new and original one. Such right arises from the fact of a product being created through the author's own skill, judgement and individual effort and is not certified by a special document. For example, the author's right to a piece of music belongs to the person who wrote it.

Related rights protect the legal interests of certain persons and legal entities who contribute to making works available to the public. For example, the related right to a phonogram belongs to the producer of the phonogram. The principle of correlation between an author's rights and related rights is that objects of related rights should be created in compliance with the author's right to the work used in the process. At the same time, related rights are recognised regardless of whether copyright for such works exists and is in effect.

### 2.2 What type of works can be protected by copyright?

The categories of work that can be covered by copyright are works of science, literature and art, regardless of the value and purpose of the work, as well as of the mode of its expression.

The objects of author's rights can be summarised as follows:

#### Literary works

These are any works, other than a dramatic or musical work, which are written, spoken or sung and have been recorded in writing or otherwise. Computer programs are also considered objects of copyright and are protected as literary works.

#### Dramatic works

This includes but is not limited to musical and dramatic works, and scripts for plays.

#### Choreographic works

This means works of choreography and pantomime.

#### Musical works

These are works consisting of music, with or without text.

#### Audiovisual works

An audiovisual work is a work consisting of a fixed series of interconnected images (with or without sound), and designed for visual and auditory (if accompanied by sound) perception with the aid of appropriate technical devices. These are films, movies, clips, TV films etc.

#### Artistic works

An artistic work is a painting, graphic work, sculpture, a work of design, graphic novel, comic or any other work of art. This includes composite works such as collages.

#### Works of crafts and scenic design

Works of crafts are art products or household products that have artistic and aesthetic qualities and at the same time meet practical needs. Scenic design is a creation of theatrical, film or television scenery.

#### Architectural works

This includes works of architecture, town planning or garden design, which can be expressed in the form of projects, charts, drawings, layouts and models.

#### Photographic works

Photographic works are photos and other objects that are created using the same or similar instruments as in photography.

#### Geographical works

Geographical works are geographical maps, geological maps, plans, sketches, visual arts used in geography, topology etc.

Other works, given that the list of objects of author's rights is open.

Related Rights:

Objects of related rights are:

- performances of performing artists and conductors, productions of director-producers of shows (performances) if these performances are expressed in a form that allows them to be reproduced and distributed by technical means
- phonograms, with the exception of sound recording included in an audiovisual work
- broadcasting or disseminating radio or television transmissions via cable
- databases – in terms of protecting them from unauthorised extraction and repeated use of the data constituting their content
- works of science, literature and art that are made public after they fall into the public domain, in terms of protecting the rights of the publishers of such works.

### 2.3 What is required for works to qualify for copyright protection?

The following features are necessary for works to be recognised as subject to copyright: a) creative nature b) objective form. Designation, public benefit or the quality

of a work do not affect protectability. Publishing is not a must. Separate parts of a work, such as a title or a character, benefit from copyright protection, as they are results of the author's creative work. Copyright does not protect ideas, concepts, methods of solving technical problems, discoveries, facts or machine codes. In addition, the Civil Code provides for a list of works that never fall under copyright protection. Those are official governmental documents, laws, court rulings, international agreements with translations; state and municipal symbols including flags, coats of arms, honours, banknotes etc; folklore; informational messages in any form.

As a general rule, the Russian Federation provides copyright protection if: (i) the author is a national of the Russian Federation; (ii) the work was first published in the Russian Federation or was not published but is existing in some objective form within the territory of the Russian Federation (regardless of author's citizenship); or (iii) the work was first published outside the territory of the Russian Federation (or was not published), but the author's state is a signatory to one of the various international conventions to which the Russian Federation is a party.

## 2.4 What rights does copyright grant to the rights holder?

The Civil Code sets out the rights subsisting in copyright works, which are the exclusive rights of the rights holder, ie the author of the work (before any licences are granted). They include the rights to:

- copy the work
- distribute the original work or a copy of it by selling or otherwise disposing of it
- publicly display a work or a copy of it
- import a work or a copy of it for the purpose of further distribution
- rent out the work or a copy of it
- perform the work live in public or with the use of technical means
- broadcast the work or a copy of it on air or by cable
- translate or otherwise modify the work
- implement a project of architecture, town planning, or garden design
- bring the work to the public (via the internet)
- transfer the entire contents of a database or a substantial part of its constituent materials to another information carrier using any means and in any form, etc.

Rights holders also have the moral rights described in the answer to 2.5 below.

## 2.5 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

The following moral rights are set out in the Civil Code:

- the right of authorship (ie the right to be recognised as the author of the work)
- the right to name (ie the right of the author to use or authorise the use of a work under his or her name, under a pen name or anonymously)
- the right of integrity and inviolability (ie the requirement that any modifications, edits, commentaries or illustrations of and to the work may only be made or added with the consent of the author, as well as the right of the author to demand that his/her reputation and personal integrity be protected)
- the right to make the work public first time
- in cases where the Civil Code so provides, other rights (such as the right to withdraw consent to the publication of work provided that the publisher is compensated for the resulting losses).

## 2.6 What is the duration of copyright in protected works?

The duration of the protection for copyright works varies according to the type of work and the date of creation. In general, the duration of copyright protection is as follows:

Category of work
Literary works (including computer programs), dramatic, choreographic, musical, audiovisual, artistic works, works of crafts and scenic design, architectural works, photographic works, geographical works
Duration
Copyright expires 70 years from 1 January of the year following the year in which the author dies.
Where a work has a joint author/co-author, 70 years from 1 January of the year following the year in which the last known author dies.
Where the author's identity is unknown, copyright expires 70 years from 1 January of the year following the year in which the work was made available to the public.
Where the work was made available to the public within 70 years of the author's death, the copyright expires 70 years from 1 January of the year following the year in which the work was made available to the public.

<b>Category of work</b>
Performances
<b>Duration</b>
The exclusive right expires with the death of the performer but not earlier than 50 years from 1 January of the year following the year in which the performance was made, recorded or broadcast on air or by cable.
<b>Category of work</b>
Phonograms
<b>Duration</b>
The exclusive right expires 50 years from 1 January of the year following the year in which the phonogram was recorded. If a phonogram was promulgated not later than 50 years from 1 January of the year following the year in which the phonogram was recorded, the exclusive right expires 50 years from 1 January of the year following the year in which the phonogram was promulgated.
<b>Category of work</b>
Broadcasting
<b>Duration</b>
The exclusive right expires 50 years from 1 January of the year following the year in which the radio or TV transmission was broadcast on air or by cable.
<b>Category of work</b>
Databases (with respect to protecting them from unauthorised extraction and repeated use of the data constituting their content), works of science, literature, and art that are made public after they fall into the public domain, with respect to the protection of the rights of publishers of such works
<b>Duration</b>
The exclusive right of a creator of a database arises at the moment when the database is completed and expires 15 years from 1 January of the year following the year in which it is completed.
If the database was promulgated not later than 15 years from 1 January of the year following the year when it was completed, exclusive rights expire 50 years from 1 January of the year following the year in which the database was promulgated.
The exclusive rights of a publisher arise at the moment when the database was promulgated and expire 25 years from 1 January of the year following the year in which the database was promulgated.

## 2.7 For how long do moral rights subsist in copyright works?

Authorship, the right to name of the author and the right to integrity do not have a time limit.

## 3. Ownership

### 3.1 Who is the first owner of a copyright work?

As a general rule, the first owner of a copyright work is the author, ie the individual who created the work. There is, however, one exception. Exclusive rights to the work belong to the author's employer if the work was created by the author in performance of his or her employment duties, and where a labour contract or civil contract between the employer and the author has not provided otherwise. This type of work is known as 'work made for hire'. Audiovisual works have three authors/owners: the director, the screenwriter and the composer who wrote the music for the audiovisual work. If a copyright is granted on the basis of an international agreement, the author is determined in accordance with the laws of the country that is the party to the agreement.

### 3.2 Can copyright in a work be jointly owned? If so, what are the rights of a co-owner?

Copyright in a work can be jointly owned by two or more persons. This can occur where a work is created by more than one person. A work can constitute a unified whole (when it is impossible to determine which of the co-authors created a concrete part) or can consist of parts which have independent significance (eg a textbook, each chapter of which is prepared by an independent author).

Co-authors use the work together unless they have agreed otherwise. When a work constitutes a unified whole, co-authors must not, without due cause, prohibit such work from being used. As a general rule, a part of a work that has independent significance may be used by its author at their own discretion unless they and co-authors have agreed otherwise. Any co-author is entitled to protect their rights in any lawful way without the prior consent of the other co-authors.

### 3.3 Can you register copyright? If so, what are the benefits of such registration and what other steps, if any, can you take to help you bring an infringement action?

Copyright is an unregistered right in Russia; it arises automatically when the work is created. Copyright is only registrable, on an optional basis, for computer programs and databases. This is advisable as registration offers proof of authorship and date of creation for subsequent works. The procedure is carried out by the Russian Federal Service for Intellectual Property (*Rospatent*).

### 3.4 What steps should you take to validly transfer, assign or license copyright?

An assignment or licence agreement must be in writing, signed by or on behalf of the copyright owner and the assignee/licensee. A contract to grant the right to use a work in a periodical press publication may be concluded in oral form.

From 1 January 2015, IP owners have been able to dispose of their copyright or related rights by way of a public declaration (paragraph 5 of Art. 1233 of the Civil Code), provided the right is not already the subject of a valid exclusive licence. The declaration, which cannot be withdrawn or varied, states that the work in question may be used by any other person on a royalty-free basis for a specified period and on specified conditions. Where the period is not specified, it is deemed to be five years. Such public declarations are to be placed on the website of the responsible state authority, but the Government has not yet designated such authority.

Article 1286.1 has introduced to the Civil Code the legal concept of an open licence to use scientific, literary and artistic works and items of related rights. Such licence is non-exclusive, royalty-free (as a general rule) and, in addition, it is considered a contract of adhesion. The parties to the contract may set limits on the use of intellectual property. Unless otherwise stated in the licence conditions, licences will be granted free-of-charge and be valid throughout the world for five years (if the open licence is for computer programs and databases, this will be for the duration of the exclusive rights). It is expected that open licences will significantly simplify the procedure for the use of works, which in turn will reduce the number of copyright infringements: authors will be able to avoid the procedure of executing a licence agreement (which can be inconvenient and time-consuming) and will have the opportunity at their own discretion to set the terms of licence.

### 3.5 Can moral rights be transferred, assigned or licensed?

No. Moral rights can be neither waived nor assigned. Such a waiver is deemed void.

## 4. Infringement

Owners of copyright can take legal action if any of their exclusive rights (as set out in 2.4 above) have been infringed.

### 4.1 What acts constitute infringement of a copyright?

In accordance with the Civil Code and the Criminal Code of the Russian Federation, infringement occurs, in particular, where a person performs any of the following acts without the consent of the rights holder:

- making one or more copies of a work or any of its part
- distributing a work through sale or other form of alienation
- publicly displaying a work
- importing the original or copies of a work for the purpose of distribution
- renting out the original or a copy of the work
- performing a work in public live or with the use of technical means
- communication by wireless means
- broadcasting a work or its copy on air or via cable
- retransmitting
- making a translation or other modification of the work
- practically implementing an architectural design, city planning, or park/garden plan
- communicating a work to the public in such a way that any person may obtain access to the work from any place and at any time of their own choosing
- plagiarising.

Please note, this list is not exhaustive.

### 4.2 What acts are permitted with respect to copyright works (ie what exceptions apply)?

There are a number of acts that can be carried out in relation to copyright works despite the fact that they might be protected by copyright. These permitted acts are wide in variety but often relate to very specific scenarios. They include (amongst others):

Act
Making temporary copies
Description
A copy that is transient or incidental which: <ul style="list-style-type: none"> <li>• is an integral and essential part of a technological process</li> </ul>

- has the sole purpose of enabling a transmission of the work in a network between third parties by an intermediary, or
- has no independent economic significance.

#### Act

Making personal copies for private use

#### Description

Making of a copy exclusively for the individual's personal and private use and when necessary.

However, such means of use as the reproduction of databases or their significant parts, recording of an audiovisual work at a place open for free attendance and its reproduction with professional equipment and some other means are directly prohibited by the Civil Code.

#### Act

Free use of a work for informational, scientific, educational or cultural purposes

#### Description

In particular:

- quotation for scientific, discussion, critical, informational and educational purposes
- use of works lawfully made public and excerpts from them as illustrations in educational publications, radio and television programmes
- reproduction in periodicals, broadcasting over the air or via cable and bringing to the public of:
  - articles on current economic, political, social and religious issues lawfully published in newspapers and magazines (unless such use is specifically forbidden by the rights holder)
  - publicly pronounced political speeches, addresses, reports and other similar works within a scope necessary for information purposes
- public performance at educational, medical organisations, social service institutions by staff and/or persons serviced or kept at these institutions
- recording on an electronic medium and bringing to public a summary of a thesis.

#### Act

Free use of a work permanently located at a place open to the public

<b>Description</b>
With the exception of cases when the reproduction of a work by this method is the basic object of the reproduction, communication by wireless means or by wire or when the image of the work is used for commercial purposes.
<b>Act</b>
Free recording of a work by a broadcasting organisation for the purpose of short-term use
<b>Description</b>
Such recording shall be made by a broadcasting organisation using its own equipment and for its own broadcasts. The recording shall be destroyed within six months of the day of its creation, unless a longer term has been agreed with the rights holder or provided by operation of law.
<b>Act</b>
Parody
<b>Description</b>
The creation of a work in the genre of a literature, musical or other parody, or in the genre of caricature on the basis of another (original) work lawfully made public and the use of this parody or caricature.

#### 4.3 Is it permissible to provide a hyperlink to, or frame a work protected by copyright? If so, in what circumstances?

In accordance with the provisions of Russian Anti-Piracy Law (Federal Law No. 187-FZ on Amending Certain Legislative Acts of the Russian Federation on Protecting Intellectual Rights in Information and Telecommunications Networks) linking to or framing links to copyright material may be regarded as a copyright infringement. Anti-Piracy Law permits restricting access to the websites not only for placing illegal content, but also for placing the “information necessary for obtaining such illegal content”. Hyperlinks and frames can be regarded as such information. For more information regarding Anti-Piracy Law, please refer to 5.2.

#### 4.4 Is a licensee of copyright able to bring an infringement action?

In accordance with the Civil Code, if infringement by third parties of an exclusive right to a work affects the rights of the licensee under a licence contract, the licensee shall have the opportunity to enforce their rights by enforcement measures provided by the Civil Code. However, this rule applies only if the licence is exclusive.



## 5. Remedies

### 5.1 What remedies are available against a copyright infringer?

The Civil Code provides for remedies for rights holders among which are, *inter alia*, provisional measures, injunctions, damages, as well as declaration, annulment restoration or transfer of rights to the claimant.

Remedies specific to certain types of intellectual property include mandatory publication of a court decision, destruction of goods, award of compensation instead of damages, mandatory licence agreements, etc. Provisional measures are usually granted for the purpose of seizing counterfeit goods or temporarily prohibiting the defendant or a third party from disposing of the subject matter of a dispute (eg, transfer a domain name, etc).

### 5.2 Are there any specific remedies for online copyright infringement?

In accordance with Russian Anti-Piracy Law, which was implemented step by step during 2014 and 2015, there is a special remedy for copyright owners in Russia which includes two procedural stages: (i) provisional measures and (ii) a court ruling being issued for protection of copyrights. A special interaction system has been developed in order to assure correct information sharing and liaison between a) the Moscow City Court (the MCC), which has exclusive jurisdiction to examine online copyright infringement disputes, b) *Roskomnadzor* (the Federal Service for Supervision of Communications, Information Technology, and Mass Media), c) copyright owners, d) hosting providers and e) Communications Service Providers (CSP). This order is applicable to almost all copyright objects (films, books, music, software, etc) except for photographic works.

The mechanism for blocking content in accordance with the Anti-Piracy Law shall be as follows:

- preliminary provisional remedies:
- the copyright owner requests the Moscow City Court (the MCC) for preliminary injunction (blocking the content). Within one day, the MCC shall grant injunctive relief regarding the content to be blocked or refuse to do so
- then, the administrator of the website will have to remove the infringing content. If the administrator refuses to do so, the website will be blocked by the hosting provider or CSP

- this prompt blocking of infringing content described above is limited to 15 working days following the day of the MCC's decision (unless the rights holder files a lawsuit to the MCC)
- A court ruling being issued for the protection of intellectual property rights in the case where a rights holder filed a lawsuit within the 15-day period after injunctive relief.

A systematic violation of intellectual property rights may lead to a permanent blocking.

### 5.3 Under what circumstances does a copyright infringement constitute a criminal act and what sanctions may apply?

The main criterion which Russian law uses to define a copyright infringement as a criminal act is the extent of damage. Generally such damage may be calculated by multiplying the average market price of the original goods by the number of revealed counterfeit products. The Criminal Code of the Russian Federation provides the following types of criminal acts:

Criminal act
Unauthorised use of copyrighted works: specifically, purchase, storage or carriage of counterfeited copies of works or phonograms for the purpose of sale if it has caused significant damage (exceeding RUB100,000)
Relevant intention, knowledge or belief
Direct intention
Penalty
Criminal sanctions include payment of a fine up to RUB200,000; 480 hours of obligatory works or one year of correctional labour; or six months of arrest, at the discretion of the judge.
Criminal act
The same action if: <ul style="list-style-type: none"> <li>• it has caused damage at an especially large scale (exceeding RUB1m)</li> <li>• it is committed by an organised gang, or</li> <li>• it is committed by a person through the abuse of office.</li> </ul>
Relevant intention, knowledge or belief
Direct intention

## 6. Enforcement

<b>Penalty</b>
Five years of compulsory labour, or six years in prison along with a fine in the amount of up to RUB500,000 or in the amount of a wage/salary or other income of the convicted person for a three-year period.
<b>Criminal act</b>
Appropriation of authorship (plagiarism), if it has caused significant damage (exceeding RUB100,000) to the author or another rights holder
<b>Relevant intention, knowledge or belief</b>
Direct intention
<b>Penalty</b>
Criminal sanctions include payment of a fine of up to RUB200,000 or six months' correctional labour or arrest at the discretion of the judge.

### 5.4 Is there a time limit for bringing a copyright infringement claim?

The time limit for bringing a copyright infringement claim depends on the nature of the claim. In the case where a property right has been violated, the limitation period will be three years. Time begins to run from the moment when the rights holder learned or should have learned about the violation of their right and the identity of a proper defendant. However, a time limit is not applicable to non-property claims, eg claims connected with an author's moral rights.

### 5.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

In Russia, the general rule is that the unsuccessful party pays the costs of the successful party (including expenses for legal representatives) within reasonable limits. Such costs may be recovered in a separate proceeding. The court may reduce the required sums if they are higher than the average amount in the region where the dispute was examined. However, recent court practice shows that the courts are more willing to satisfy the claims for reimbursement of court expenses in cases where the amounts claimed are supported by evidence. If a claim is satisfied in part, the costs are levied upon persons participating in the case in proportion to the amount of satisfied claims.

### 6.1 What courts can you bring a copyright infringement action in, and what monetary thresholds, if any, apply?

In deciding which court to bring a copyright claim in, the nature of the infringement (civil, administrative or criminal) and the extent of the economic activity involved are the key considerations. Commercial (arbitration) courts examine copyright infringement disputes to which the parties are legal entities and citizens with the status of an individual entrepreneur. Courts of general jurisdiction examine copyright infringement disputes involving private individuals.

The judgment of a first-level commercial court can be appealed to the relevant appellate court. A resolution of an arbitration appellate court may also be appealed to the cassation level. A cassation appeal for cases involving protection of copyright should be filed with the Intellectual Property Court, which started to work on 3 July 2013. In this capacity, it reviews copyright infringement cases decided upon by all state commercial (arbitration) courts of first and appeal instance within Russia. As a court of first instance, the IP Court does not adjudicate cases concerning copyright infringements. However, as a court of cassation it plays a key role in ensuring consistent and transparent interpretation of the law relating to IP. Moreover, review by way of supervision is available in both commercial courts and the general jurisdiction courts systems.

The Supreme *Arbitrazh* Court of the Russian Federation was responsible for supervision of economic disputes until 6 August 2014. However, in the recent judicial reform its powers passed to the newly formed Supreme Court of the Russian Federation. This new unified supreme judicial authority now performs judicial supervision for all Russian courts (general jurisdiction courts, commercial (arbitration) courts and military courts), considering all types of disputes (civil, economic, criminal, administrative and other cases that are under the jurisdiction of the aforementioned courts).

The Moscow City Court (the MCC) has exclusive jurisdiction to examine online copyright infringement disputes. The jurisdiction of the MCC is discussed in 5.2 above. Under the Civil Code, a rights holder is entitled to demand that an infringement cease, counterfeit products be destroyed at the expense of the infringer if copyright items were illegally used in such products, and damages be paid.

As an alternative, instead of payment of damages, the rights holder may demand compensation amounting to:

- from RUB10,000 to RUB5m determined at the discretion of the court
- double the cost of the counterfeit goods
- double the amount of the value of the licence fee which, in comparable circumstances, would usually be paid for lawful use of the copyright object. The bailiff service should complete and enforce the court decision within two months after the claimant files the corresponding application.

## 6.2 Are there any other ways in which you can enforce copyright?

### Criminal enforcement

Criminal proceedings can be initiated on the grounds described in 5.3 above.

A copyright violation in the form of plagiarism is classified by the Criminal Procedural Code of the Russian Federation as one of the criminal cases for a private-public prosecution. In this category of case, a prosecution can be initiated only at the request of the victim. The other type of violation is an unauthorised use of copyrighted works (purchase, storage or carriage of counterfeited copies of works or phonograms for the purpose of sale). This falls within the cases of public prosecution where the consent of the victim is not required. Criminal cases concerning a violation of copyright are investigated by the investigators of the Investigative Committee of the Russian Federation and examined by the courts of general jurisdiction.

### Administrative enforcement

If an infringement does not qualify for a criminal case, administrative proceedings can be initiated. In an administrative infringement case, there is no need to prove the amount of damage caused.

According to the Code of Administrative Offences of the Russian Federation, administrative proceedings can be initiated simply for unlawful use of IP rights (eg import, sale, hiring out of counterfeit items etc) for the purpose of deriving revenue. Administrative cases are investigated by the police and tried by the courts under a simplified procedure. This step is effective in terms of counterfeit copies of works being seized and subsequently destroyed.

### Unfair competition action

The Federal Law on Protecting Competition provides for an opportunity to initiate unfair competition proceedings within the Federal Anti-Monopoly Service against a copyright infringer. The sale, exchange or other introduction into circulation of goods involving an illegal use of copyright may be recognised as unfair competition

should the claimant and defendant be direct competitors in the same segment of the Russian market. Applications regarding unfair competition are examined by the Federal Anti-Monopoly Service and its regional bodies, but they can transfer such cases to the relevant commercial (arbitration) court.

## 6.3 What agency bodies are responsible for promoting and/or enforcing copyright? What do they do?

The Ministry of Culture of the Russian Federation is the main government body responsible for general policy in the sphere of copyright. Among the functions of the Ministry of Culture are enacting regulatory legal acts for the purpose of regulating relationships in the area of copyright and related rights, as well as accrediting collective rights management agencies to represent rights holders. There are currently no agency bodies in Russia that are responsible for promoting copyright. With regard to enforcement, the police will target criminal activity (see 5.3) but it is up to the rights holders or the collective rights management agencies to stop the infringing activity and take action.

## 6.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

Collective rights management agencies in Russia act as intermediaries between rights holders (authors, publishers, performers, phonogram owners) and users of their works. They are entitled to conclude licence agreements with users and collect remuneration under such agreements, to file lawsuits as well as to commit the other legal actions required to protect the rights of rights holders. Such agencies exist in the form of non-commercial organisations.

There are two types of collective rights management agencies existing in Russia – accredited and non-accredited. The first group includes those organisations that received a certificate of state accreditation from the Ministry of Culture of the Russian Federation in the relevant sphere (the list of spheres is set out in the Civil Code). After it receives an accreditation, the agency is entitled to collect remuneration for the benefit of all rights holders (regardless of whether a signed agreement exists with them). The only exception is a situation when the rights holder himself/herself has already entered into an agreement with another non-accredited collective rights management agency. The following collective rights

management agencies have government accreditations (in each case, the acronym directly reflects that commonly used in Russian for the organisation in question):

<b>Agency</b>
Russian organisation for intellectual property (VOIS)
<b>Who it represents</b>
Performers, phonogram producers. Accreditation in the sphere of public performance and broadcast or cable transmission of phonograms published for commercial purposes.
<b>Agency</b>
Russian Authors' Society (RAO)
<b>Who it represents</b>
Composers and authors of text. Accreditation in the sphere of:
<ul style="list-style-type: none"> <li>• public performance and broadcasting of musical works</li> <li>• public performance and broadcasting of musical works used in audiovisual works.</li> </ul>
<b>Agency</b>
Russian Union of Rights Holders (RSP)
<b>Who it represents</b>
Authors, performers and producers of phonograms and audiovisual works. Accreditation in the sphere of free reproduction of phonograms and audiovisual works for private purposes. For more information, please refer to 6.5.
<b>Agency</b>
Non-commercial partnership "UPRAVIS"
<b>Duration</b>
Painters, sculptors and other authors of works of art. Accreditation in the sphere of managing the artist's resale right in respect of artistic works as well as the author's manuscripts (autographs) of literary and musical works.

Among agencies without Government accreditation, the following are the most notable:

<b>Agency</b>
Russian Society of Management Performers' Rights (ROUPI)
<b>Who it represents</b>
Performers, phonogram producers.

<b>Agency</b>
National Federation of the Music Industry (NFMI)
<b>Who it represents</b>
A non-profit partnership of leading music companies brought together for the purpose of the development of the legal music market in Russia and the Russian internet, and promotion of respect to artists and their copyright.

## 6.5 Are copyright levies payable? By whom, and in what circumstances?

In accordance with Article 1245 of the Civil Code, the authors, performers and manufacturers of sound recordings and audiovisual works are entitled to receive a fee for a free reproduction/playback of the sound recordings and audiovisual works exclusively for personal purposes. Such fee is of a compensatory nature, and is payable to rights holders from the funds payable by the manufacturers and importers of the equipment and material media used for the reproduction/playback.

A list of the equipment and material media, and also the amount of, and procedure for collecting, the funds is approved by the Government of the Russian Federation. Under Regulation No.829 of the Government of Russian Federation dated 14 October 2010, there is a uniform 1% tax on computers, blank optical disks, memory sticks, TVs, video and audio recorders, radios, mobile phones, etc. The Russian Union of Rights Holders (RSP) is responsible for collecting these funds (a specific copyright levy), which is to be distributed in the following proportions:

- 40% – to the authors
- 30% – to the singers
- 30% – to the manufacturers of the media.

## 7. Copyright reform

### 7.1 What do you consider to be the top recent copyright developments?

#### New order has been initiated in respect of disputes between rights holders (legal entities)

From 1 July 2017, a legal entity or individual entrepreneur whose exclusive rights have been violated by another legal entity or individual entrepreneur must send a cease and desist letter before filing a lawsuit with the court.

This only applies to cases of damages refunds and compensation. It is not required to file a cease and desist letter before filing a claim for recognition of the exclusive right, suppression of actions that violate or threaten to violate the exclusive right, or for the seizure of the digital media, or the seizure and destruction of funds used or intended to be used to infringe exclusive rights.

#### Higher Court's explanations on the free use of objects of copyright

On 25 April 2017, the Higher Court issued additional explanations on the free use of objects of copyright for cultural, educational, informational and scientific purposes. Under current legislation, such a use (in different forms, including quotation) is allowed without the author's consent or remuneration being paid. However, such a use must be accompanied by a reference to the author and source of the quotation.

The Higher Court has specifically indicated that quotation may only be applied to text and statements and may not relate to photos and other graphical objects of copyright.

However, the Higher Court has pointed out that all objects of copyright, including photos, are subject to free use under the following circumstances:

- the object is used only for cultural, educational, informational and scientific purposes
- the author and source of borrowing are clearly indicated
- the volume of such a borrowing is justified by its purpose.

Also, quotation is applicable to all objects, including photos that have become publicly available on lawful grounds.

#### Anti-piracy legislation amended

New regulations on the internet have been introduced to protect holders of copyright and related rights online. These new provisions continue the trend set in Russian legislation by the Anti-Piracy Acts, successfully enforced in 2013-2016, which included widening the list of objects

of anti-piracy legislation to almost all objects of copyright (except for photos), and introducing the simplified procedure of actions against copyright infringement, preliminary injunctions.

Under these new regulations, the governmental agency *Roskomnadzor* is entitled to demand blocking a website within 24 hours of receiving a specific notice. Such a notice must contain proof of numerous violations of copyright and related rights on the given website.

Another issue is the existence of so-called 'mirror' sites that derive from the blocked site and allow internet users to gain access to information posted on the initial site that has been blocked.

The term 'copy of a blocked site' has been introduced. It can be defined as a site confusingly similar to the one blocked due to numerous violations of copyright and related rights. Such a site can be blocked within 24 hours upon the application of *Roskomnadzor*.

Apart from that, the law specifically forbids the activity of companies that provide services aimed at overcoming such blocking.

*Roskomnadzor* is also obliged to compile and publish a list of all blocked internet resources on its own website.

These provisions were enacted from 1 October 2017.

### 7.2 What do you consider will be the top two copyright developments in the next year?

#### Widening the rights of directors of stage performances/shows

Amendments to the Civil Code of the Russian Federation have been made to protect the rights of the directors of stage performances. These amendments have already been accepted and will come into force on 1 January 2018.

The changes are aimed mainly at strengthening the mechanism for protecting the related rights (part of copyright) of stage directors of performances. Here are some of them:

- the terms 'performance' and 'show' are separated. Shows can only be reproduced and spread with the use of technical equipment. Performances can be repeated in public and be recognised by the audience

- the director of a performance/show gains the right of the inviolability of the performance/show; ie the performance/show is regarded as an independent object of copyright. For this, a new term has been introduced: 'public performance on stage'. It is related to the use of performance. The performer also gains the right to the inviolability of his/her individual acting in the public performance
- the right to publicly perform a performance/show (including live performance) is now indicated as a separate exclusive right to the performance/show
- a provision has been introduced on when the period of protection of the exclusive right of the director to the performance begins. Such period is determined based on the date of the first public performance of the production.

**Amendments regarding the rights and obligations of collective rights management agencies will be enacted from May 2018.**

These amendments are aimed at giving maximum protection to authors and users of exclusive rights and they clarify the provisions regarding the structure of such agencies.

The amendments establish that the collective rights management agencies may not refuse to conclude an agreement with the user of exclusive rights or other person obliged to pay funds for payment of remuneration without sufficient grounds.

The Government of the Russian Federation establishes strict rules of collecting and spending the income of such agencies through a system of funds and supervisory boards.

Collective rights management agencies shall also be obliged to consult rights holders online about the use of rights, the amount of the collected remuneration and the amounts withheld from such collected remuneration.

Also, the provisions of the Civil Code are supplemented by a rule establishing the procedure for allocating remuneration that is not claimed by the rights holder within three years.

Along with that, the Code on Administrative Violations is supplemented by an Article that establishes administrative responsibility of collective rights management agencies for any violation of their obligations.

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