17. Intellectual Property

17.1 Regulatory Environment

Russian IP legislation consists for the most part of the Civil Code of the Russian Federation, specifically Part IV put into force by Federal Law No. 230-FZ, dated 18 December 2006. Part IV of the Civil Code along with Federal Law No. 231-FZ “On Enacting Part IV of the Civil Code of the Russian Federation,” dated 18 December 2006, have replaced or amended all preceding individual IP laws as of 1 January 2008. Part IV of the Civil Code is a codification of pre-existing IP laws, which have been compiled as chapters in Part IV of the Civil Code with some significant amendments. Parts I–III of the Russian Civil Code also set out certain general provisions pertaining to legal protection of IP rights. Federal Law No. 35-FZ, dated 12 March 2014, introduced a vast set of amendments to Part IV of the Civil Code, part of which entered into force on 1 October 2014 and the second part — on 1 January 2015.

Any foreign legal entity or individual may seek protection for its/his/her intellectual property rights in Russia, provided that the requirements of the law are satisfied. Russia is a signatory to major international treaties on intellectual property rights, including the Universal Copyright Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Madrid Agreement on the International Registration of Trademarks, the Protocol to the Madrid Agreement, the Singapore Treaty on the Law of Trademarks, the Trademark Law Treaty, the Patent Law Treaty, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Brussels Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, the Nairobi Treaty on the Protection of the Olympic Symbol, the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure, the Strasbourg Agreement Concerning International Patent Classification, the Locarno
Agreement Establishing an International Classification for Industrial Designs, the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, the WIPO Performances and Phonograms Treaty, the WIPO Copyright Treaty and the WIPO Beijing Treaty on Audiovisual Performances.

17.2 Patents

**An invention** is a *technical* solution in any field related to a product (inter alia, to a device, substance, microbial strain, or cell culture of plants and animals) or a method/process. Patent protection is given to an invention if it is novel, inventive (non-obvious from prior art) and industrially applicable. The maximum duration of patent protection for an invention is 20 years from the application filing date, subject to payment of annuities. The term of a patent for an invention related to a medicine, pesticide or agrochemical, the use of which is subject to obtaining special permission (Marketing Authorization), may be extended at the request of the patent owner for a period not exceeding five years. The right to obtain a patent belongs to the inventor, his/her employer (in case of an employee’s invention) and their assignees. A patent application is filed with the Federal Service for Intellectual Property, Patents and Trademarks (“Rospatent”).

A **utility model** is a *technical* solution pertaining to a device. Utility model protection is similar to that of inventions, with certain limitations and restrictions. A utility model is granted patent protection if it is novel and industrially applicable. The term of a utility model’s patent protection is ten years from the application filing date, subject to payment of annuities, and may be extended for an additional period not exceeding three years. One application can cover only one device, variants have not been possible since 1 October 2014.

**An industrial design** is an artistic and construction solution that determines the outer appearance of a product of industrial or handicraft origin by its *images*. An industrial design is granted patent
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protection if its essential features as present on the images are novel and original. An industrial design is deemed novel if the combination of its essential features from the images is not known from information publicly available in the world before the priority date of the industrial design. An industrial design is considered original if its essential features from the images evince the creative character of a product’s distinctive features. Legal protection of industrial design patents granted prior to 1 January 2015 lasts for 15 years, subject to payment of annuities, and with the possibility of extension for an additional period specified in the application, but not exceeding ten years. Starting from 1 January 2015 the initial term of industrial design patent validity lasts for five years, extendable four times for an additional five years (25 years in total).

Russia has two valid patent systems for inventions: national and regional. The regional patent system is based on the Eurasian Patent Convention of 1995 (the “Convention”), which enables one Eurasian patent to cover eight countries that are members of the Commonwealth of Independent States. Russia is a member state of the Convention. Both Russian and Eurasian patents for inventions can be obtained to protect an invention in Russia. Utility models and industrial designs are not covered by the Convention and can be protected only under national patent law.

A granted Russian patent may be invalidated on a limited number of grounds, such as the patented invention, utility model or industrial design not complying with the conditions of patentability established by Russian patent law; the patented invention, utility model or industrial design not being sufficiently disclosed to enable implementation by a skilled person; the patent being issued when there were several applications for identical inventions, utility models or industrial designs having one and the same priority date; the patent indicating as the author or patent holder a person not being such or without an indication in the patent of the author or patent holder.

A patented invention or utility model will be deemed used in a product or by a method if the product contains, or the method uses, each
feature of the patented invention or utility model stated in an independent claim of the invention or utility model, or a feature equivalent thereto. Equivalence of a feature is generally assessed according to the criteria of identical or adequate replacement and achievement of the same technical function/effect.

Patent rights are protected by the remedies contained in the Civil Code of the Russian Federation (see section 17.11 below) and are applicable at the request of right holders and/or exclusive licensees under the authorization thereof.

Preliminary or interim injunctions are available but rarely granted in patent cases at present. It is more realistic to obtain preliminary or interim injunctions in case of a repeated infringement that has already been proven in other litigation in respect of the same patented product or process.

There are also criminal and administrative proceedings available for patent disputes but these are rarely used.

**Summary of specific issues of patent litigation in Russia**

It is necessary to have all information and evidence at hand before initiating the action since:

- there is no discovery;
- courts frown upon requests aimed at obtaining information from third parties;
- once initiated the proceedings move quickly;
- judges rely heavily on forensic examination results, thus it is necessary to engage suitable experts to recommend for the forensic examination.

Patent invalidity is not a defense in patent infringement actions since these are two different types of action. The Chamber for Patent
Disputes of the Russian Patent Office handles invalidity actions. Russian courts handle patent infringement suits. At that, if a patent is invalidated partially or in whole a patent infringement court case may be dismissed or reconsidered.

It is necessary to be careful in drafting claims as ambiguous claims may be rejected by the court even if the plaintiff has sufficient evidence to prove infringement.

The IP court, which has operated in Russia since 2013, currently considers patent disputes as a third (cassation) court instance (see Section 17.12 below).

Under Russian law it is possible to assign or license an invention, utility model and industrial design protected by a patent to another person. Such assignment and license agreements must be recorded with Rospatent, failing which the transfer (grant) of the rights is deemed not to have taken place. These agreements enter into force as of the date of such recording. The patent owner has the sole right to use an invention, utility model or industrial design that is protected by such a patent. Without the patent owner’s permission no one is allowed to use a patented object in any way, including importation, manufacture, application, offer for sale, sale or other introduction into commercial turnover, or storage for this purpose. Infringement of patent rights may entail civil, administrative or criminal liability in accordance with the applicable legislation.

17.3 Trademarks, Service Marks, Trade Names and Appellations of Origin of Goods

Under Part IV of the Civil Code, trademarks (and service marks) are designations individualizing goods or services of legal persons and individual entrepreneurs. A mark may be represented by a word or words, pictures, three-dimensional signs and other designations or combinations thereof. A trademark may be registered in any color or color combination.
Legal protection of trademarks and service marks is granted by virtue of their registration with Rospatent or by virtue of international agreements to which the Russian Federation is a party. Russia is a “first-to-file” jurisdiction. Although unregistered signs used as trademarks do not enjoy legal protection, extensive pre-filing use may help to demonstrate acquired distinctiveness if the trademark is inherently non-distinctive.

It is advisable to conduct a preliminary search of senior rights among registered trademarks and pending applications designating similar goods and services prior to any use or filing of a trademark for registration. The Russian trademark legislation does not provide a formal opposition procedure. Trademarks maybe challenged by third parties only after registration, however it is possible to submit an “informal opposition” with objections against granting registration while the undesirable trademark is still pending. All applications are examined by Rospatent for compliance with formal and substantive requirements, including absence of conflict with a prior right. A coexistence agreement with the holder of a prior right (or its written consent to registration) may help to overcome a provisional refusal.

Trademark protection is granted for ten years from the filing date of the application, and may be renewed during the last year of validity for a subsequent ten-year period. Unless it is renewed a trademark registration lapses. Trademark protection may be terminated upon a request from an interested party in respect of all or part of the designated goods and services due to non-use. The request for cancellation may be filed before the IP Court with respect to registered trademarks or service marks that, as of the date the cancellation request is filed, have not been used in Russia for a consecutive three-year period... Any changes which might affect the registration, such as changes of name and/or address of the trademark owner, assignments, mergers or other transactions, must be recorded as soon as possible.

Extensively used trademarks and unregistered signs may be recognized as well-known marks in Russia. Legal protection of a well-
known trademark is perpetual, retrospective and under certain circumstances not limited to goods and services in regard of which the registration has been granted. Therefore, the procedure of recognizing a trademark well-known may be used in order to ban use of identical or confusingly similar trademarks owned by third parties for other goods and services, without it being necessary to have the renowned trademark registered in all classes of goods, thus risking cancellation based on non-use. Trademark and service mark assignments and licenses must be registered with Rospatent. In the absence of such registration the transfer of the respective rights to the trademark is deemed not to have taken place.

**Trade names** are protected by the Civil Code. Part IV of the Civil Code contains a special section concerning legal protection of trade names. Trade names (so-called “commercial designations”) are designations which individualize trading, industrial or other types of enterprises owned by legal entities and individual entrepreneurs. Trade names differ from company names in that they do not require registration and are not subject to obligatory incorporation into the foundation documents of the trade name owners. The owner of a trade name enjoys an exclusive right to its trade name and may use it by any lawful means. The exclusive right to a trade name arises if the designation which is used as a trade name possesses sufficient distinctiveness and its use has gained notoriety within a certain territory. The scope of protection of a trade name used for the purpose of individualization of an enterprise located in the Russian Federation is limited to the territory of the Russian Federation. An exclusive right to a trade name terminates if the owner of the trade name fails to use it during a continuous one-year period. A trade name owner may grant the right to use its trade name to another person under a lease of enterprise agreement or a franchising agreement.

**An appellation of origin** of goods is a name constituting or containing a current or historical denomination of a country, settlement, locality or other geographic unit (hereinafter referred to as a “geographic unit”) or a derivative of such denomination that has become known as a result of its use with respect to goods, the specific
features of which are mainly or exclusively determined by natural conditions or human factors which are characteristic of such geographic unit. A designation which, though representing or containing the name of a geographic unit, has entered into the public domain in the Russian Federation as a designation of goods of a certain kind (has become generic) and is not related to the place of manufacture of said goods, may not be deemed to be an appellation of origin of goods. Legal protection is given to an appellation of origin of goods based on its registration with Rospatent. An appellation of origin of goods may be registered in the name of one or more persons. The person or persons that have duly registered an appellation of origin of goods obtain the right to use such appellation, provided that the goods manufactured by such person(s) satisfy the criteria mentioned above. The right to use an appellation of origin of goods may be granted to any legal entity or individual which produces goods with the same specific features within the same territory. The protection is granted for ten years from the date of filing the application, and may be renewed for subsequent ten-year period. The owner may not grant licenses for use of the appellation of origin of goods.

Infringement of rights to a trademark, service mark or appellation of origin of goods may entail civil, administrative or criminal liability.

17.4 Company Names and Trade Names (Commercial Designations)

Company names are designations that identify or distinguish different legal entities when conducting their commercial activities. Legal protection of company names is provided by the Civil Code and the Paris Convention for the Protection of Industrial Property, to which the Russian Federation is a party. In the Russian Federation a company name consists of two parts: the indication of a business’s legal structure and the distinctive name of the company. A company may use the official name of the Russian Federation or any words derived therefrom in its company name only with the consent of the Russian Government. The right to a company name arises from the
moment of state registration of the legal entity. The owner of a company name is allowed to use its company name exclusively, and to prohibit others from its unauthorized use. The owner of a company name may not alienate its company name or grant the right to use it to another person. A legal entity may not use a company name that is identical or confusingly similar to the company name of another legal entity if both entities are engaged in similar business activities and the company name of the former legal entity has been incorporated in the state register of legal entities prior to state registration of the latter. A legal entity illegally using the company name of another legal entity is obliged to cease such use at the request of the company name owner and to compensate for any losses caused. A company name owner may use its company name or its individual elements as a part of its trade name or a trademark (service mark) belonging to the company name owner. A company name incorporated in a trade name or a trademark (service mark) is protected regardless of the protection of the trade name or the trademark itself.

17.5 Domain Names

Part IV of the Civil Code of Russia does not list domain names among objects of intellectual property, nor does it contain a legal definition of a domain name. A registered domain name by itself is not considered as a prior right impeding registration of a trademark, unless at the date of trademark application the website is famous enough for Rospatent to find that registration of the trademark may lead to customer confusion.

Please note that .RU domain names are registered in Russia on a “first-come, first-served” basis by several registrars. When registering domain names, the registrars neither check nor require domain name applicants to prove that they have a legitimate right to use the names they seek to register.

Pursuant to Part IV of the Civil Code, no one may use, without the permission of the trademark owner, designations that are confusingly similar to a trademark in respect of goods and services for the
individualization of which the trademark was registered, or similar goods. The law specifies some acceptable forms of use of a trademark by its owner. The exclusive right to a trademark may be exercised, in particular, by use of the trademark on the Internet, including its use in domain names and other means of address.

In the recent years the number of disputes over domain names has significantly increased.

There is no procedure similar to the Uniform Domain-Name Dispute-Resolution Policy in Russia; therefore, all domain name disputes that are not amicably resolved need to be taken to a court of law. In practice domain name disputes are usually submitted to arbitrazh (state commercial) courts (regardless of whether the defendant is an individual or a legal entity) as claimants (owners of trademarks valid in Russia) are either legal entities or individual entrepreneurs.

According to the recent practice of the Higher Arbitrazh Court,\(^88\) courts should verify three criteria for finding a domain name holder responsible for a trademark infringement:

- whether the domain name at issue is confusingly similar to the trademark;
- whether the domain name holder has any rights or legal interests with respect to the domain name;
- if the domain name is registered and used in bad faith.

Consequently, if the registrant of a confusingly similar domain name has acquired it and uses it in good faith for activities unrelated with the goods and services of the trademark holder, it is highly unlikely that the court will rule in favor of the trademark owner, especially if

\(^{88}\) Although on 6 August 2014 the Higher Arbitrazh Court was merged with the Supreme Court of the Russian Federation, the decisions and guidelines on domain name issues of the former are still observed by the lower courts.
the domain name was acquired prior to the registration of the trademark.

In addition, it is worth noting that even if the trademark in question hasn’t been actually used by its owner, the disputed domain name registration may be considered illegal and infringing upon the trademark owner’s rights (in accordance with the practice of the Higher Arbitrazh Court).

17.6 Copyrights and Neighboring Rights

Part IV of the Civil Code protects works of science, literature and the arts (copyright), and grants protection to the rights of performers, phonogram producers, broadcasting and cable-casting organizations, database compilers and publishers (neighboring rights). Copyright protection arises by virtue of the creation of a work of art without any registration requirements. An author enjoys personal (moral) rights (right of authorship, right to the name, right to public disclosure, right to protect the author’s reputation) and proprietary rights (right of reproduction, distribution, import, public demonstration, public performance, translation, modification, etc.). Personal (moral) rights are inalienable from the author and cannot be assigned or transferred by agreement. The proprietary rights to a copyrighted object may be licensed or assigned by virtue of a copyright agreement. Part IV of the Civil Code allows for the transfer of copyright in the form of an exclusive or non-exclusive license agreement as well as by an assignment of copyright. The term of copyright protection for all works, including software programs or databases, is the lifetime of the author plus 70 years after his/her death. The author’s moral rights (right of authorship, right to the name and right to protect the author’s reputation) are protected perpetually. Infringement of copyright may entail civil, criminal or administrative liability.
17.7 Software Programs and Databases

Copyright protection also applies to software programs and databases. Pursuant to Part IV of the Civil Code, software programs are protected as literary works, while databases are protected as compilations. Although registration is not mandatory for protection, an author may optionally register and deposit software or a database with Rospatent. Assignments of registered software and databases must be recorded with Rospatent. A software program or a database is protected for the lifetime of the author(s) plus 70 years after his/her (their) death(s). The right to use a software program may be granted under a software license agreement.

17.8 Topologies of Integrated Microcircuits

In accordance with Part IV of the Civil Code, legal protection is granted with regard to original topologies of integrated microcircuits, developed as the result of an author’s work. The author enjoys the exclusive right to use the topology as he/she sees fit, including the prohibition of its unauthorized use by third parties. The rights to a topology may be transferred fully or partially to another person under a written assignment agreement or license agreement. Although the registration of a topology is not mandatory for its protection, an author may voluntarily register it with Rospatent. The exclusive right to use the topology is effective for ten years from the date of its initial use or from the date of the topology’s registration, whichever is earlier.

17.9 Trade Secrets (Know-How)

Rules on trade secrets (know-how) are included in the Russian Civil Code (Part IV) and Federal Law No. 98-FZ “On Trade Secrets,” dated 29 July 2004, as amended (the “Trade Secrets Law”).

According to the Civil Code, information of any nature (production, technical, economic, organizational, etc.) relating to results of intellectual activity in the scientific and engineering sphere and the
methods of carrying out professional activity may be treated as a trade secret (know-how) and be protected intellectual property only if:

- such information has actual or potential commercial value being not known to third parties;
- there is no free legal access to such information; and
- the owner of such information takes reasonable measures to maintain such information’s confidentiality, in particular, by establishment of a special trade secrets regime with regard to such information.

All these criteria must be met in order for information to be protected as a trade secret (know-how) and recognized as intellectual property under Russian law. If any of these criteria is not met the entity might be unable to protect its trade secrets (e.g. to initiate criminal or administrative prosecution for violation of the trade secrets regime, to claim damages, to dismiss an employee for disclosure, etc.).

Pursuant to the Trade Secrets Law, the trade secrets regime includes the following steps and actions to be taken by an entity in order to protect (and have others respect) its trade secrets (know-how):

- to create a list of information constituting a trade secret;
- to limit access to the trade secret by establishing and implementing controlling procedures;
- to list the persons who have been given access to the trade secret, including, e.g., employees and counterparties of the trade secret owner;
- to regulate the relations on use of the trade secret by employees on the grounds of employment agreements and by contractors on the grounds of civil agreements; and
• to affix “trade secret” markings on tangible media (documents) containing the trade secret with a reference to the owner of such information with its full name and address.

The trade secrets regime is deemed established if and when the trade secret owner performs all the above-mentioned actions. Otherwise, the company might be unable to prove that certain information constitutes know-how under Russian law and, consequently, to protect its valuable information as valid intellectual property.

17.10 Employee’s Developments

As a general rule of Russian law, an employer obtains rights (including the exclusive right) to the intellectual property created by an employee strictly within his/her employment duties. Therefore, to ensure that all rights are owned by the employing company, it is essential to ensure that employment agreements and other relevant documents with Russian developers are drafted in such a way that all rights in and to the intellectual property created by the developers are fully and duly vested in the employer and are consequently wholly owned by the employer without any limitations or encumbrances.

In most cases employees create patentable intellectual property and copyrighted works.

The amount of remuneration for creation of intellectual property and its payment to an employee is established in an agreement between the employee and the employer. Should the employee and employer fail to reach such an agreement, the amount of such remuneration and other payment terms may be established by a court at the request of either party.

The Russian Government adopted rules on the calculation of remuneration payable to employee inventors who have created patentable solutions, including an invention, utility model, or industrial design.
Specifically, these rules entitle the employee inventor to receive a payment equal to 30% of his/her average monthly salary (for the last 12 month preceding the creation) for the creation of an invention, and 20% of his/her average monthly salary (for the last 12 month preceding the creation) for the creation of a utility model or an industrial design. In addition, the employee inventor is entitled to receive an average monthly salary for each 12-month period during which the invention, utility model or industrial design is used by the employer. The employee inventors are also entitled to 10% of the licensing fees the employer receives under a patent license, and to 15% of the remuneration received by the employer as consideration for the assignment of the patent. These rates of remuneration apply in the absence of a specific agreement between the employer and employee covering these issues.

To ensure that all rights to the intellectual property created by employees are vested in the employer the latter should take the following steps:

- draft an employment agreement as well as other employment documents (i.e. job descriptions) to ensure that any intellectual property which has to be, or might be, created by an employee would fall into the scope of his/her employment duties;

- ensure that the employment agreement envisages that the remuneration for creation of intellectual property is included into the employee’s salary or, alternatively, the employee and the employer enter into a stand-alone agreement on the remuneration (it is highly advisable to enter into such agreements with employees who are likely to create patentable solutions in order to avoid application of the rules on remuneration established by the Russian Government);

- the employer should take timely measures provided by the Russian Civil Code (Part IV) to keep the ownership to the intellectual property created by its employees (i.e. keep the
created intellectual property confidential, file a patent application with Rospatent, start to use the created intellectual property, etc.).

17.11 License and Franchise Agreements

Under a general rule of Russian law, a grant of the right to use intellectual property in Russia may be in the form of a license or franchise agreement made in writing and signed by both parties.

The grant of rights to registered patents or trademarks under a license agreement or a franchise agreement is subject to mandatory state registration with Rospatent. Without such registration with Rospatent the license/franchise would be considered invalid in Russia.

The grant of rights under a license/franchise agreement can be registered on the basis of a notification executed by both licensor and licensee (franchisor and franchisee) and filed with Rospatent. Such notification must contain the essential terms of the relevant agreement. Alternatively, to register the grant of rights to use intellectual property under a license / franchise, the parties can file a notarized extract from the relevant agreement or the agreement in its entirety with Rospatent. At the moment the safest approach is to file the entire agreement for recordal with Rospatent, since there might still be questions as to the enforceability of those license and franchise agreements or parts of them or amendments thereto that have not been submitted to and registered with Rospatent.

License and franchise agreements between an international licensor/franchisor and a Russian licensee / franchisee may be governed by non-Russian law. However, certain mandatory Russian law provisions and requirements would be applicable to license and franchise agreements irrespective of the parties’ choice of law. For instance, a license/franchise agreement must provide a detailed description of the licensed intellectual property (e.g. registration numbers of the licensed trademarks) and specify the scope of rights granted to a licensee. From the Russian law perspective the right to
use intellectual property that is not specifically provided in a license agreement is considered not granted.

Under Russian law, a franchisor is subsidiarily or even jointly and severally liable with a franchisee with regard to claims brought against the franchisee in respect of the quality of franchised goods and/or services. The scope of such liability differs depending on whether or not the franchisee manufactures those goods in connection with which a claim is brought under the franchise agreement. For a trademark license, a trademark licensor would be jointly and severally liable with a licensee in connection with claims brought against the licensee in connection with its manufacture of goods and rendering of services under the licensed trademark.

17.12 IP Enforcement. IP Court

Infringement of intellectual property rights entails civil, administrative or criminal liability.

**Criminal and administrative actions** are initiated by the police, the customs, the Federal Antimonopoly Service, or by the mark owner filing a complaint with one of the above agencies. To qualify for criminal proceedings, the infringement must have caused substantial damage to an IP right/trademark owner or consumers. The authority in charge will investigate the case and pass their findings on to the court. The decision of the court of first instance may be further appealed in the court of appeals and in the cassation court.

In Russia legal entities cannot be held liable for a **criminal offense**. Criminal charges may be lodged against the director(s) of the entity responsible for infringement of copyright and related rights (article 146 of the Criminal Code), patent (article 147 of the Criminal Code), trademarks, service marks and appellations of origin (article 180 of the Criminal Code). Depending on the scale and gravity of the crime, the court hearing the criminal case may adjudge a punishment in the form of a fine, mandatory community service, correctional labor or imprisonment.
Administrative sanctions (fines, confiscation of infringing goods) are applicable both to individuals and legal entities. The sanctions applied to legal entities are stricter than those applied to individuals. If a legal entity repeatedly or grossly infringes IP rights, the court may decide to liquidate it.

A civil claim may be filed in a criminal trial, but to obtain damages in case of administrative liability, the trademark owner must file a civil lawsuit in parallel.

**Remedies under civil proceedings** include:

- Declaration: recognition of the right when a person either denies or otherwise does not recognize the exclusive rights and by doing so violates the interests of the right holder;

- Injunction: stopping the actions that infringe the right or create the threat of infringement;

- Payment of damages or — alternatively for patent, trademark, appellation of origin, copyright and related rights holders — of monetary compensation in the amount:
  - from RUB 10,000 to 5 million, or
  - of double the royalties that would be due under similar circumstances;

- Seizure of material utilized by the manufacturer, importer, holder, carrier, seller, distributor or non-bona fide acquirer; and

- Proclamation: publication of a court decision on an infringement.

**The Court for Intellectual Property Rights** ("IP Court") is the first IP-dedicated civil judicial body in Russia. It became operational on 3 July 2013. It has exclusive jurisdiction to consider disputes involving
intellectual property rights and acts both as the court of first instance and the court of cassation.

- As the court of first instance, the IP Court resolves disputes involving challenges of acts of federal state authorities in the IP area as well as various disputes related to granting or terminating the legal protection of IP, including decisions of the federal antimonopoly authority on recognizing actions related to the acquisition of exclusive rights to the means of individualization of legal entities, goods, works, services and businesses as unfair competition;

- Within its capacity as the court of cassation, the IP Court considers cases it had previously resolved as a court of first instance as well as cases related to the protection of IP resolved by other arbitrazh courts across the country;

- The court is authorized to resolve all disputes mentioned in federal legislation regardless of the parties involved in the case;

- Judicial decisions passed by the IP Court as the court of first instance can not be appealed other than by way of cassation appeal and come into force immediately after adoption.

The IP Court resolves IP disputes collegially in the first instance and in cassation, while the Presidium of the IP Court reviews cassation appeals in cases considered by the IP Court in the first instance.

17.13 Russia’s New Anti-Piracy Legislation

In August 2013 Russia introduced country-wide blocking injunctions for the rights owners of movies and TV shows and codified safe harbor principles for information intermediaries.

On 1 May 2015 blocking injunctions also became available to owners of other categories of copyrighted content (with the exception of photographs).
Applications seeking preliminary injunctions are to be filed with the Moscow City Court. Alongside the regular “paper” method there will be an option of filing the application through an on-line form at the website of the Moscow City Court. In both scenarios, the applicant must prove the infringement and provide sufficient evidence of the existence of the relevant rights. As it stands, Moscow City Court is the only venue to consider disputes involving placement of infringing content on the Internet.

Once the injunction is granted, the Moscow City Court appoints a deadline for filing a claim (no more than 15 calendar days). If the claim is not filed, the preliminary injunction will be withdrawn. The ruling imposing the injunction will be published on the website, sent to the applicant and the Telecom Regulating Authority (Roskomnadzor). The adverse party is entitled to request the court to bind the applicant to provide an indemnity to cover potential damages.

Further, the law provides for a procedure of executing injunctions by Roskomnadzor. Roskomnadzor must identify the ISP; send a notice with details that will enable the identification of the particular website and work (name of the work, author, rights holder, IP address) and record the date when it was sent out.

The ISP must inform the customer and request immediate removal of the infringing information within one business day. If the customer takes no action the ISP must limit access within three business days after the receipt of the notice by the customer. Should the ISP fail to perform such actions, this information will be sent to the relevant network operator, who must block this website/web page within one day.

The law explicitly states that the ISPs can not be held liable for limitation of access to the Internet under this procedure.

**Liability of Internet service providers (ISP):**

There are three types of providers identified by the new law:
• persons performing transmission of materials in networks (i.e. access providers);

• persons providing the possibility of placing materials in networks, or information required for obtaining such materials (i.e. website and platform operators); and

• persons providing the possibility to access materials placed in networks (e.g. hosting providers).

An Internet access provider can not be held liable if it (i) does not initiate the transmission, (ii) does not alter materials (except for technical purposes), (iii) is not and could not have been aware that use of the materials by the person initiating their transmission is illegal.

A website and platform operator can not be held liable if it (i) is not and could not have been aware that use of the respective intellectual property in such materials is illegal, (ii) receives written notice of an infringement and expeditiously takes necessary and sufficient measures.

With respect to persons providing the possibility to access materials placed in networks, the law just says that the above rules apply to this category, without any further specifications.

Notwithstanding the above, the new legislation states that even if the above requirements are met by an ISP, it is still possible to file an infringement claim against the ISP, however the relief will be limited and will not include damages or statutory compensation.