

Copyright 2021

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**Steven R Englund, Andrew H Bart, Susan J Kohlmann
and Andrew J Thomas**

Jenner & Block LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Copyright*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on the European Union and Russia.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

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LEGISLATION AND ENFORCEMENT

Relevant legislation

1 | What is the relevant legislation?

The relevant Russian legislation on copyright includes the Constitution and international treaties, such as the Berne Convention for the Protection of Literary and Artistic Works (1886), the Universal Copyright Convention (1952) and the World Intellectual Property Organization Copyright Treaty (1996). The main national legal provisions related to copyright are found in: Part IV of the Civil Code; the Civil Procedural Code; the Commercial Procedure Code; the Code of Administrative Offences; the Criminal Code; the Customs Code of the Eurasian Economic Union; the Federal Law on Information, Information Technologies and Information Protection; the Federal Law on Protection of Competition; and other laws and acts of executive bodies.

Enforcement authorities

2 | Who enforces it?

There are several enforcement bodies depending on the type of a dispute.

Civil disputes are resolved in court. When at least one party is an individual, the dispute is handled by the courts of general jurisdiction. In cases of online copyright infringement (excluding photographic works), the Moscow City Court is the court of first instance. If there is a commercial dispute the relevant court is the commercial (arbitrazh) court.

Other enforcement bodies are:

- the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor), which, through court orders, restricts access to copyright-infringing sources of information;
- the police (for copyright crimes falling under article 146 of the Criminal Code; such cases also fall under the authority of courts of general jurisdiction); and
- customs authorities (seizure of imported and exported goods containing copyrighted work without authorisation to use it, which are either recorded with the Customs Register of Intellectual Property Objects or ex officio).

The only administrative disputes that are resolved by the administrative body (the Federal Antimonopoly Service and its regional divisions) are disputes on unfair competition through copyright infringement.

Online and digital regulation

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?

Yes, under Russian law there is a special provision to cease illegal use of copyrighted work (excluding photographic works) on the internet. In particular, the Moscow City Court may order a preliminary injunction to restrict access to materials containing illegally used works on a web page. The procedure is described in detail in the Federal Law on Information, Information Technologies and Information Protection. Where copyright owners discover that their work is being used without their consent in information and telecommunication networks, including the internet, they have a right to seek a preliminary injunction in the Moscow City Court and ask Roskomnadzor to limit the access to such information sources. Roskomnadzor shall notify the hosting provider (or other person providing placement of such copyrighted object in the information and telecommunication network) to limit such access in Russian and in English within three working days. The hosting provider shall notify (within one working day) the owner of the information resource they serve and notify him or her of the need to restrict access immediately to the illegally posted information. Within one working day the owner shall delete or restrict access to the information. If the hosting provider fails to restrict access to the infringing source, the domain name of the site, its network address, links to the pages on the site revealing information that contains objects of copyright and related rights (except for photographic works), the request to limit the access is forwarded to the relevant telecoms operator. The telecoms operator shall act within one working day to restrict access to the source.

After the preliminary injunction is received from the court, the copyright owners must prove that their rights have been infringed and the court may then grant a permanent injunction.

The law stipulates the liability of an 'information intermediary'. An information intermediary is a person or entity that delivers material online or provides access to the material. An information intermediary may be liable for online infringement (eg, a registrar of domain names may be considered an information intermediary if he or she renders hosting provider services).

Extraterritorial application

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

Yes, under Russian law there is a special provision to cease illegal use of copyrighted work (excluding photographic works) in information and telecommunication networks, including the internet.

Based on paragraphs 14 and 15 of the Resolution of the Plenum the Supreme Court of the Russian Federation of 27 June 2017 No. 23 'on

the consideration by arbitration courts of cases on economic disputes arising from relations complicated by a foreign element', the Russian commercial courts are entitled to review cases with a foreign entity, if such disputes are related to the protection of rights to the results of intellectual activity and means of individualisation of legal entities engaged in entrepreneurial and other economic activities, goods, works, services and enterprises, used in the registration of domain names in the Russian domain zone (first-level national domains and second-level domain zones aimed at a Russian audience or including sites in Cyrillic). If the registration is carried out on the Russian territory (and the registrar is a Russian person), then it will be in other domain zones. Additionally, the Russian court establishes whether there is a close connection to the Russian territory in each dispute involving a foreign entity. For instance, a website with a domain name that has been disputed (with the exception of domain names in the Russian domain zone), and is primarily aimed at a Russian audience, and where its commercial activities are aimed at persons under the jurisdiction of Russia.

The Moscow City Court may order a preliminary injunction to restrict access to materials containing illegally used works on a web page. The procedure is described in detail in the Federal Law on Information, Information Technologies and Information Protection. Where copyright owners discover that their work is being used without their consent in information and telecommunication networks, including the internet, they have a right to seek a preliminary injunction in the Moscow City Court and ask Roskomnadzor to limit access to such information sources. Roskomnadzor shall notify the hosting provider (or other person providing placement of such copyrighted object in the information and telecommunication network) to limit such access in Russian and in English within three working days. The hosting provider shall notify (within one working day) the owner of the information resource they serve and notify him or her of the need to immediately restrict access to illegally posted information. Within one working day the owner shall delete or restrict access to the information. If the hosting provider fails to restrict access to the infringing source, the domain name of the site, its network address, links to the pages on the site revealing information that contains objects of copyright and related rights (except for photographic works), the request to limit the access is forwarded to the relevant telecoms operator. The telecoms service operator shall act within one working day to restrict access to the source.

After the preliminary injunction is received from the court the copyright owners must prove that their rights have been infringed and the court may then grant a permanent injunction.

Agency

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

Yes, the Ministry of Culture is the centralised governmental body. It is a federal executive body responsible for the development and implementation of state policy and legal regulation in the field of culture, art, cultural heritage (including archaeological heritage), cinematography, copyright and related rights (based on Resolution of the Government of 20 July 2011 No. 590 on the Ministry of Culture of the Russian Federation).

Additionally, the Federal Service for Intellectual Property (Rospatent) also deals with copyright in computer programs (software) and databases. Rospatent is in charge of maintaining the register of computer programs (software) and the register of databases.

SUBJECT MATTER AND SCOPE OF COPYRIGHT

Protectable works

6 | What types of works may be protected by copyright?

Under article 1259 of the Russian Civil Code any work of science, literature and art, regardless of the merits and purpose of the work, as well as the way it is expressed may be copyrighted (with several exceptions). The list of copyrighted works is unlimited and includes the following:

- literary works;
- dramatic and musical-dramatic works, and scripts;
- choreographic works and pantomimes;
- musical works with or without text;
- audiovisual works;
- paintings, sculpture, graphics, design, graphic stories, comics and other works of visual art;
- works of arts and crafts and scenographic art;
- works of architecture, urban planning and landscape gardening, including in the form of projects, drawings, images and models;
- photographic works and works obtained by methods analogous to photography; and
- geographical and other maps, plans, sketches and plastic works related to geography and other sciences.

Russian law also recognises computer programs (software) and databases as copyrighted works and protects them as literary works. Copyright law applies also to derivative works.

Rights covered

7 | What types of rights are covered by copyright?

Copyright under articles 1255 and 1226 of the Russian Civil Code embodies three types of rights: moral rights; proprietary rights, which are translated from Russian as 'exclusive rights' (this sometimes leads to misinterpretation, as such a right should be differentiated from an 'exclusive licence right'); and other rights depending on the copyrighted work (eg, the right to remuneration for an employee's work, the right to recall, the right to follow, the right to access works of fine art). Moral rights to a work consist of the right of authorship; the author's right to a name; the right to inviolability (integrity) of the work; and the right to publish the work.

Russian law distinguishes between copyright, neighbouring rights and special regulation of databases.

In addition to copyright, under Russian law neighbouring rights are protected. Intellectual rights to the results of performing activities (performances), to phonograms, to messages on the air or by cable of radio and television broadcasts (broadcasting of on-air and cable broadcasting organisations), to the content of databases, as well as to works of science, literature and art, first made public after their transition into the public domain, are related to copyright and are referred to as neighbouring rights.

Russian law classifies databases as composite works that are protected by copyright, while databases that do not represent the result of creative work in the selection or arrangement of the material, but the creation of which required significant financial, material, organisational and other costs, are protected under the regime of related (neighbouring) rights (article 1333 of the Russian Civil Code). In accordance with the norms of domestic legislation, a single database can be both an object of copyright and an object of neighbouring rights.

Excluded works

8 | What may not be protected by copyright?

Copyright does not apply to ideas, concepts, principles, methods, processes, systems, ways, solutions to technical, organisational or other problems, discoveries, facts, programming languages, or geological information about the subsoil (according to paragraph 5 of article 1259 of the Russian Civil Code).

The following objects are not subject to copyright protection pursuant to paragraph 6 of article 1259 of the Russian Civil Code:

- official documents of state bodies and local self-government bodies of municipalities, including laws, other regulations, court decisions, other materials of a legislative, administrative and judicial nature, and official documents of international organisations and their official translations;
- state symbols and signs (flags, emblems, orders, banknotes, etc), as well as symbols and signs of municipalities;
- works of folk art (folklore) that do not have specific authors; and
- messages about events and facts of an exclusively informational nature (messages about the news of the day, television programmes, timetables of vehicles, etc).

Fair use and fair dealing

9 | Do the doctrines of 'fair use' or 'fair dealing' exist, and, if so, what are the standards used in determining whether a particular use is fair?

No, there is no legal definition of fair use under Russian law, however there is a similar exception to use copyrighted work without the copyright owner's prior consent based on the purpose of such use. The rules are stipulated in articles 1273 to 1279 of the Russian Civil Code and are outlined below.

Under article 1273, it is allowed to use a lawfully published work without the consent of the copyright owner and without paying remuneration if it is necessary and only for personal use (with exceptions).

Pursuant to article 1274, it is permitted to use a lawfully published work without the consent of the copyright owner and without paying remuneration, but with the obligatory indication of the author's name whose work is used and provided that the work is being used for scientific, polemical, critical, informational or educational purposes, in order to reveal the creative intention of the author to the extent justified by the purpose of the citation.

Thus, the law allows, without the consent of the author and without payment of remuneration, the quoting of excerpts from audiovisual works (films) and photographs for informational purposes in an amount justified by the purpose of citation.

To determine the legitimacy of a citation in a documentary film, three circumstances must be established:

- whether the documentary film is being made just for informational purposes or also for entertainment (see ruling of the Intellectual Property Court dated 14 December 2018 N C01-1002/2018 in Case No. A40-32542/2018, according to which a documentary film about a corporation was considered to be made for informational purposes);
- whether the citation itself is for informational purposes only or if it is to enhance the artistic and aesthetic impact on the viewer (see ruling of the Intellectual Property Court of 25 April 2016 No. C01-159/2016 in Case No. A40-142309/2015; and ruling of the Supreme Court of 24 December 2014 No. 305-ES14-6441); and
- if the purposes are informational, whether the volume of material used in the citation is justified by these purposes.

Paragraph 4 of article 1274 specifies that the creation of a work in the genre of literary, musical or other parody or in the genre of caricature

on the basis of another (original) lawfully published work and the use of these parodies or caricatures are allowed without the consent of the author or other owner of the exclusive right to the original work and without payment of remuneration to him or her.

On 2 April 2021, the Intellectual Property Court upheld the decision of previous court instances in Case A56-123039/2019 and agreed that the defendant in this case has the right to use the result of intellectual activity that does not belong to him to create stickers (virtual stickers on a social network) by virtue of the provisions of paragraph 4 of article 1274 of the Russian Civil Code, and that, at its core, the disputed set of stickers is a parody.

According to article 1275, public libraries, as well as archives, access to archival documents of which is not restricted, provided that there is no profit-making purpose, may, without the consent of the author or other copyright owner and without payment of remuneration, provide for temporary free use (including in the order of mutual use of library resources) originals or copies of works lawfully introduced into civil circulation.

Under article 1276, the reproduction and distribution of manufactured copies, broadcasting or cable communication, making available to the public a work of fine art or a photographic work that is permanently located in a place open to the public is allowed without the consent of the author or other copyright owner and without payment of remuneration, except in cases where the image of the work is the main object of use or the image of the work is used for profit.

Pursuant to article 1277, it is allowed, without the consent of the author or other copyright owner and without payment of remuneration, to perform publicly a legally published musical work during an official or religious ceremony or funeral, to the extent justified by the nature of such a ceremony.

According to article 1278, it is allowed, without the consent of the author or other copyright owner and without payment of remuneration, to reproduce the work for the purpose of conducting proceedings concerning an administrative offence, for conducting an inquiry, preliminary investigation or legal proceedings, to the extent justified for this purpose.

Under article 1279, a broadcasting organisation has the right, without the consent of the author or other copyright owner and without payment of additional remuneration, to make a recording for short-term use of the work in respect of which this organisation has received the right to broadcast, provided that such a recording is made by the broadcasting organisation using its own equipment and for its own broadcasts. In this case, the organisation is obliged to destroy such a record within six months of the date of its production, if a longer period is not agreed with the copyright owner or is not established by law. Such a record may be stored without the consent of the copyright owner in state or municipal archives, if it is of an exclusively documentary nature.

Architectural works

10 | Are architectural works protected by copyright? How?

Yes, architectural works are protected by copyright and there are special provisions related to the rights of the author of architectural works. For instance, the author of architectural works, urban planning or landscape gardening has the right to exercise control over the development of documentation for construction and the right to supervision over the construction of a building or structure, or other implementation of the corresponding project.

Additionally, in accordance with subparagraph 10 of paragraph 2 of article 1270 of the Russian Civil Code, practical implementation of an architectural, design, urban planning or gardening project is considered as use. Moreover, under article 1294, the use of an architectural, urban planning or landscape project for implementation is allowed only once,

unless otherwise stipulated by the contract under which the project was created. The project and the construction documentation made on its basis may be reused only with the consent of the project author, unless the contract provides otherwise.

Performance rights

11 | Are performance rights covered by copyright? How?

In addition to copyright, under Russian law neighbouring rights are protected. Intellectual rights to the results of performing activities (performances), to phonograms, to messages on the air or by cable of radio and television broadcasts (broadcasting of on-air and cable broadcasting organisations), to the content of databases, as well as to works of science, literature and art, first made public after their transition into the public domain, are related to copyright and are referred to as neighbouring rights.

Article 1313 of the Russian Civil Code defines who is a performer (ie, an author of a performance, a person whose creative work created the performance) and covers three types of performers:

- artist-performers (actors, singers, musicians, dancers or other persons who play a role, read, recite, sing, play a musical instrument or otherwise participate in the performance of a work of literature, art or folk art, including a variety, circus or puppet show);
- conductors of an orchestra; and
- stage directors of a performance (persons who have staged a theatrical, circus, puppet, variety or other theatrical and entertainment performance).

The performer enjoys so-called related (neighbouring) rights that consist of proprietary rights and moral rights. Performers exercise their rights in compliance with the rights of the authors of the performed works. The rights of the performer are recognised and apply regardless of the existence and validity of the copyright to the performed work.

Neighbouring rights

12 | Are other 'neighbouring rights' recognised? How?

Under Russian law, neighbouring rights are protected. Intellectual rights to the results of performing activities (performances), to phonograms, to messages on the air or by cable of radio and television broadcasts (broadcasting of on-air and cable broadcasting organisations), to the content of databases and to works of science, literature and art, first made public after their transition into the public domain, are related to copyright and are referred to as neighbouring rights.

Moral rights

13 | Are moral rights recognised?

Yes, moral rights are recognised. They belong to the author and are part of copyright. Moral rights comprise: the right of authorship; the author's right to a name; the right to inviolability (integrity) of the work; and the right to publish the work. Moral rights are non-transferable, inalienable and perpetual (ie, they have an indefinite term of protection).

COPYRIGHT FORMALITIES

Notice

14 | Is there a requirement of copyright notice?

The copyright notice under Russian law consists of the © symbol, the name of the author or copyright owner and the year of first publication. The use of a copyright notice is a right but not an obligation. Additionally, it is obligatory for the name of the author or copyright owner and the

source of the published work to be indicated by the user in those exceptional cases when the law allows the use of a copyrighted work without the payment of remuneration to the author or copyright owner.

15 | What are the consequences for failure to use a copyright notice?

There are no legal provisions imposing sanctions for not placing a copyright notice. Still, a copyright notice helps to prove an infringer's guilt in case of a dispute.

Deposit

16 | Is there a requirement of copyright deposit?

No, there is no requirement of copyright deposit. Copyrighted works may be deposited at the discretion of the author or copyright owner.

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

There are no consequences for not depositing copyrighted works. The author or copyright owner may deposit the copyrighted work for the deposit to serve as evidence proving copyright.

Registration

18 | Is there a system for copyright registration, and, if so, how do you apply for a copyright registration?

There is no requirement to register a copyrighted work to obtain copyright protection. Computer programs (software) as well as databases may be voluntarily registered with the register of computer programs (software) or register for databases at the Federal Service for Intellectual Property (Rospatent).

19 | Is copyright registration mandatory? If voluntary, what are the benefits of registration?

No, copyright registration is voluntary. The voluntary registration or deposit helps in case of copyright infringement to prove the copyright and the priority date.

20 | What are the fees to apply for a copyright registration?

The official fees to file an application to register a computer program (software) and database is 3,000 roubles for individuals and 4,500 roubles for legal entities. Registration is voluntary.

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

There is no requirement to register copyrighted work to obtain copyright protection. Computer programs (software) as well as databases may be voluntarily registered with Rospatent. However, if no actions are taken by the copyright owner it may be difficult to prove priority and the authorship of the copyrighted work in a dispute.

OWNERSHIP AND TRANSFER

Eligible owners

22 | Who is the owner of a copyrighted work?

Initially, the owner of a copyrighted work is its author. An author of a copyrighted work is a private person or an individual whose creative

effort has created the work. The author is entitled to moral rights, exclusive rights (proprietary, material) and some other rights (eg, the right to recall; the right to an interest in resales; and the right to access works of fine art). The proprietary rights may be transferred from the author to any entity (legal or private entity), which will become the owner of the copyright as part of the proprietary rights.

Employee and contractor work

23 | May an employer own a copyrighted work made by an employee?

Yes, an employer is entitled to exclusive (proprietary) rights to a work made for hire by his or her employee by law, unless otherwise specified in the employment or other contract. Such contract shall be in writing. The employee reserves the moral rights as the author of such work.

There is an important legal provision stating that if the employer, within three years of the day when the work was placed at his or her disposal, does not start using this work, does not transfer the exclusive right to it to another person or does not inform the author about keeping the work in secret, the exclusive right to the work will be returned to the author (employee).

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

Yes, a hiring party is entitled to exclusive (proprietary) rights to a work made based on a legal contract unless otherwise specified in the contract. Such contract shall be in writing. The independent contractor reserves the moral rights as the author of such work.

Joint and collective ownership

25 | May a copyrighted work be co-owned?

Yes, a copyrighted work may be co-owned.

A copyrighted work may be created by co-authors that will enjoy equal scope of rights, unless agreed otherwise. Co-authors are individuals who have created a work through joint creative effort, regardless of whether such a work forms an inseparable whole object or consists of parts, each of which has an independent meaning.

The copyright in part of proprietary rights may be owned by one or jointly by several copyright owners (by persons and by entities).

Transfer of rights

26 | May rights be transferred? If so, what rules and procedures apply?

Yes, copyright as part of proprietary rights may be transferred. An agreement on the alienation of proprietary rights is concluded in writing. Failure to comply with the written form entails the invalidity of the contract.

Licensing

27 | May rights be licensed? If so, what rules and procedures apply?

Yes, copyright as part of proprietary rights may be licensed. The licence agreement is concluded in writing, unless otherwise specified in the legislation. For instance, an agreement on the granting of the right to use a work in a periodical may be concluded verbally. Failure to comply with the written form entails the invalidity of the licence agreement.

Russian law also provides a legal framework for an open licence. The open licence agreement, according to which the author or other copyright owner (licensor) provides the licensee with a simple

(non-exclusive) licence to use a work of science, literature or art, can be concluded in a simplified manner (open licence).

An open licence is a contract of adhesion. All its terms must be available to any person and placed in such a way that the licensee reads them before using the corresponding work. An open licence may contain an indication of actions, the commission of which will be considered acceptance of its terms. In this case, the written form of the contract is considered to be complied with.

28 | Are there compulsory licences? What are they?

No, there are no legal provisions to oblige the grant of compulsory licences with respect to copyrighted works.

29 | Are licences administered by performing rights societies? How?

Yes, Russian law provides for the creation of collective management societies that assist authors in the administration of their rights. This includes, but is not limited to, the collection of remuneration from users of the authors' works as part of licence agreements with those users or the collection of damages for illegal use of the works. The number of such societies is not limited. The most famous are the Russian Organisation for Intellectual Property and the Russian Authors' Society.

Such management societies will be authorised either to act on behalf of copyright owners or to conclude agreements with copyright owners.

Termination

30 | Is there any provision for the termination of transfers of rights?

Yes, the copyright owner is entitled to have the copyright transferred back through the court, if, based on the agreement on the alienation of proprietary rights, the other party significantly violates the agreement by not paying the remuneration within a certain term defined in the agreement.

Recordal

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

There is no requirement to register copyrighted work to obtain copyright protection. Computer programs (software) as well as databases may be voluntarily registered with the register of computer programs (software) or register for databases at the Federal Service for Intellectual Property (Rospatent). In cases where the copyright is transferred and it was previously recorded, necessary amendments shall be entered into the register of computer programs (software) and the register of databases. The licence agreements for software and databases are not recorded with Rospatent (Resolution of the Plenum of the Supreme Court and the Plenum of the Supreme Arbitration Court of 26 March 2009 No. 5/29 on Certain Issues arising in connection with the Entry into force of Part Four of the Civil Code of the Russian Federation).

DURATION OF COPYRIGHT

Protection start date

32 | When does copyright protection begin?

Copyright protection begins from the moment the work is created. Pursuant to paragraph 3 of article 1259 of the Russian Civil Code, copyright applies to both published and unpublished works expressed in any objective form, including written, verbal (in the form of public pronouncement, public performance and other similar forms), image, sound or video recordings, or three-dimensional.

Duration

33 | How long does copyright protection last?

The exclusive right to a work is valid for the entire life of the author and for 70 years, counting from 1 January of the year following the year of the author's death. For a work published anonymously or under a pseudonym, the exclusive right shall expire after 70 years, counting from 1 January of the year following the year of its lawful publication. The moral rights have an indefinite term of protection.

According to article 6 of the Federal Law of 18 December 2006 No. 231-FZ on the Enforcement of Part Four of the Civil Code of the Russian Federation, the term of protection (70 years from the date of death of the last of the authors) applies in cases where the 50-year term of copyright duration did not expire by 1 January 1993 (that is, to all cases when the last of the authors died after 1 January 1943, and in cases when an author worked during the Great Patriotic War and participated in it).

The copyright of legal entities that arose before 3 August 1993 expires 70 years after the date of lawful publication of the work, and if it has not been made public, from the day the work is created. By analogy, the rules of Part IV of the Civil Code shall apply to the relevant legal relations. For the purposes of their application, such legal entities are considered authors of works.

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

The calculation of copyright duration is conditioned on the publication date if a work was published anonymously or under a pseudonym. The exclusive right shall expire after 70 years, counting from 1 January of the year following the year of its lawful publication.

According to article 6 of the Federal Law of 18 December 2006 No. 231-FZ on the Enforcement of Part Four of the Civil Code of the Russian Federation, the term of protection (70 years from the date of death of the last of the authors) applies in cases where the 50-year term of copyright duration did not expire by 1 January 1993 (that is, to all cases when the last of the authors died after 1 January 1943, and in cases when an author worked during the Great Patriotic War and participated in it).

The copyright of legal entities that arose before 3 August 1993 expires after 70 years from the date of lawful publication of the work, and if it has not been made public, from the day the work is created. By analogy, the rules of Part IV of the Civil Code shall apply to the relevant legal relations. For the purposes of their application, such legal entities are considered authors of works.

Renewal

35 | Do terms of copyright have to be renewed? How?

No.

Government extension of protection term

36 | Has your jurisdiction extended the term of copyright protection?

Yes, Russian law has extended the term of copyright protection to up to 70 years counting from 1 January of the year following the death of the author (plus the lifetime of the author) or counting from 1 January of the year following the year of its lawful publication, if a work was published anonymously or under a pseudonym. Previously, the term was 50 years.

COPYRIGHT INFRINGEMENT AND REMEDIES

Infringing acts

37 | What constitutes copyright infringement?

Unauthorised use of a copyrighted work constitutes copyright infringement. Absence of the copyright owner's consent is not recognised as authorisation. Russian law stipulates the following ways to use a copyrighted work:

- reproduction (ie, the creation of one or more copies of a work or of part of it in any material form);
- distribution of a work by sale or other alienation of its original or of copies;
- public display (ie, any showing of the original or of a copy of a work directly or on a screen);
- the import of the original or of copies of a work for the purpose of distribution;
- renting out of the original or a copy of the work;
- public performance (ie, the presentation of the work in live performance or with the use of technical means);
- broadcasting (ie, communication of a work to the public (including showing or performance) by radio or television (including by way of retransmission), with the exception of communication by wire);
- cable communication (ie, communication of the work to the public by radio or television with the use of a cable, wire, optical fibre or analogous means (including by way of retransmission)) – communication of coded signals is communication by cable if the means of decoding are granted to an unlimited group of people by the cablecasting organisation or with its consent;
- a translation or other derivative work;
- the practical implementation of an architectural, design, city planning, or park or garden plan; and
- making a work publicly available.

Therefore, any unauthorised use of a copyrighted work by the above means will constitute copyright infringement.

Vicarious and contributory liability

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

Article 1253.1 of the Russian Civil Code provides for the liability of an 'information intermediary'. An information intermediary is a person or entity that delivers material online or provides access to the material. An information intermediary may be liable for online infringement. For example, a registrar of domain names may be recognised as an information intermediary if he or she renders hosting provider services.

Moreover, if one violation of the exclusive right to the result of intellectual activity is committed by the actions of several persons jointly, such persons are jointly liable to the copyright owner (paragraph 6.1 of article 1252 of the Russian Civil Code).

Available remedies

39 | What remedies are available against a copyright infringer?

Article 1252 of the Russian Civil Code provides for the following remedies:

- recognition of a right (if someone denies it);
- final injunction (a right to request that the infringement or action constituting a threat of infringement is stopped);
- removal of counterfeits or the equipment utilised for the manufacturing of counterfeits from the civil turnover and destroying them at the infringer's expense;
- publication of a judgment at the infringer's expense; and

- reimbursement of damages (or the copyright owner may claim compensation).

In practice, copyright owners most often request compensation instead of damages, as they do not have to prove the amount of inflicted damage and the connective link between the infringement and the damage. If the copyright owner requests compensation, he or she should prove the infringement only.

Article 1301 of the Russian Civil Code stipulates the following types of compensation:

- an amount ranging from 10,000 to 5 million roubles (the court determines the amount of the compensation based on the judge's discretion; however, a recent Russian Supreme Court ruling provides the criteria to determine the amount of compensation);
- double the value of all the counterfeit goods put into civil turnover by the infringer; and
- double the value of the royalty for lawful use of the copyright.

Recent court practice has significantly changed the approach applied to final injunction. The Russian Supreme Court ruled that a final injunction may be applied to continuing civil wrongs only in cases where they have not ceased by the date when the court renders a judgment.

If a copyright owner requests that the counterfeits or the equipment used to manufacture the counterfeits be destroyed, he or she should indicate the location of the relevant counterfeits and the quantity. If a copyright owner fails to indicate these details, the court may recognise such claim as unenforceable.

Limitation period

40 | Is there a time limit for seeking remedies?

Yes, Russian law stipulates that the limitation of action period is three years, starting from the date when the copyright owner finds out that his or her right has been infringed or when he or she should have found out that his or her right had been infringed (paragraph 1 of article 196 and paragraph 1 of article 200 of the Russian Civil Code).

At the same time, the burden of proof lies on the defendant (who should prove that the plaintiff missed the limitation of action). The court may not refer to limitation of action unless the defendant states it.

The biggest part of copyright infringement is continuing civil wrongs (eg, use of copyright on a website or frequent sales of counterfeits).

Recent court practice provides that the above-mentioned standard rules of limitation of action are not applied to continuing civil wrongs.

The Intellectual Property Court and the Supreme Court point out that each particular sale (or another input of counterfeits into civil circulation) or each day of illegal use of copyright on the website constitutes a separate copyright infringement and the court should apply the rules concerning the limitation of action period to each particular infringement.

At the same time, if a copyright owner seeks compensation of double the value of the counterfeits put into civil turnover by the infringer, the defendant may claim that the limitation of action period has been missed and the court should not award compensation for the sales (or other input into civil circulation) of goods that took place more than three years prior to the filing of the lawsuit. In other words, the compensation is limited to double the amount of goods put into civil circulation within three years prior to the filing of the lawsuit.

Recent amendments to Russian law also enacted a 10-year limitation of action period (the 'objective limitation of action period'), starting from the date of the infringement. However, the 10-year period may not start earlier than on 1 September 2013 (the date when these amendments became effective). Therefore, there is no relevant court practice yet.

Monetary damages

41 | Are monetary damages available for copyright infringement?

Yes, monetary damages are available under Russian law. The copyright owner may claim either damages (both real damage and lost profit) or compensation. Claiming compensation is preferable in cases of copyright infringement, as the copyright owner does not have to prove the amount of inflicted damage and the connective link between the infringement and the damage. If the copyright owner requests compensation he or she only has to prove the infringement.

Under article 1301 of the Russian Civil Code the following types of compensation are stipulated:

- an amount ranging from 10,000 to 5 million roubles (the court determines the amount of such compensation based on the judge's discretion; however, a recent Supreme Court ruling provides the criteria to determine the amount of compensation);
- double the value of all the counterfeit goods put into civil turnover by the infringer; and
- double the value of the royalty for lawful use of the copyright.

Attorneys' fees and costs

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

Yes, according to Civil Procedural Code and the Commercial Procedure Code, attorneys' fees and costs can be claimed either jointly with the lawsuit or separately after the court resolves the dispute. A petition to reimburse attorneys' fees and costs can be filed within three months of the last court act resolving the dispute on the merits being rendered (paragraph 2 of article 112 of the Commercial Procedure Code and article 103.1 of the Civil Procedural Code).

However, the courts usually reduce the amount of attorneys' fees and costs to a great extent. The amount of reimbursement depends on the complexity of the case, the number of hearings and the number of participants to the disputes, etc.

Criminal enforcement

43 | Are there criminal copyright provisions? What are they?

Yes, Russian law stipulates criminal copyright provisions. Plagiarism or illegal use of copyright, if such actions have inflicted major damage on the copyright owner (above 100,000 roubles), may constitute a crime. However, the infringer's intention must be proven.

Online infringement

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

Yes, preliminary injunction is available for online copyright infringement (the possibility to block the infringer's website or a web page on a social network before filing the lawsuit). Article 1253.1 of the Russian Civil Code stipulates the liability of an 'information intermediary' (a person that delivers material on the internet or provides access to the material or information on the internet).

There has been debate within the professional community about whether a registrar of domains may be considered an information intermediary. The Intellectual Property Court held that a registrar of domains is an information intermediary if he or she provides the services of a hosting provider, but is not an information intermediary if he or she simply registers domains.

A copyright owner (except for the copyright owner of photographic works) may file for preliminary injunction measures with the Moscow City Court.

After the court has applied the preliminary injunction measures, the copyright owner may proceed with filing the lawsuit within the term indicated in the respective court ruling.

Prevention measures

45 How may copyright infringement be prevented (including, for example, customs enforcement measures and any technological notable developments)?

Customs enforcement measures are available. Copyrighted work may be included in the customs register of IP rights and the customs authorities may take measures to prevent the import or export of counterfeit goods coming across the borders. The measures may be taken against possible copyright infringement ex officio as well.

It is also important to collect evidence of authorship, as it is the claimant who shall prove the copyright existence in infringement disputes. Depositing copyright is also an effective measure (it may be done through a notary, a collective management society or another organisation).

If copyright refers to a computer program or a database, it also may be registered by the Federal Service for Intellectual Property, in accordance with article 1262 of the Russian Civil Code.

Pursuant to article 1299 of the Russian Civil Code the author or other copyright owner may use technical means of protection for his or her work. Technical means of copyright protection are any technologies, technical devices or their components that control access to the work, and prevent or restrict the implementation of actions that are not authorised by the author or other copyright owner in relation to the work.

In relation to works, the following is prohibited:

- the performance of actions without the permission of the author or other copyright owner aimed at eliminating the restrictions on the use of the work established by the use of technical means of copyright protection; and
- the production, distribution, rental, provision for temporary gratuitous use, import or advertising of any technology or any technical device or its components, or the use of such technical means for profit or the provision of appropriate services, if as a result of such actions it becomes impossible to use technical means of copyright protection or these technical means will not be able to provide adequate protection of these rights.

RELATIONSHIP TO FOREIGN RIGHTS

International conventions

46 Which international copyright conventions does your country belong to?

Russia is party to the following international treaties:

- the Berne Convention for the Protection of Literary and Artistic Works (1886);
- the Universal Copyright Convention (1952; acceded to by Russia in 1973);
- the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961);
- the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (also known as the Geneva Phonograms Convention) (1971);
- the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);
- the Moscow agreement on cooperation in the field of copyright protection (1993) (cooperation is mostly within the Commonwealth of Independent States);

- the World Intellectual Property Organization (WIPO) Copyright Treaty (1996);
- the WIPO Performances and Phonograms Treaty (1996); and
- the Beijing Treaty on Audiovisual Performances (2012).

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

The Russian legal system aims to consolidate all imperative rules of law into legislative acts; therefore, when Part IV of the Civil Code was adopted, the goal of the legislature was to incorporate all the rules of international copyright conventions into Part IV of the Civil Code.

Before adopting Part IV of the Civil Code, in July 2004 most of the rules of the international treaties were implemented into the amended Law No. 5351-I of 9 July 1993 on Copyright and Neighbouring Rights.

At the same time, paragraph 4, article 15 of the Constitution stipulates that if an international treaty of the Russian Federation establishes rules other than those provided for by law, the rules of an international treaty shall prevail. Therefore, the rules of international conventions, which are to be applied directly, shall prevail over the national laws in case of contradiction.

In addition, the main outcome of Russia (the former Soviet Union) joining international treaties was the granting of protection to foreign works of art published abroad.

UPDATE AND TRENDS

Key developments of the past year

48 Are there any emerging trends or hot topics in copyright regulation in your jurisdiction? Has there been any new copyright legislation passed or proposed within the last 12 months?

On 18 June 2020, the Russian Constitutional Court reviewed the inquiry of the 15th Appeal Commercial (Arbitrazh) Court with respect to whether audiovisual works are protected and the rights thereof enforced as a whole (complex) work and separately, with parts of the work being considered independent works. The court reiterated that if both a complex audiovisual work and a work of visual art that is a part of it have an independent objective form, then both works are subject to legal protection. Although the Court did not provide clarification on the inquiry, it referred to earlier court practice, where one action may violate several intellectual property objects (paragraph 68 of the Resolution of the Plenum of the Supreme Court of the Russian Federation on the application of Part IV of the Civil Code). When filing a claim for recovery of compensation or damages, the plaintiff must specify the right to the object that he or she claims has been violated (ruling of the Russian Constitutional Court No. 1345-O/2020 of 18 June 2020).

On 15 September 2020, the Supreme Court ruled in Case A40-46622/2019 that, until proven otherwise, the person indicated on the original or a copy of the work (article 1257 of the Civil Code) is considered the author of a work. Civil law does not link the presumption of authorship with the deposit of a work. The deposit is a voluntary procedure not provided for by law. The fact of depositing only testifies to the existence of certain objects of copyright at a certain point in time, but in itself does not confirm the right of authorship to the corresponding works. Authorship can only be established by evidence confirming the creation of a work by a specific person (eg, testimony, publications, drafts, evidence based on the establishment of the author's creative style). In this case, the defendant was trying to challenge the assumption of authorship. The lower courts satisfied the lawsuit in part; however, the Supreme Court disagreed with rendered court decisions and sent the case for reconsideration to the first instance court.

Coronavirus

49 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The restrictive measures imposed by the Russian government in response to the coronavirus pandemic are gradually coming to an end. Cooperation with state bodies has returned to normal (in 2020, in-person meetings were suspended and court hearings were conducted through online or conference call sessions). However, sanitary measures to prevent the spread of covid-19 remain in force.



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