

RUSSIAN FEDERATION

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2016 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that the Russian Federation be retained on the Priority Watch List in 2016.¹

Executive Summary: Legal reforms in 2013, 2014 and 2015 established procedures, for the first time, for websites and hosts of infringing content to comply with takedown notices from rights holders. These reforms have yielded some progress and a more streamlined process, and have also resulted in some sites being blocked to users within Russia. However, while these reforms have improved enforcement against online piracy within the Russian market, the Russian legal regime continues to make it difficult for rights holders to address the problem of sites operating inside Russia that target an international audience. In this respect, Russia remains a substantial copyright piracy problem internationally.

To have truly effective digital enforcement, Russian agencies should significantly enhance their *ex officio* activities. Effective enforcement would include both criminal and administrative actions, and strengthening administrative penalties, particularly against large-scale enterprises. Such action would allow legitimate markets to develop for film, music, entertainment software, and published books and journals, for the benefit of local and foreign creators and producers, and Russian consumers.

The U.S. Government concurred with this assessment in its April 2015 Special 301 Report on Russia: “[c]opyright infringement is a persistent problem in Russia, including, but not limited to, online piracy” because “Russia remains home to many sites facilitating online piracy” which harms both Russian and foreign markets. The U.S. Government also noted that even though there were (first ever) criminal convictions in 2014 for online piracy, there are no deterrents to the dissemination of infringing content, because suspended sentences are the norm. Separately, the U.S. Government placed several Russian online sites on its “Notorious Markets” list in December 2015 because of widespread dissemination of infringing materials.

Four years ago, Russia completed its accession to the World Trade Organization, and agreed to a detailed Intellectual Property Rights (IPR) Action Plan with the U.S. Government. Neither the WTO obligations outlined in that Action Plan, nor in the 2006 U.S.-Russia IPR Agreement — both aimed at improving the marketplace for digital copyright materials — have been fully and properly implemented by the Government of Russia.

To properly implement its treaty obligations, IIPA recommends that Russia, first and most importantly, improve digital enforcement, a problem pervasive for all of the copyright industries. Second, Russia should finally address the collective administration woes that have thwarted music rights holders’ attempts to effectively license their works in Russia. The music industry remains concerned with the lack of transparency and governance issues in connection with the state accredited collecting societies (and supports the proposals of the Ministry of Communications to address these problems). Third, it is imperative to address the ongoing problem of camcording motion pictures, an illegal activity which, after a few years in decline, was up sharply in 2015. Correcting this problem will require both legal reforms and effective enforcement.

¹For more details on Russia’s Special 301 history, see previous years’ reports at <http://www.iipa.com/countryreports.html>. For the history of Russia’s Special 301 placement, see <http://www.iipa.com/pdf/2016SPEC301HISTORICALCHART.pdf>.



PRIORITY ACTIONS REQUESTED IN 2016

IIPA recommends the following priority enforcement actions and legal reforms to the Government of Russia for 2016:

- Undertake effective and deterrent actions against Internet piracy — including streaming services (such as *vKontakte*), pay-per-download websites, video game hacking or cheating sites, cyberlockers, BitTorrent sites, private servers bypassing official video game servers, and other commercial enterprises that provide services with the clear intent to promote or induce infringement, whether or not the servers are located in Russia.
- Promote the development of the digital marketplace. One important step would be for the government to clarify that Russia will reject any proposal to create a compulsory license for Internet transmissions in exchange for an Internet levy — such a proposal would violate international treaties and practice.
- Resolve the confusion surrounding the operation of collecting societies by confirming that rights holders have the legal and practical ability to determine how to exercise their rights (including whether to choose to entrust licensing to any collective, and if so to choose that entity, and to delineate the rights for such collections).
- Further amend the Civil Code, Part IV, to:
 - a) better define the basis for liability for providers of online services that induce or encourage the infringement of copyright and related rights, or that facilitate infringement and do not take reasonable steps to prevent such activities;
 - b) clarify the definition of the types of intermediaries entitled to the safe harbors, to prevent knowing facilitators from enjoying the safe harbor benefits; and
 - c) provide legal norms that create incentives for Internet Service Providers (ISPs) to cooperate with rights holders in fighting infringement taking place over their networks or platforms (and to clarify that information intermediary services that facilitate the widespread dissemination of unauthorized content cannot benefit from the liability privileges in Article 1253 of the Civil Code).
- Amend the Civil Code in Article 1229, and the Presidium Decision (March 2009), to provide civil liability for commercial trafficking of circumvention devices. Current law limits liability to rare instances where the devices are advertised (solely) as circumvention devices.
- Amend the Criminal Code to establish criminal liability against principals in legal entities, including for IPR crimes.
- Amend the Criminal Code and undertake effective enforcement against illegal camcording of motion pictures.
- Amend the Criminal Code to establish criminal liability for importation and commercial trafficking in circumvention devices.
- Strengthen copyright liability under the Administrative Code by eliminating the for-profit requirement in Article 7.12 of the Code of Administrative Offences, and by raising administrative penalties to deterrent levels, for example, by implementing: (i) higher fixed fines for violations by legal entities and individuals; (ii) fines proportionate to corporate revenues (e.g., as is done for anti-monopoly violations); and/or (iii) penalties to disqualify from their managerial responsibilities, for one to three years, managers of legal entities.
- Establish an official uniform methodology for the investigation and prosecution of copyright and related rights infringements, focused on digital enforcement.
- Increase the overall effectiveness of criminal IPR cases, and bring deterrent criminal actions against retail chains that sell pirated entertainment software, movies and music, and organized criminal syndicates involved in piracy.

COPYRIGHT PIRACY AND ENFORCEMENT IN RUSSIA

Internet Piracy: Internet and wireless access by Russian citizens has grown rapidly in the past few years. In 2010, it was estimated that 43% of individuals in Russia were using the Internet. In 2014, that figure grew to 70.5%, including 65.9 per hundred inhabitants having active mobile broadband subscriptions — according to the

International Telecommunications Union (ITU) (December 2015 Report). Unfortunately, and notwithstanding recent efforts, effective copyright enforcement of digital piracy has lagged far behind the rapid growth of Internet and wireless access in Russia, stifling the development of legitimate markets for copyrighted content.

Russia is the home to many of the most “notorious” large-scale infringing websites, including web-based (and peer-to-peer (P2P)) downloading sites, linking sites, and cyberlockers that offer access to pirated music, film, video game and book materials. Many of these sites cater to English-speaking (and other non-Russian) users, so they harm markets in many countries. The 2013 and 2014 antipiracy laws have had some impact with respect to BitTorrent sites, and caused some pirate sites, especially those hosting unauthorized motion pictures or television programs, to move their sites to foreign hosting locations.

But, there are many sites still hosted in Russia, including three that feature prominently on the U.S. Government’s Notorious Markets List.

The first is *vKontakte* (*vk.com*), the most popular online social network in Russia (with over 35 million visits per day and 80 million registered users), which remains the largest single distributor of infringing music in Russia as well as a hotbed for online piracy of movies and television programming. This site has been on the U.S. Government’s Notorious Markets list since 2012; it is ranked 19 in Alexa’s global top 500 most visited websites worldwide, and is the second most visited website in Russia. *vKontakte* (now owned by *Mail.ru*) has a functionality specifically designed to enable its members to upload music and video files, which includes hundreds of thousands of unlicensed copyright works. It is available in many languages, including English, and has a dedicated content search engine that enables other members to search and instantly stream infringing content. In addition, some third-party software developers have distributed “apps” to enable non-members to search, stream and download the content available on the site. *vKontakte* will generally take down specific content when notified, but that is not an adequate enforcement mechanism for a problem that *vKontakte* created. Russia’s second largest social network site, *odnoklassniki.ru* (with 43 million visits per day, and also owned by *Mail.ru*) also operates an unlicensed music service similar to *vKontakte*’s service and includes unauthorized motion pictures and television programming. These two sites alone host more than half of the unauthorized motion picture and television material in Russia.

Russia hosts a number of major BitTorrent indexing sites which contain a wide variety of infringing copyrighted material, especially motion pictures and television programs. Other particularly problematic sites are: the cyberlocker *rapidgator.net*, which has been on the U.S. Government’s Notorious Markets list since 2012, and hosts over 500,000 infringing video game files;² *myegy.to*, a linking and streaming site with video game materials; *Torrent-Games.net*, a Russian BitTorrent tracker; *mygully.com*, a German-language forum site, hosted in Russia, with over 2.5 million registered users; *Kinozal.tv*, with over 370,000 visits per day; and *nmm-club.me*, with over 280,000 visits per day. Neither ISPs nor most website owners respond to takedown requests for these sites. There are a few exceptions. For example, members of the Entertainment Software Association (ESA) report that a few sites do comply with takedown notices (and the new laws have helped), while others never comply. To frustrate enforcement, some sites operate regionally, such as *games.net*, which is hosted in Russia but administered from Georgia (making takedowns especially problematic). In January 2016, the Moscow City Court ordered the permanent blocking of thirteen pirate websites including *Kinozal.tv* and *rutor.org*.

For the third consecutive year, Russia was first in the world by far in the number of connections by peers participating in the unauthorized file sharing of select video game titles on public P2P networks. Russia is first in the world when it comes to the unauthorized file-sharing of video games on PCs with more than four times as many illicit downloads to PCs in Russia compared to the second highest country, Brazil. In 2015, users with Russian IP addresses accounted for more than 32% of the global volume of detected infringements occurring on public P2P networks.

² For the most recent report, see USTR, 2015 Out-of-Cycle Review of Notorious Markets (December 2015), available at <https://ustr.gov/sites/default/files/USTR-2015-Out-of-Cycle-Review-Notorious-Markets-Final.pdf>. *Rapidgator.net* was ordered taken down in late 2015, but was retained on the Notorious Markets list in December 2015 because it is still operational.

While *vKontakte* is by far the biggest impediment to the functioning of a legitimate online marketplace for music, the recording industry reports that paid download sites are still a source of piracy in Russia along with the P2P services and cyberlockers. There are over thirty *allofmp3.com* copycat sites which offer entire albums for as little as US\$1, and use up to thirty different domain names for the same user interface. Some of the unlicensed pay-per-download sites include: *Soundlike.com*, *Payplay.fm*, *Mp3million.com*, *MP3skull*, and *Goldenmp3.ru*.

Russia remains the home to some of the world's most prolific criminal release groups of motion pictures. Pirates obtain their source materials for infringing copies by camcording films at local theaters, and then upload these copies onto the Internet (as well as selling illegal hard copies). The total number of sourced camcord pirate copies from within Russia rose significantly in 2015, after several years of declines; there were 26 camcords sourced from Russia in 2015, most from Moscow and Tatarstan. The illicit camcords that are sourced from Russia are of exceptional quality and remain in high demand by international criminal syndicates. Pre-release DVDs of major film titles often appear on the Internet (and then in pirate hard copies sold online or in markets) within a few days after the authorized theatrical release. The Government of Russia should propose (so the Duma can adopt) an amendment to address properly camcording in Article 146 of the Criminal Code. An amendment was considered in the Duma in 2013, but stalled; the Government should also undertake effective enforcement against illegal camcording of motion pictures.

The independent segment of the film and television industry (IFTA) reports that online and physical piracy remain a significant export constraint for independent producers and distributors, the majority of which are small to medium-sized businesses. Independent producers partner with exclusively authorized local distributors to finance and distribute films and television programming. High quality pirated hard copies (DVDs) are routinely uploaded and offered for free online, destroying the legitimate market for these works. As a result, legitimate distributors cannot commit to distribution agreements, or alternatively, offer drastically reduced license fees which are inadequate to support the financing of independent productions. Revenue from legitimate distribution services, which is licensed country-by-country, is critical to financing the development of new creative works worldwide. Since Internet piracy in one territory affects other markets instantly, this type of infringement not only undercuts anticipated revenue from the distribution of a particular asset, it also harms the ability of independent producers to secure financing for future productions. The independent production sector cannot easily shift to new business practices that might otherwise limit piracy, such as worldwide same day release (referred to as "day-and-date" releases), since national distributors release films on their own schedules around the globe.

Book and journal publishers are also concerned by the prevalence of online piracy in Russia (consisting of books and scientific, technical and medical (STM) journal articles), particularly on hosted-content websites that are operated by Russian residents. For example, a group of sites known as the "Library Genesis Project" (*libgen.org*) offers over 21 million journal articles and over 6 million books, all available for free. The site encourages the creation of mirror sites of all of its content, and there are presently several such mirror sites (including *booksee.org* and *booksc.org*). A *libgen.org*-related, but rather specialized site, is *sci-hub.io* (formerly *sci-hub.org*).³ *Sci-hub.io* enables unauthorized access to databases that host STM articles published by journal publishers. The "sci-hub model" however, is more pernicious than other online pirate sites, because it facilitates unauthorized access to publisher databases using compromised log-in credentials issued by higher education institutions to their subscribers (i.e., students, faculty and other university personnel). Once the sci-hub operators have obtained a copy of an STM article, the same article is then cross-posted, or also made available on *libgen.org* and its related mirror sites. Other major Russian book piracy sites are *freebookspot.es* and *freebookspot.com*. In general, publishers report online enforcement is hampered by low compliance rates in response to rights holder requests to takedown links to

³*Sci-hub.org*, the Library Genesis Project (*Libgen*), and its operator, were sued in the Southern District of New York in 2015 (by an AAP member company) for copyright infringement (for the unauthorized reproduction and distribution of journal articles), and violations of the Computer Fraud and Abuse Act (for *sci-hub*'s intrusions into publisher databases). On October 30, 2015, the court granted the publishers a preliminary injunction against *Sci-hub*, the Library Genesis Project, a number of mirror sites and its operators. The injunction prohibits the defendants from distributing plaintiff's copyrighted works, and also ordered the TLD registries for the defendants' websites to place the subject domains on registryHold/serverHold. The site then resurfaced under the *sci-hub.io* domain.

infringing content, with many sites ignoring requests altogether. P2P piracy providing free unauthorized access to e-books continues to be an issue as well.

Enforcement Against Internet Piracy: In three separate bilateral and multilateral agreements over the past several years, the Government of Russia made commitments to take effective action against Internet piracy. In the 2006 U.S.-Russia IPR Agreement, Russia agreed to combat the growing threat of Internet piracy “with the objective of shutting down websites that permit illegal distribution of content protected by copyright or related rights” (and especially for websites registered in Russia’s .ru domain name, or whose servers are situated in Russia), and “to investigate and prosecute companies that illegally distribute objects of copyright or related rights on the Internet.” As part of its WTO accession, in the Working Party Report (paragraph 1339), the Government of Russia pledged that it would “continue to take actions against the operation of websites with servers located in the Russian Federation that promote illegal distribution of content protected by copyright or related rights, such as phonograms (sound recordings) and investigate and prosecute companies that illegally distribute objects of copyright or related rights on the Internet.” In December 2012, in the U.S. — Russia Action Plan on IPR, the Government of Russia agreed it would take “enforcement actions targeting piracy over the Internet” and more specifically it would, inter alia: “Take measures in order to disrupt the functioning of websites that facilitate criminal copyright infringement, and provide for takedown of infringing content....Take actions against the creators and administrators of websites through which intellectual property crimes are committed....Conduct meaningful consultations with rights holders to target and to take action against high-priority infringing websites.” The Government of Russia has not fully implemented any of these obligations.

For criminal cases, all of the agencies that can commence a case, including the Investigative Committee of Russia, the Investigative Department of the Ministry of Internal Affairs (MVD), the Federal Security Service of the Russian Federation (FSB), and Customs, should coordinate their efforts with police. Since the General Prosecutor’s Office has supervisory authority over investigations and prosecutions, it should work with the Investigative Committee of Russia and the Investigative Department of MVD to develop an updated and detailed methodology for investigations of digital copyright infringements. This would help to increase the quality, effectiveness and consistency of IPR enforcement activities. Work on a draft methodology was suspended a few years ago.

One fundamental enforcement shortcoming is the lack of clear authority and jurisdiction to act against copyright infringement crimes occurring on the Internet, whether through administrative or criminal means. IIPA continues to recommend that there should be a dedicated digital IPR enforcement unit within the Government of Russia to focus on this problem. For example, combating copyright violations on the Internet such as the dissemination of music through illegal pay-per-download sites and illegal P2P services does not clearly fall within the current jurisdiction of the Computer Crimes Department (Department K) within the MVD, even though they have occasionally taken action in the past. At present, there no Department K staff are doing any IPR enforcement (that is left to the Economic Crime Police). Department K’s authority and responsibility to act in all cases of online infringement should be clarified and strengthened. In addition, Department K should be properly staffed (there are currently fewer than 10 staff), equipped and resourced, and other such units within the MVD should be formed to deal exclusively with IPR Internet cases and to train officers in how to combat these copyright crimes, including the maintenance of evidence. It also should be clarified that actions can be brought under the Code of Administrative Offenses against commercial actors involved in the massive distribution of infringing material, even where there is no direct fee charged by the enterprise.

An intensification of criminal investigations and criminal convictions against principals of organized commercial pirates is sorely needed, especially directed at Internet operations. The relevant administrative agencies (e.g., the Federal Anti-Monopoly Control) need to target large illegal distribution enterprises, such as the large-scale unlicensed services responsible for most of the illegal distribution of music and film in Russia. Changes to criminal procedure which placed copyright infringement cases into the category of serious crimes have enabled — at least in theory — Russian law enforcement agencies to conduct thorough and comprehensive investigations against owners and operators of piratical operations. However, deterrent criminal penalties have rarely, if ever, been imposed against

owners of commercial Internet operations. There were only three criminal cases initiated against pirate Internet sites in 2015 (two are still pending, and one concluded with a one-year suspended sentence). One practical problem that has surfaced recently is that police and prosecutors have had difficulty applying the criminal law thresholds to Internet crimes (i.e., coming up with a unified formulation), so few such cases are ever brought and even fewer tried to a conclusion.

Civil judicial remedies have improved in the past two years. In November 2014, a new law was enacted (Federal Law No. 364), in force May 1, 2015, to expand the 2013 law that provided procedures for complying with takedown notices directed at websites and hosting activities. The 2013 law had been limited in its application to motion pictures and television programs. The 2014 amendment expanded the 2013 law to cover all copyright subject matter, excepting photographs, and allows for website blocking in the event of repeat infringement. RosKomNadzor, the Federal Service for Communications, the agency responsible for enforcement of these laws, has been effective and cooperative in implementing this law, along with the Moscow City Court. In October, the court ordered the permanent shut down of eleven Russian websites (including *rutor.org*) with infringing content, in response to a complaint filed by a Russian music label. As of October 2015, 280 preliminary injunctions were granted by the Moscow City Court against infringing sites, including several orders to block websites.

The 2013 package of laws had two key features applying civil remedies against Internet piracy: (1) amendments to the Civil Code, Part IV — to provide for third party liability, as well as safe harbors from such liability for “information brokers” (ISPs) that comply with all the requirements for those safe harbors; and (2) amendments to the Civil Procedure Code (and corresponding amendments to the Arbitration Procedure Code and the Federal Law on Information and Information Technologies (2006)) that authorize judicial injunctions (only) after notice and takedown to block infringing materials or limit access to infringing websites. In addition to expanding the scope of subject matter covered by the 2013 laws, the 2014 amendments also expanded existing procedures for court ordered site-blocking against repeat infringers.

There have been some successful civil, but not criminal actions, including notable petitions by American film producers to get court-ordered blocking of infringing websites of films using the new (2013 and 2014) laws. For example, in August 2015, the Moscow municipal court blocked 16 websites for illegally distributing one American film, and in October 2015 other sites were blocked for the same reason for a different film. In addition, the same Moscow court permanently blocked access to *rutor.org*, the BitTorrent tracker and 10 other websites with unauthorized content. In September 2015, *vKontakte* was ordered by the St. Petersburg Regional Arbitration Court to use filtering technology to prevent infringement of unauthorized sound recordings by two record labels. This was the result of civil infringement suits brought by the labels in the Russian court in April 2014. In another lawsuit in October 2015, brought by a Russian record label, *vKontakte* was ordered to pay damages of 750,000 rubles (approximately US\$9,616) for 10 infringing songs. In a similar suit by another Russian record label, *vKontakte* was ordered to pay 600,000 rubles (approximately US\$7,687) for unauthorized uploading of musical recordings. These successful civil actions ironically demonstrate the inadequacies of the present legal structure, with limited injunctions and non-deterrent damages. For example, even after the October 2015 suit, *vKontakte* issued a statement praising the court for limiting damages as a result of *vKontakte*'s “intermediary” status in infringing conduct, even though it is blatantly offering thousands of unauthorized recordings through its service and has induced infringement by its users. So, while civil actions are a positive step, without criminal or administrative enforcement of the principals involved in running these lucrative illegal sites, or other deterrents, the civil laws alone will not significantly change the landscape for legal markets to develop in Russia.

The motion picture industry reports that in 2015, about half of the ISPs in Russia voluntarily cooperated and responded to the Russian-Anti Piracy Organization (RAPO) cease and desist letters for their works. The others either merely forwarded notices to users without taking down material, or did not respond at all. Efforts by the Ministry of Economic Development to develop more comprehensive notice and takedown procedures between rights holders and ISPs were not successful, even though a Memorandum of Understanding was signed with some of the ISPs, RAPO and the Government of Russia (RosKomNadzor) in 2013. Overall, although some ISPs cooperate and take

down infringing materials once identified, most ISPs are not willing to cooperate, even with clear evidence of infringement, and there has been no cooperation with advertising agencies and payment processors who financially support infringing sites. Despite these shortcomings, the motion picture industry reports that the number of users in Russia accessing legal content has increased to 18 million people, more than one and half times the number that did so in 2012.

Criminal Enforcement in General: Criminal enforcement in Russia is a priority for some of the IIPA members to deter digital, and hard copy, piracy. Russia's laws are generally adequate for addressing hard copy piracy although some gaps remain. As in years past, much of the criminal enforcement by the government in 2015 was aimed at physical piracy, but that form of piracy is declining as the marketplace moves online. For the past several years, the quality and quantity of criminal raids and police activity against IPR infringers in general has declined significantly, and especially against large-scale online infringers. The decline in police activity in general is the lingering result of the 2011 major reorganization of the police force and the consequent drop in resources, as well as changes in government priorities and an unwillingness to take action against large-scale online infringers and a focus on hard copy piracy (which is naturally diminishing), rather than on digital piracy. As in recent years, there were some deterrent sentences and prison terms applied by the Russian courts, including a handful aimed at serious repeat offenders.

The lengthy criminal investigative process must also be examined and redressed, particularly at the provincial level. As the government continues to rely on its own experts in investigating, examining and prosecuting IPR violations, it should take measures to increase the number of experts and consider the appointment of a specialized unit of investigators and prosecutors, adequately trained and provisioned to effectively address IP crimes. Due to the lack of adequate staffing and the high volume of work, examinations of products seized take months. The Entertainment Software Association (ESA) continues to report delays in examination reports from government experts, due to a lack of technical expertise. Enforcement is also hampered, and trials delayed, by the requirement that exemplars be collected only with the participation of state officials, and by a statutory reliance on government expert reports. Delays also result from a lack of subject matter expertise in some cases, as well as a reluctance to use or rely on rights holder expertise on forensic matters. Worse, some local authorities refuse to share any information on cases with rights holders at the investigative stage, making effective cooperation extremely difficult. The problems are further exacerbated by ongoing reforms of the investigative bodies. These arcane and outdated rules and practices create unnecessary delays and costs in litigation. The rules should be modernized so that industry experts can be more effectively integrated into the judicial process. One way to accomplish this would be for the Supreme Court to issue new guidelines on the admissibility of the testimony of private experts. It is reported that some courts will accept private expert testimony, but a uniform rule would be more effective.

Improvements should also be made with respect to court procedure. The criminal procedures generally require that a rights holder request the destruction of the seized goods (or move for recovery of damages) in a separate proceeding before the Arbitration Court (court of general jurisdiction) — which unnecessarily lengthens the process and makes enforcement even more difficult. The copyright industries recommend clear and sensible guidelines on the calculation of damages in online cases for the purpose of meeting the minimal criminal damage thresholds established under the (revised and increased) Article 146 of the Criminal Code.

Another recommended measure to increase the efficiency of IPR criminal investigations is the appointment of IPR special prosecutors, investigators, and police officers at both the federal and regional levels throughout Russia. IIPA recommends that the Investigative Department of MVD and the Investigative Committee of Russia continue to work with IIPA members on future training programs, and that the General Prosecutor's Office (along with the MVD-IC) appoint a government liaison with IP rights holders to more effectively bring criminal investigations and trials to successful conclusions. The approval in 2011 of a specialized IP court in Skolkovo (the innovation center) which opened in 2013 (with thirty trained judges) was a positive step; these courts should be created in other cities and regions across Russia to handle copyright, as well as patent cases.

Russia's current Criminal Code does not allow for corporate entities to be held criminally liable. Only a natural person (usually a corporation director) can be found criminally liable for infringement, and only upon a showing that he/she had a direct intent to commit the infringement. It is extremely difficult to make such a showing (for example, against the owners of a retail outlet selling pirated product or against a business using unlicensed software), so many cases are suspended without any penalty. Thus, verdicts are issued against only the retail staff found selling pirate products at the time of a seizure or raid, rather than against a manager or corporate owner, with little deterrence against the retail establishment.

Several copyright industries continue to report that raids against retail outlets, while undertaken, are not ultimately successful in stopping criminal activity because: (a) there is no criminal liability for corporate entities or principals in these entities; (b) the police fail to comply with the Criminal Procedure Code; and (c) prosecutors are generally reluctant to recommend the initiation of criminal cases. Amendments to the Criminal Code to allow principals in corporate entities to be held criminally liable would help to correct this problem. There were no large warehouse raids reported in 2015.

Civil Enforcement: The commercial-scale piracy which harms all of the copyright industries can and should be addressed through enhanced administrative actions (and penalties), and criminal remedies. Civil measures are not capable of providing the requisite level of deterrence against that type of piracy; but, if, properly applied, civil enforcement can be a useful tool for some industries. There remain many civil enforcement inadequacies, including: remedies limited to the seizure of specific copies of works that are the object of a lawsuit; the failure to award preliminary injunctions (although some changes were made in 2013), or to freeze assets and evidence; low damage awards, which, like all awards, are also very difficult to enforce; burdensome evidentiary requirements, including rights ownership information; the absence of personal liability for the directors of infringing companies or enterprises (which is the only way to bring proceedings in cases where bogus companies operate); and the absence of the notion of contributory liability under the Russian civil law system dealing with copyright infringements. One additional recommendation is the adoption of judicial guidelines on civil search practices, including provisional measures (consistent with the WTO TRIPS requirements).

Administrative Enforcement: The Administrative Code (Article 7.12) provides a range of fines on natural persons (1,500 to 2000 rubles, US\$20 to US\$26), the owners or managers of legal entities (10,000 to 20,000 rubles, US\$130 to US\$260), and on legal entities themselves (30,000 to 40,000 rubles, US\$391 to US\$521), as well as permitting the confiscation and destruction of pirated product. Administrative cases are filed by the police or by agencies, but the levying of fines is done by courts of general jurisdiction (for natural persons and juridical entities) and arbitration courts (for legal entities). Imposing significant administrative fines on legal entities would have a deterrent effect, especially in instances when criminal cases are terminated for failing to meet the high evidentiary burdens. Unfortunately, current administrative procedures are inadequate because of the very low level of fines imposed and the inability to reach commercial enterprises that distribute infringing content (especially when there is no direct payment for such infringing content, but only, for example, advertising revenue, as on illegal websites).

In addition to the piracy problems, the lack of transparency and good governance in the collecting societies remain a major concern for authors, record labels and performers. We urge the Government of Russia to use its oversight authority to ensure that rights holders are being fairly represented and treated and that there are no conflicts of interest in the governance structures, in accordance with commitments that it made to the U.S. Government and other trading partners who had expressed concern with the accreditation process. IIPA urges the government to introduce legislation increasing the accountability and transparency of collecting societies (and IIPA supports the proposals of the Ministry of Communications to achieve those goals).

Fair representation in these societies includes direct representation of rights holders on the board in a manner that is proportionate to relevant market share (and that reflects commercial realities). During WTO accession (in the Working Party Report, paragraph 1218), Russia assured its trading partners it would "review its system of collective management of rights in order to eliminate non-contractual management of rights within five years after

Part IV of the Civil Code entered into effect,” to bring the management societies in line with international standards on governance, transparency and accountability. That commitment was due in 2013. As the U.S. Government WTO Report (2014) noted, what resulted instead (in August 2014) was “a 10-year re-appointment term of the existing collecting societies, which are unable or have failed to properly represent and compensate U.S. rights holders.” There has been no progress on this issue since that action. To develop properly functioning music broadcasting and streaming services (including proper public performance collections), the Government of Russia must fulfill its WTO Working Party Report obligation and resolve the issue of the state accreditation of collecting societies in a matter that ensures that rights holders are able to control and manage their own societies.

DEFICIENCIES IN THE RUSSIAN LEGAL REGIME

Russia made progress on legal reforms as part of its WTO accession. The Civil Code, Part IV revisions, and the 2013, 2014 and 2015 amendments, for example, made some improvements, but left many gaps with either incomplete or inadequate reforms, especially with regard to effective Internet enforcement and full implementation of the digital treaties.

IIPA and its members have in the past commented on three major overarching concerns in the Civil Code, as amended: (a) a lack of clarity on numerous provisions, especially exceptions; (b) administrative law principles throughout the Civil Code that likely cannot be enforced by civil or criminal procedures; and (c) the absence of clear liability rules for online websites and services that induce or encourage infringement. Even after the 2013, 2014 and 2015 amendments, the law does not clearly define ISPs (and the various services they provide); nor does it link liability (and safe harbors) in a manner that will encourage cooperation with rights holders to effectively deal with Internet piracy — in civil and criminal law; last, it does not clearly define secondary liability. If Russia is to foster legitimate electronic commerce and if the rule of law is to apply to the online world, Russia needs to develop a balanced system of liability provisions that incentivizes ISPs to cooperate in addressing Internet piracy, and one that does not provide cover for services that induce or promote infringement. Further, it is critical that Russia amend its regime to allow for injunctive relief that is quick and effective, applicable to all works, and especially for Internet matters.

Other existing hurdles to effective civil and criminal enforcement are: (a) the failure of courts and police to apply statutory presumptions of copyright ownership; (b) overly burdensome evidentiary requirements to prove title; and (c) the lack of criminal liability for corporate enterprises or the principals in such enterprises. To require a “full” chain of title for each recording in every investigation is especially problematic for foreign rights holders with translation, notarization and other costs and delays. Similarly, the procedures for obtaining injunctions tied to notice and takedown (and proposals for further changes), have been criticized as being overly burdensome in requiring “proof” of ownership. For a detailed list of IIPA’s comments specifically on the Civil Code (and some of the related laws), see <http://www.iipa.com/rbc/2010/2010SPEC301RUSSIA.pdf> at page 138.

Article 1229 of the Civil Code provides a cause of action against importers of technological protection measures (TPM) circumvention devices, but there is an overly burdensome procedure to identify the importer (and include details of any seizure) that needs simplification and improvement. In addition, the liability should apply for commercial trafficking of all circumvention devices, not, as at present, only in instances where the devices are advertised as circumvention devices. And, commercial trafficking in circumvention devices (including by importation) should be criminalized as well.

In addition to those already mentioned, IIPA continues to recommend steps to ensure that remedies for IPR infringements required by treaties, found in the Criminal Code, the Criminal Procedure Code, the Administrative Code and the Customs Code, continue to apply in light of the adoption of the 2008 Civil Code and the repeal of the copyright law. Last, we recommend that Article 1252(5) of the Civil Code, which currently includes remedies for the seizure and destruction of materials and equipment used in infringements, be improved by deleting the exception for the sale of materials by the state for “income,” and by parallel changes in the respective procedural codes.

There is one recent development of particular concern to the motion picture industry: in January 2015, a law went in to force that bans advertisements on pay cable and satellite channels. While the 2015 law does not appear to affect state-owned television channels, it will likely have a significant impact on foreign cable and on-demand services, and will harm the overall marketplace for audiovisual content in Russia.

In 2014, the Government of Russia considered adopting an Internet tax that would have been paid by digital users, intended for distribution to rights holders in lieu of licensing, to compensate rights holders for massive online infringement of their works. The proposal has, for now, been put on hold. It should not be allowed to move forward. Supporters of the proposal suggested it would “improve” the digital marketplace, but copyright creators and producers remain very concerned that such a levy would fail to generate fair or meaningful compensation for the use of their copyrighted material, and would instead distort the competitive environment for services that could expand the legitimate digital marketplace. In short, the proposal would have created a compulsory license for the distribution of copyright protected materials in violation of the requirements of TRIPS and the WIPO treaties. It would not, as some suggested, have provided a solution to the current market failure, but instead would have locked-in market failure, in perpetuity, eroding any basis for establishing conditions for healthy and legal competition. Instead of this proposal, the Government of Russia should focus on improving enforcement against infringing parties (and those who enable infringement), thereby promoting opportunities for voluntary licensing and the development of market conditions, and to use all other available tools to create a robust online marketplace.

Last, in 2014, President Obama issued a proclamation removing Russia from eligibility for trade benefits under the Generalized System of Preferences (GSP) program, based “on a determination that Russia is sufficiently advanced in economic development and improved in trade competitiveness that continued preferential treatment under GSP is not warranted.” As a result, USTR closed the GSP country practices review of Russia’s protection of intellectual property rights (which was originally launched in response to a petition filed by the IIPA). This means that removal of some or all of the GSP benefits for Russia, for failing to provide adequate and effective IPR protection or enforcement, is no longer possible.