



LIKE A ROLLING STONE: SHOULD ACTA BE STOPPED?

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ISPs and piracy
Who's responsible?



RAISING THE BAR: MEETING WTO OBLIGATIONS

Now that it is a member of the World Trade Organization, Russia must lift its game against the counterfeiters and pirates. Elena Solovyova finds out what progress has been made and where Russia is falling short.

When it joined the World Trade Organization (WTO) in December 2011, Russia committed to harmonising its trade laws and practices with those of other member states. But the accession has wide-ranging implications for how Russia protects intellectual property rights, laid down in the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

Russia must continue to investigate and prosecute the owners of websites that infringe copyright, if their servers are located in the country. Similarly, it must seek to reduce the

sale of counterfeit goods, punishing the people responsible. Russia must also apply the rules set out by the Berne Convention for the Protection of Literary and Artistic Works, an international agreement governing copyright protection.

Resulting from bilateral negotiations with the US, Russia has other obligations when tackling counterfeiting and piracy. It has been shutting down websites that illegally distribute music and other copyrighted works, and has enacted laws to protect pharmaceutical test data from falling into the wrong hands. It has also introduced criminal

penalties to deter piracy and counterfeiting, strengthened border enforcement and brought Russia's laws into compliance with the international standards under TRIPS.

Russia must adhere to these provisions under TRIPS, but its own IP legislation has developed rapidly in the past 20 years, accelerating more recently. In 2011, a new law was passed to create a special state arbitration court for IP rights, which will become effective in February 2013. In July 2011, a customs union with uniform principles of IP protection between Russia, Kazakhstan

and Belarus began functioning. Many Russian IP specialists are also discussing future amendments to the fourth part of Russia's civil code, which is entirely devoted to protecting IP. We expect that these amendments will become effective in autumn 2012.

Despite a continuing effort to meet these obligations, Russia must more actively enact legislation to meet the WTO's standards. This disparity has been noted by the US government, which said that owing to the "continuing challenges" of copyright piracy and gaps between the law and its enforcement, Russia remains on the priority watch list of the *Special 301 Report*. One of the report's most serious concerns is protecting IP on the Internet, and the US government has urged Russia to take additional steps to address Internet piracy. The amendment of the fourth part of the civil code will contain new provisions shifting some liability to Internet service providers. Together with the implementation of the concept of 'gross offence', IP owners will have a serious weapon and solid legislation with which to fight against infringers on the Internet.

There are still irrefutable gaps in Russia's IP legislation, making it difficult, for example, to calculate damages or destroy counterfeit goods. The courts are not sophisticated enough at the moment, and we need more practice to make all of our legal instruments adequately work together. It should be underlined, though, that Internet piracy is an international problem. Russia is not the only country to suffer at the hands of Internet pirates, and it wishes to cooperate with WTO members to reduce problems. Software piracy is a global problem. In order to combat IP infringement effectively, particularly of software rights, it must be addressed on a global level, not only on Russian territory.

In order to make all anti-counterfeit measures more effective, Russia is in the process of harmonising its IP legislation. For example, criminal fines for infringing IP were recently raised: a potential infringer will now think more carefully upon starting any counterfeit activity. In the past two years, the Russian police have organised permanent anti-counterfeit raids against infringers all over the Russian territory. Customs authorities have become more and more effective in stopping counterfeit imports. This measure is important not only for Russia

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but for Europe as well, because Russia is a transit channel to European countries for counterfeit goods from China.

There also needs to be greater demand from brand owners to raise enforcement standards to an acceptable level—for them and their customers. For instance, when small quantities of counterfeit goods are seized, businesses often fail to enact administrative proceedings. They wait for larger quantities of goods before taking action. To counteract some of these problems, the Russian government is trying to raise awareness of the importance of protecting IP. It is extremely important to change the mentality of Russian consumers, who must understand that IP is similar to tangible property, and infringements must lead to appropriate compensation. Nowadays, almost all Russian media outlets across the country frequently report on anti-counterfeit operations and police activity. However, it will take time to change the mentality of 140 million people.

Russia's achievements were noted in the same *301 Report*, which said important progress has been made in the fight against piracy and counterfeiting. For the past 20 years, starting with the collapse of the Soviet Union, Russia has had tremendous success in developing its IP legislation and enforcement measures. However, in comparison to IP systems that have existed for hundreds of years such as those in the US or Europe, Russia is relatively new to matters of IP legislation and regulation, and still has a lot more to accomplish.

It is, perhaps, difficult for many people to grasp what progress Russia has made over the past couple of decades. For instance, years ago there wasn't single mall in Moscow, and the first Russian Trademark Law and Patent Law became effective only 20 years ago.

It must also be remembered that Russia is just one of 42 countries on the watch list—almost one third of WTO members are on it. Of course, Russians would love the implementation of IP laws to be quicker and enforcement more efficient, especially in the area of Internet piracy. However, the general enforcement system in the Russian Federation, including the administrative bodies and judicial system, is satisfactory. Administrative bodies together with businesses should undertake mutual efforts to overcome the inefficiency of enforcement programmes, the passivity of brand owners, the non-cooperation of legislation provisions, and the mentality of Russian consumers in relation to piracy.

Accession to the WTO allows Russia actively to join the international battle against piracy. Russia's IP legislation has dramatically improved, and will continue to improve due to its ongoing international cooperation and integration into the WTO. ■

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