



Russian Government considers extraordinary compulsory licensing of music and movie copyrighted content

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Some changes to the legal treatment of certain IP rights, namely inventions, have been recently introduced by the Russian Parliament, but copyright had been left so far unscathed. However, according to information released by newspaper Vedomosti (a business news medium) on 20 April 2022, the Russian authorities are considering possible legislation introducing compulsory licensing to copyrighted works too.

This is presumably a reaction to announcements by foreign media producing companies of plans to terminate or suspend their operations in Russia in the wake of the Ukrainian crisis. In fact, during March-April 2022 several majors, including Universal, Disney, Warner Bros., Sony and Paramount, stopped launching new movies and music in Russia, whilst maintaining available earlier releases.

According to industry sources, licensing arrangements between Russian video service companies and foreign right-holders are concluded yearly, and existing licenses are maintained in force. No US majors announced the intention to prematurely terminate existing agreements, which may well not be legally doable.

The freezing of new releases is reportedly affecting the movies business in Russia and results in a significant loss of income. Cinema owners were forced to seek public support to survive and discussions were triggered as to possible remedies.

Press sources indicate that the authorities are working at legislative amendments aimed at broadening the scope of compulsory licensing.

The Russian Civil Code contemplates the general compulsory licensing concept in



article 1239, where it is provided that in certain cases defined by law a court may grant an interested party the license to use an IP right owned by a third party without its consent. The court will in such case set the terms and conditions of the compulsory license.

However, article 1362 of the Civil Code indicates that compulsory licenses can be issued for invention patents, utility model or industrial design. This provision is based on article 31 of the TRIPS Agreement, which permits member States to legitimize the use of patents without the consent of the right-holder, subject to the limits and requirements listed therein, including, as concerns patent, the absence of use by the right-holder for 4 years and a shortage of the relevant goods in the domestic market.

Always according to press sources, the mechanism would be extended to other IP rights, including copyrighted works, and no longer include the non-use requirement for a certain period of time. Applications for compulsory license of copyrighted content could be filed by

1. Russian licensees of the right-holder or
2. Russian collective management organizations (Russian CMOs).

In the former case, the compulsory license could be granted if the licensor is domiciled in an “unfriendly State” (which for practical purposes means a jurisdiction having adopted an international sanction program against

Russia) and has terminated an existing license for reason other than the non-performance of the contract by the licensee. The draft amendment would also permit licensees to pay royalties by allotting preference non-voting shares, issued in amount not exceeding 25% of the charter capital especially for the purpose of payment of royalties (only for license agreements concluded after 23 February 2022).

In the latter case, Russian CMOs may apply for a compulsory license, if the foreign right-holders withdraw their rights from the management entrusted to the CMOs.

It is plain that the proposed amendments to the legislation reported by the press do not comply with the TRIPS Agreement and the Berne Convention, and may affect the international cooperation obligations Russia has committed to in the intellectual property field. In fact, the TRIPS allows member States to resort to compulsory licensing only for patents and on certain precise conditions, and not for other IP rights. Moreover, the special treatment that is being envisaged rule for foreign right-holders belonging to “unfriendly States” appears a discrimination and breach of principle of national treatment enshrined in the Berne Convention which compels member States to treat other member States’ nationals in the same way as domestic nationals.



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