LEGISLATIVE DEVELOPMENTS

TOTAL UPGRADE: INTELLECTUAL PROPERTY LAW REFORM IN RUSSIA

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Russia has just undertaken a large-scale intellectual property (IP) law reform. The reform abolishes most of the existing IP legislation and instead puts all IP issues into the new Fourth Part of the Civil Code. The new legislation was signed into force at the end of 2006, but it was made effective starting from January 1, 2008. While the new legislation largely restates, consolidates, and refines the existing legislation, it also introduces some concepts not known to Russian law before (such as "unified technology"). Importantly, the new Russian IP legislation addresses issues currently being a matter of international concern (such as phony right-management organizations granting licenses to pirate websites). This paper discusses the historical and international context of the new legislation and provides a detailed outline of the new Fourth Part of the Civil Code.

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I. INTRODUCTION

In the modern world intellectual property (IP) law is far from a purely domestic matter. Insufficient legal protection for foreign rights holders in a certain country may be economically painful for the rights holders, not only because of losses incurred in that particular country, but also because of losses incurred in other countries due to the international distribution of materials and products bearing rights infringements.

In particular, Russia recently became the talk of the town because of the activity of several Russian websites selling copyrighted music at fabulously low prices and, apparently, without any permissions from the copyright holders.[1] This activity is claimed to be legal under Russian law because of some statutory non-contractual-licensing provisions.[2] While the issue of legality is not certain, Russian law enforcers are reluctant to initiate criminal prosecution against the website operators.[3] Obviously, such sites, whether or not legal under domestic standards, are instrumental in facilitating the infringement of foreign musicians' rights by downloaders worldwide.

As a result, Russian IP law attracted keen interest from the international community. Insufficient intellectual property protection

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1. *See, e.g.*, Thomas Crampton, *Russian Download Site Is Popular and Possibly Illegal*, INT'L HERALD TRIB., June 1, 2006, *available at* www.nytimes.com/2006/06/01/world/europe/01cnd-mp3.html; *See also* Scott M. Fulton, *US Music Publishers Sue AllofMP3 for $1.65 Trillion USD*, BETANEWS, Dec. 21, 2006, http://www.betanews.com/article/US_Music_Publishers_Sue_AllofMP3_for_165_Trillion_USD/1166739613 (describing $1.65 trillion lawsuit brought by Sony, EMI, Warner, Universal, and others against AllofMP3 in U.S. federal court).

2. Sergey Budylin & Yulia Osipova, *Is AllofMP3 Legal? Non-contractual Licensing Under Russian Copyright Law*, 7 J. HIGH TECH. L. 1 (2007).

3. James Chapman, *Russian Web Sites Jeopardize U.S. Users: The Dangers of Importing Copyrighted Material over the Internet*, 29 HASTINGS INT'L & COMP. L. REV. 267, 290 (2006).

was reported to be one of the biggest obstacles for Russia to join the World Trade Organization (WTO).[4]

Apparently, partly because of these international concerns in July 2006, President Putin finally submitted the long-awaited draft of the new intellectual property legislation to the State Duma (the lower chamber of the Russian parliament).[5] This seems to have worked: in November 2006, the United States agreed to Russia's admission into the WTO (most other WTO members gave their consent earlier).[6]

This article is devoted to the new Russian IP legislation. It has been approved by the parliament and was signed into force on December 18, 2006.[7] According to the enabling law, the new legislation will be effective from January 1, 2008.[8]

The reform is arguably not as radical as it might seem: although old IP laws will be abolished, most of their provisions are incorporated into the new legislation. Our general conclusion is that the new Russian intellectual property legislation does a good job in terminology unification and filling existing gaps. However, some problems are left open, and a number of new ones have been created.

II. A BRIEF HISTORY

As a Russian scholarly commentator mournfully observed, "Russia has a long and widespread tradition of disregarding intellectual

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4. *See, e.g.*, Frank Ahrens, *U.S. Joins Industry in Piracy War*, WASH. POST, Jun. 15, 2006, at A1.

5. *Grazhdanskiy Kodeks Razoshelsya s Trebovaniyami VTO [Civil Code Deviates from WTO Requirements],* 133 KOMMERSANT 2 (Jul. 24, 2006).

6. U.S. Paves Way for Russia WTO Entry, BBC NEWS, Nov. 19, 2006, *available at* http://news.bbc.co.uk/2/hi/business/6163008.stm; *Russia-U.S. WTO Protocol Conducive for Mutual Trade—Putin,* RIA NOVOSTI NEWS AGENCY, Nov. 19, 2006, http://en.rian.ru/russia/20061119/55779900.html.

7. Grazhdanskii Kodeks RF [GK] [Civil Code], Part Four (Russ.), Federal Law No. 230-FZ of Dec. 18, 2006, 289 ROSSIISKAIA GAZETA [Ros. gaz.] 25 (2006) [hereinafter GK RF pt. 4].

8. Federal'nyi Zakon "O Vvedenii v Deystvie Chetvertoy Chasti Grazhdanskogo Kodeksa Rossiyskoi Federatsii" [Federal Law on the Enactment of the Fourth Part of the Civil Code of the Russian Federation] No. 231-FZ of Dec. 18, 2006, 289 ROSSIISKAIA GAZETA [Ros. gaz.] 34 (2006) (Russ.) [hereinafter Federal'nyi Zakon].

property rights."[9] This tradition arguably originated from the general negation of private property during the seven-decade Soviet era. In particular, most intellectual products in the Soviet Union were in the public domain.[10]

After the collapse of the Soviet Union in 1991, Russia had to develop its IP legislation (as well as many other laws) as a matter of urgency and from scratch. Within only two years (1992–1993) the bulk of the now-current intellectual property legislation was adopted, including laws on patents,[11] trademarks,[12] software,[13] microchip topology,[14] copyright,[15] and agricultural selection.[16] Un-

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9. Andrew A. Baev, *Recent Changes in Russian Intellectual Property Law and Their Effect upon the Protection of Intellectual Property Rights in Russia*, 19 SUFFOLK TRANSNAT'L L. REV. 361, 363 (1996).

10. *Id.* at 364.

11. Patentnyi Zakon Rossiiskoi Federatsii [Patent Law of the Russian Federation] No. 3517-1, Sept. 23, 1992, 42 VSND i VS RF No. 42, item 2139 (1992), *amended by* Federal Law No. 150-FZ, Dec. 27, 2000, 1 SZ RF (Part I) item 2 (2001), *amended by* Federal Law No. 194-FZ, Dec. 30, 2001, 53 SZ RF (Part I) item 5030 (2001), *translated in* LEXIS GARANT 12025266, *amended by* Federal Law No. 176-FZ, Dec. 24, 2002, 52 SZ RF (Part I) Item 5132 (2002), *translated in* LEXIS GARANT 3861305, *amended by* Federal Law No. 22-FZ, Feb. 7, 2003, 6 SZ RF Item 505 (2003), *translated in* LEXIS GARANT 85505, *amended by* Federal Law No. 19-FZ, Feb. 2, 2006, 6 SZ RF item 636 (2006), *translated in* LEXIS, GARANT 12044749, *partially consolidated translation* in LEXIS GARANT 10004511 [hereinafter Patent Law] (Russ.).

12. Zakon Rossiiskoi Federatsii "O Tovarnikh Znakakh, Znakakh Obsluzhivaniya i Naimenovaniyakh Mest Proiskhozhdeniya Tovarov" [Law of the Russian Federation on Trademarks, Service Marks, and the Appellation of the Origin of Goods] No. 3520-1, Sept. 23, 1992, 42 VSND i VS RF item 2322 (1992), *amended by* Federal Law No. 150-FZ, Dec. 27, 2000, 1 SZ RF (Part I) item 2 (2001), *amended by* Federal Law No. 194-FZ, Dec. 30, 2001, 53 SZ RF (Part I) item 5030 (2001), *translated in* LEXIS GARANT 12025266, *amended by* Federal Law No. 116-FZ, Dec. 12, 2002, 50 SZ RF (Part I) item 4927 (2002), *amended by* Federal Law No. 176-FZ, Dec. 24, 2002, 52 SZ RF (Part I) item 5132 (2002), *translated in* LEXIS GARANT 3861305, *partially consolidated translation in* LEXIS GARANT 10004505 [hereinafter Trademark Law] (Russ.).

13. Zakon Rossiiskoi Federatsii "O Pravovoi Okhrane Programm Dlia Elektronnykh Vychislitel'nikh Mashin i Baz Dannykh" [Law of the Russian Federation on the Legal Protection of Programmes for Electronic Computers and of Databases] No. 3523-1, Sept. 23, 1992, 42 VSND i VS RF item 2325 (1992), *amended by* Federal Law No. 177-FZ, Dec. 24, 2002, 52 SZ RF item 5133 (2002), *translated in* LEXIS GARANT 85367, *amended by* Federal Law No. 127-FZ, Nov. 2, 2004, 45 SZ RF item 4377 (2004), *translated in* LEXIS GARANT 12037441, *amended by* Federal Law No. 19-FZ, Feb. 2, 2006, 6 SZ RF 636 (2006), *partially compiled translation in* LEXIS GARANT 10004500 [hereinafter Computer Programme Law] (Russ.).

14. Zakon Rossiiskoi Federatsii "O Pravovoi Okhrane Topologiy Integral'nykh Mikroshem" [Law of the Russian Federation on the Legal Protection of Topologies of Integrated Microcircuits] No. 3527-1, Sept. 23, 1992, 42 VSND i VS RF item 2328

fair competition is to some extent covered by anti-monopoly legislation, originally dated 1991.[17] During 1994–2001, the first three parts of the Civil Code were adopted covering some relatively mi-

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(1992), *translated in* LEXIS GARANT 3899151, *amended by* Federal Law No. 82-FZ, July 9, 2002, 28 SZ RF 2786 (2002), *translated in* LEXIS GARANT 84666, *amended by* Federal Law No. 127-FZ, Nov. 2, 2004, 45 SZ RF item 4377 (2004), *translated in* LEXIS GARANT 12037441, *amended by* Federal Law No. 19-FZ, Feb. 2, 2006, 6 SZ RF 2006 item 636 (2006), *partially consolidated translation in* LEXIS GARANT 10004503 [hereinafter Microcircuit Topography Law] (Russ.).

15. Zakon Rossiiskoi Federatsii "Ob Avtorskom Prave i Smezhnykh Pravakh" [Law of the Russian Federation on Copyright and Neighbouring Rights] No. 5351-1, July 9, 1993, 32 VSND i VS RF item 1242 (1993), *amended by* Federal Law No. 110-FZ, July 19, 1995, 30 SZ RF item 2866 (1995), *amended by* Federal Law No. 72-FZ, July 20, 2004, 30 SZ RF item 3090 (2004), *translated in* LEXIS GARANT 12036318, *partially consolidated translation in* LEXIS GARANT 10001423 [hereinafter Copyright Law] (Russ.).

16. Zakon Rossiiskoi Federatsii "O Selekcionnykh Dostizheniyakh" [Law of the Russian Federation on Achievements in Selection] No. 5605-1, Aug. 6, 1993, 36 VSND i VS RF item 1436 (1993), *translated in* LEXIS GARANT 10008391 [hereinafter Selection Achievements Law] (Russ.).

17. Zakon RSFSR "O Konkurencii i Ogranichenii Monopolisticheskoy Dejatelnosti na Tovarnyh Rynkah" [Law of the RSFSR on Competition and Restriction of Monopoly Activity on Commodity Markets] No. 948-1, Mar. 22, 1991, 16 VSND i VS RF item 499 (1991), *amended by* Law of the Russian Federation No. 3119-1, June 24, 1992, 34 VSND i VS RF item 1966 (1992), *amended by* Law of the Russian Federation No. 3310-1, July 15, 1992, 36 VSND i VS RF item 1882 (1992), *translated in* LEXIS, GARANT 5112, *amended by* Federal Law No. 83-FZ, May, 25, 1995, 22 SZ RF item 1977 (1995), *amended by* Federal Law No. 70-FZ, May 6, 1998, 19 SZ RF item 2066 (1998), *translated in* LEXIS GARANT 12011446, *amended by* Federal Law No. 3-FZ, Jan. 2, 2000, 2 SZ RF item 124 (2000), *translated in* LEXIS GARANT 81450, *amended by* Federal Law No. 196-FZ, Dec. 30, 2001, 1 SZ RF (Part I) item 2 (2002), *amended by* Federal Law No. 31-FZ, Mar. 21, 2002, 12 SZ RF item 1093 (2002), *amended by* Federal Law No. 122-FZ, Oct. 9, 2002, 41 SZ RF 3969 (2002), *translated in* LEXIS GARANT 12028452, *amended by* Federal Law No. 13-FZ, Mar. 7, 2005, 10 SZ RF 761 (2005), *translated in* LEXIS GARANT 12039109, *amended by* Federal Law No. 19-FZ, Feb. 2, 2006, 6 SZ RF item 636 (2006), *partly abolished by* Federal Law No. 135-FZ, July 26, 2006, 31 SZ RF (Part I) item 3434 (2006), *partially consolidated translation in* LEXIS GARANT 5108 [hereinafter Anti-Monopoly Law] (Russ.); Federal'nyi Zakon "O Zashchite Konkurencii na Rynke Finansovykh Uslug" [Federal Law on the Protection of Competition on the Financial Services Market] No. 117-FZ, June 23, 1999, 26 SZ RF item 3174 (1999), *amended by* Federal Law No. 196-FZ, Dec. 30, 2001, 1 SZ RF (Part I) item 2 (2002), *amended by* Federal Law No. 19-FZ, Feb. 2, 2006, 6 SZ RF item 636 (2006), *partially consolidated translation in* LEXIS GARANT 12016076 [hereinafter Financial Anti-Monopoly Law] (Russ.).

nor intellectual property issues.[18] The law on trade secrets followed in 2004.[19]

The first three parts of the Civil Code only slightly touched issues related to intellectual property. The listing of the types of civil rights objects included, in particular, "information" and "results of intellectual activity, including exclusive rights for them (intellectual property);" without providing any further explanation of the terms.[20] Moreover, the Civil Code drew a somewhat vague distinction between a "legal person name" and a "firm name."[21] The chapter on the franchising ("commercial concession") contract allowed passing to a franchisee not only the rights for franchisor's trademarks, but also the "firm name," "commercial designation" (something otherwise unknown to Russian law at that moment), and "protected commercial information" (also left undefined until the adoption of the Commercial Secrecy Law).[22] As we will see later, all these objects are included into the spectrum of intellectual products under the new Fourth Part of the Civil Code.

It is noteworthy that Russia is a party to many major international IP treaties, including a number of conventions administered by the World Intellectual Property Organization (WIPO). These include the Paris Convention for the Protection of Industrial Property (Paris Convention),[23] the Bern Convention for the Protection of Literary and Artistic Works (relating to copyright),[24] the Madrid Agreement Concerning the International Registration of Marks and relating Madrid Protocol (relating to trademarks),[25] the Patent Co-

18. Grazhdanskii Kodeks RF [GK] [Civil Code] pts. One, Two, and Three (Russ.) [hereinafter collectively "GK RF"].

19. Federal'nii Zakon "O Kommercheskoy Tayne" [Federal Law on Commercial Secrecy] No. 98-FZ, July 27, 2004, 32 SZ RF item 3283 (2004), *translated in* LEXIS GARANT 12036454, *amended by* Federal Law No. 19-FZ, Feb. 2, 2006, 6 SZ FR item 636 (2006) [hereinafter Commercial Secrecy Law] (Russ.).

20. GK RF art. 128.

21. *Id.* art. 54.

22. *Id.* art. 1027(1).

23. Paris Convention for the Protection of Industrial Property, March 20, 1883, revised July 14, 1967, 21 U.S.T. 1629–76 and 24 U.S.T. 2140–41, 828 U.N.T.S. 305–88, *available at* http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html#TopOfPage.

24. Bern Convention for the Protection of Literary and Artistic Works, Sept. 28, 1979, Int'l Bur. WIPO, *available at* http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html.

25. Madrid Agreement Concerning the International Registration of Marks, Sept. 28, 1979, Int'l Bur. WIPO, *available at* http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo015.html; Protocol Relating to the Madrid Agreement Concerning the

operation Treaty,[26] and several other WIPO conventions.[27] Russia is also a party to the UN-administered Universal Copyright Convention.[28] In addition, Russia participates in the Eurasian Patent Convention administered by the Eurasian Patent Organization (comprising of nine post-Soviet states).[29] However, since currently Russia is not a WTO member, it is not a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).[30]

Despite the rush, the Russian legislation adopted in the early 1990s appeared to be reasonably efficient and corresponding to the existing international standards (on which, in fact, it was largely modeled). However, with the passage of time certain deficiencies became evident. In particular, terminology used in different laws appeared to be somewhat inconsistent.[31] Numerous amendments to the laws were adopted to repair defects and to catch up with technology developments, including the emergence of Internet technology.[32]

As early as in 1994 various projects of intellectual property law reform began to appear.[33] Some specialists proposed to include

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International Registration of Marks, June 27, 1989, *amended on* Oct. 3, 2006, Int'l Bur. WIPO, *available at* http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo016.html.

26. Patent Cooperation Treaty, Apr. 1, 2002, 28 U.S.T. 7645 and 7813, 1160 U.N.T.S. 231–482, *available at* http://www.wipo.int/pct/en/texts/articles/atoc.htm.

27. Further WIPO treaties *available at* http://www.wipo.int/treaties (last visited Feb. 13, 2007).

28. Universal Copyright Convention, July 24, 1971, 25 U.N.T.S. 1341, *available at* http://www.unesco.org/culture/laws/copyright/html_eng/page1.shtml (unofficial text).

29. Eurasian Patent Convention, Sept. 9, 1994, World Intellectual Property Organization publication No. 22, *available at* http://www.eapo.org/eng/documents/konvenci.html.

30. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125 (1994), *available at* http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm [hereinafter TRIPS].

31. *Compare* Copyright Law art 16 (defining exclusive author's rights as "property rights") *with* GK RF art. 128 (listing property rights and exclusive rights for results of intellectual activity as separate types of civil-right objects).

32. *See, e.g.*, Copyright Law art. 16(2), par. 11 (introducing the exclusive right of the author to "communicate a work" in "interactive regime," apparently intended to cover placing the work on a web site).

33. *See, e.g.*, A.P. Sergeev, Zaklyuchenie na Proekt Chetvertoy Chasti Grazndanskogo Kodeksa Rossiyskoy Federatsii ot 21 Dekabrya 2005 g. [Opinion on the Draft of the Fourth Part of the Civil Code of the Russian Federation of Dec. 21, 2005], COALITION FOR INTELLECTUAL PROPERTY RIGHTS, March 2006, *available at* http://www.cipr.org/activities/advocacy/civil_code/activities/expert_opinion_sergeev.doc (unofficial source).

general provisions on intellectual property into the Civil Code, while retaining specialized laws on patents, copyright, etc. The most important draft of this sort was developed in 2002 by a group lead by Professor Alexander Sergeev of St. Petersburg State University.[34] Some others proposed to incorporate all intellectual property law provisions into the Civil Code and abolish all specific IP laws. This proposition eventually prevailed. A working group lead by Professor Veniamin Yakovlev,[35] a former Chairman of the Supreme Arbitration Court, and including many prominent Russian law scholars, prepared a draft of the Fourth Part of the Civil Code as a comprehensive and all-inclusive IP legislation.

The draft raised considerable controversy in the Russian scholarly and practitioner IP law communities. Critics attacked the draft arguing that such a radical reform was unnecessary; that it might be harmful as virtually canceling the existing case law; that total codification of IP law was unprecedented even in civil-law-system countries; and that many of the draft provisions were questionable.[36] Although the drafters of the Fourth Part were always open for discussion, it will probably be fair to say that the government failed to organize a meaningful public debate about the draft. Finally the draft was approved by the government and submitted to the parliament by President Putin. The parliament, overwhelmingly dominated by a pro-president party, promptly adopted the draft with relatively minor amendments.

To summarize, the history of the modern Russian IP law is short and fervent. The bulk of the current IP legislation was written from scratch less than fifteen years ago. It was repeatedly amended throughout the period. Now it will be abolished and replaced by the new legislation, constituting the new Fourth Part of the Civil Code. Fortunately, most provisions of the existing legislation are restated in the new one. However, some controversy over the new legislation is present in the Russian law community.

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34. *Id.*

35. *See* Boris Yamshanov, *Talanty i Zakonniki* [*Talents and Legislators*], ROSSIISKAIA GAZETA [RUSSIAN GAZETTE], Mar. 17, 2006, *available at* http://www.rg.ru/2006/03/17/yakovlev.html.

36. *See* Sergeev, *supra* note 33, ¶¶ 2–3.

III. NEW LEGISLATION

The rest of this paper discusses the provisions of the new Russian IP legislation.[37] The Fourth Part of the Civil Code consists of eight chapters (69–77) including 327 articles (1225–1551). An "article" of a Russian law can be analogized to a "section" of a U.S. legislative act. Note that since Russia is a civil law country, its court decisions are not precedential, at least theoretically.[38] Accordingly, many provisions paralleling U.S. judicially-made doctrines are codified in the written law.

A. General Provisions

Chapter 69 contains general IP law provisions. According to the new statute, IP law protects the "results of intellectual activity" and "means of individualization," including the following: (1) works of science, literature, and art; (2) computer programs; (3) databases; (4) performances; (5) phonograms; (6) air and cable broadcasts; (7) inventions; (8) useful models; (9) industrial designs; (10) agricultural selection achievements; (11) integrated circuit topologies; (12) trade secrets (know-how); (13) firm names; (14) trademarks and service marks; (15) appellations of (geographical) origin of goods; and (16) commercial designations.[39] The most controversial object of IP rights, the domain name, present in the original draft, was removed from the list by the State Duma. As a result, the list is in general correspondence with the IP right objects covered by various international treaties to which Russia is a party (and also by treaties to which it is not a party as yet: e.g., trade secrets are mentioned only by TRIPS). A notable omission from the list is unfair competition. Although the Paris Convention considers the repression of unfair competition as a protection-of-industrial-property object (on an equal footing with patents, trademarks, etc.),[40] the Fourth Part drafters did not include it into the list of the "results of intellectual activity" (which seems reasonable).

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37. GK RF pt. 4, *supra* note 7.

38. *But see* O.N. Sedukina, *K Voposu o Normotvorcheskoy Deyatelnosti Vysshikh Sudov Rossii [On the Question of Law-Making Activity of the Higher Courts in Russia]*, 11 ROSSIYSKIY SUDYA [Russian Judge] 15 (2004) (arguing that Russian courts do make law to a certain extent).

39. GK RF art. 1225.

40. Paris Convention for the Protection of Industrial Property, *supra* note 23, art. 1(2).

Instead, unfair competition continues to be covered by separate (anti-monopoly) legislation.[41]

The legislation introduces a new blanket notion of "intellectual rights," including "the exclusive right being a property right" and "personal non-property rights" as well as some "other rights."[42] That is, in line with the continental European tradition, Russia recognizes not only economic, but also moral rights of the author which are the "result of intellectual activity" (such as the right to claim authorship); in addition, it covers certain rights not exactly fitting into this dichotomy (such as the right of access to own work for copying it).

The author of a "result of intellectual activity" is always an individual (or several individuals) engaged in this activity, not a legal entity.[43] The author can assign her exclusive (economic) rights, but personal non-property (moral) rights are unassignable.[44] Some types of IP right objects require state registration for their legal protection, [45] but some do not (as discussed in more detail below). A right owner can either assign her exclusive right in a "result of intellectual activity" or "means of individualization," or license its use to another person.[46] In certain cases a court may compel granting a compulsory license.[47] Note that by introducing the general terminology in the introductory part of the Fourth Part of the Civil Code, the legislature unified previously inconsistent word usage as related to different objects of IP rights.

The law explicitly authorizes the creation of management organizations for the collective management of authors' rights and related ("neighboring") rights.[48] As a general rule, a contract with a right owner is required for a management organization to manage her rights.[49] However, a state-accredited organization may manage one's rights without a right owner's permission, unless she explic-

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41. Federal'nyi Zakon o Zashchite Konkurencii [Federal Law on Competition Protection] No. 135-FZ, July 26, 2006, 31 SZ RF (Part I) item 3434 (2006), *translated in* LEXIS GARANT 12048517 [hereinafter Competition Protection Law] (Russ.); *see also* GK RF arts. 1252(7), 1512(2)(6) (mentioning unfair competition in passing).

42. *Id.* art. 1226.

43. *Id.* art. 1228(1).

44. *Id.* art. 1228(2)–(3).

45. *Id.* art. 1232.

46. *Id.* arts. 1233–35.

47. *Id.* art. 1239.

48. *Id.* art. 1242(1).

49. *Id.* art. 1242(3).

itly objects.[50] The organization should take measures to contact the right owner for making a relevant payment.[51] Note that the state-accreditation requirement as a precondition of non-contractual right-management is an important legal innovation. Apparently, it is intended to solve the problem of phony right-management organizations (in particular, those providing to web-sites blanket music-distribution licenses at more than affordable prices).

An accredited right-management organization is also authorized to collect and distribute statutory royalties for free reproduction of phonograms and audiovisual works for personal needs. These royalties are collected not from individuals but from the manufacturers and importers of the relevant equipment (VCRs etc.). The details of the scheme are left to be determined by the government.[52]

The registration of inventions (i.e., issuing patents), of trademarks, etc. is carried out by the "federal organ of executive power in intellectual property" (currently Rospatent); selection achievements are registered by a separate agency.[53] Arising disputes are generally solved by courts, but in certain cases the first-instance forum is a specialized board run by the relevant state agency (Rospatent's Patent Dispute Chamber).[54]

Personal non-property (moral) rights of the author may be protected, in particular, by the following means: (1) declaration of the right; (2) restoration of the *status quo ante*; (3) injunction; (4) moral harm compensation; (5) publication of the court decision.[55] Exclusive (economic) rights can be protected by the following: (1) declaration of the right; (2) injunction; (3) compensatory damages; (4) confiscation of the infringing material object; (5) publication of the court decision.[56] In certain cases a statutory compensation is available.[57] In certain cases some other measure can be taken, like the cancellation of a concurring trademark.[58] In the case of multiple or gross infringements a legal person may be dissolved, and an

50. *Id.* art. 1244(3)–(4).
51. *Id.* art. 1244(5).
52. *Id.* art. 1245.
53. *Id.* art. 1246(3)–(4).
54. *Id.* art. 1248(1)–(2).
55. *Id.* art. 1251(1).
56. *Id.* art. 1252(1).
57. *Id.* art. 1252(3).
58. *Id.* art. 1252(6).

individual can be deregistered as an entrepreneur.[59] Note that damages are only compensatory (or sometimes fixed by a statute). Damages based on accounting for the infringer's profits, as well as double, treble, or punitive damages are not known to Russia's law (but see below for the method of calculating the statutory compensation).

To summarize, the starting chapter introduces unified terminology and establishes a legal framework for further chapters.

B. Author's Rights Law

Chapter 70 covers what is known as copyright in the U.S. However, the scope of the protection is not limited to the right of making copies, which is reflected in the terminology. Author's rights are intellectual rights in the works of science, literature, and art. Author's rights include the following: (1) the exclusive right in the work; (2) the right of authorship (to be called the author of the work); (3) the right for the name (to publish the work under own name, under a pseudonym, or anonymously); (4) the right of inviolability (to protect the work against distortions); (5) the right to publish the work.[60]

The legal protection is provided to works published in Russia or unpublished but existing in a material form in Russia, and to the works of Russian citizens published outside of Russia or unpublished but existing in a material form outside of Russia. Other works are protected if covered by an international treaty of Russia.[61] Notably, no "originality" requirement is present in the definition of the subject matter.

The author is always an individual (or several individuals—co-authors).[62] The objects of author's rights include (we shorten the statutory language a bit): (1) literary works; (2) dramatic etc. works; (3) choreographic works and pantomimes; (4) musical works with or without text; (5) audiovisual works [including motion pictures]; (6) pictorial, graphic, sculptural, etc. works; (7) decorative and scene-design works; (8) architectural and town-planning works, including drawings etc.; (9) photographs etc.; (10)

59. *Id.* art. 1253.
60. *Id.* art. 1255(1).
61. *Id.* art. 1256.
62. *Id.* arts. 1257–58.

geographical maps etc.; (11) other works.[63] As we see, the list is left open. Computer programs are protected as literary works.[64] Ideas, processes, discoveries, facts, programming languages, etc. are not covered by author's rights.[65] Official documents, state symbols, folklore, and news are all excluded from legal protection.[66]

No formalities (like registration or copyright notice) are required for legal protection of the works. Copyright notice (e.g., © Ivanov 2008) is optional.[67] For computer programs and databases voluntarily registration is available.[68]

A translator owns "author's rights" in the translation but must observe the rights of the original work author. Essentially the same is true for any derivative work, including compilations, databases, etc.[69]

The author's "exclusive right" in the work is the right to "use" it in any form, including the following: (1) to reproduce the work (an exemption for temporary "technological" reproduction of a computer program for lawful purposes is made); (2) to distribute the work in the original or in copies; (3) to display the work publicly; (4) to import the original or copies of the work for distribution; (5) to rent out the original or a copy of the work; (6) to perform the work publicly; (7) to broadcast the work; (8) to communicate the work by cable; (9) to translate or transform the work; (10) to implement an architectural etc. project; (11) to make the work publicly available (the latter arguably includes placing the work on a website).[70] With certain exceptions (most notably, for computer programs), the reproduction of a published work by an individual for purely personal needs is allowed.[71] Also allowed, to a limited extent, is the use of the work for informational, scientific, educational, or cultural purposes ("fair use"). A number of other exemptions are made, most notably, granting limited rights for

63. *Id.* art. 1259(1).
64. *Id.*
65. *Id.* art. 1259(5).
66. *Id.* art. 1259(6).
67. *Id.* art. 1271.
68. *Id.* arts. 1259(4), 1262.
69. *Id.* art. 1260.
70. *Id.* art. 1270.
71. *Id.* art. 1273.

modifying, archival copying, reverse engineering, and decompiling (for achieving interoperability only) computer programs.[72]

The term of protection of the exclusive right is the life of the author plus seventy years (starting from January 1 of the year following the year of death). The law envisages certain modifications (e.g., for anonymous works the term is seventy years from publication).[73] Interestingly, some special exceptions are made for authors who were participants of the Second World War (as well as for some others). Note that no special term is envisaged for corporate works: a company cannot be an "author" (although it can be an exclusive right owner). After the expiration of the term the work falls into the public domain.[74]

The exclusive right can be assigned or licensed.[75] Notably, a shrink-wrap license for computer programs is explicitly authorized.[76] The "contract of author order" is defined as a contract by which the author promises to create a work of science, literature, or art for the ordering party.[77] Although author's rights in the work made for hire belong to the author himself, the exclusive (economic) right generally belongs to the employer.[78] "Technical means of the author's right protection" (e.g., software protection against copying) cannot be legally removed without a right owner's permission.[79]

In case of an infringement, the right owner can claim, instead of actual damages, a statutory compensation equal to (1) 10,000 to 5 million rubles, at the court's discretion, or (2) double the value of the copies or double the value of the rightful license under similar conditions.[80] It is not exactly clear what is meant by "value of the copies": while a licensed copy of, say, Microsoft Windows, can cost about $200, pirated copies are currently marketed in Russia at about $2.

To summarize, despite some relatively minor problems, the chapter provides for comprehensive protection of copyright and

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72. *Id.* art. 1275–80.
73. *Id.* art. 1281.
74. *Id.* art. 1282.
75. *Id.* arts. 1285–86.
76. *Id.* art. 1286(3).
77. *Id.* art. 1288.
78. *Id.* art. 1295.
79. *Id.* art. 1299(2)(1).
80. *Id.* art. 1301.

other author's rights in virtually all types of expressive works. No formalities are required for legal protection. The general protection term is "life plus 70." Certain "fair-use" exceptions are made. A number of *sui generis* provisions are envisaged for computer software.

C. Neighboring Rights Law

"Neighboring rights," covered by Chapter 71, are the intellectual rights related to ("neighboring with") author's rights, namely, the rights belonging to performers, producers, broadcasters, and some others. They include exclusive (economic) rights and some personal non-property (moral) rights. The objects of the neighboring rights are: (1) performances; (2) phonograms; (3) broadcasts; (4) databases; and (5) publications of public-domain materials.[81]

No formalities are required to obtain legal protection.[82] Foreign works are protected if covered by an international treaty.[83] Notice on phonograms (e.g., (p) Ivanov 2008) is optional.[84] Many provisions of the chapter reproduce *mutatis mutandis* the author's rights chapter provisions, including various exceptions from the protection, the assignment and licensing provisions, the technological protection provisions, and the liability provisions.[85]

Separate sections (each consisting of several articles) cover the rights of performers,[86] phonogram producers,[87] broadcasters,[88] database producers,[89] public-domain material publishers.[90] The terms of protection are different: for performances—the life of the performer, but not less than fifty years;[91] for phonograms—fifty years from the publication (or from the date of the record for unpublished phonograms);[92] for broadcasts—fifty years from the date of the broadcast;[93] for databases—fifteen years from the publica-

81. *Id.* art. 1304(1).
82. *Id.* art. 1304(2).
83. *Id.* art. 1304(3).
84. *Id.* art. 1305.
85. *Id.* arts. 1306–12.
86. *Id.* arts. 1313–21.
87. *Id.* arts. 1322–28.
88. *Id.* arts. 1329–32.
89. *Id.* art. 1333–36.
90. *Id.* art. 1337–44.
91. *Id.* art. 1318.
92. *Id.* art. 1327.
93. *Id.* art. 1331.

tion;[94] for public-domain material publications—twenty-five years from the publication.[95] The terms begin to run from January 1 of the year following the relevant date.

A notable novelty here is the protection of databases and public-domain-material publications as neighboring rights objects. As for public-domain-material publication provisions, although statutory language seems somewhat vague, they are apparently intended to protect the first publisher of a previously unknown old manuscript and alike.[96] As for databases, note that they are also protected against wholesale copying by the author's rights chapter (as far as the selection and arrangement of the materials is concerned);[97] in contrast, in this chapter databases are protected against the unauthorized extracting and re-use of the materials contained therein.[98] The database producer owns the (transferable) exclusive right to extract from the database and use in any form the materials contained therein; however, the "extraction" is defined narrowly, as transferring the whole database or its substantial part onto a different information carrier.[99] Protection is granted only if the creation of the database requires substantial financial, material, organizational, and other expenses; a database containing at least 10,000 elements is presumed to be protectable.[100]

One of the most controversial provisions of this chapter is the one saying that the term of the protection of a database is renewed each time the database is updated.[101] Obviously, the provision is intended to protect publishers of renewable databases, especially electronic legal systems (e.g., Garant and Consultant Plus). However, the statutory language, taken literally, means that even immaterial additions are able to renew the database protection indefinitely. While the Fourth Part drafters borrowed much of the database-protection language from the European Union directive on the subject-matter,[102] in this particular provision the drafters omitted

94. *Id.* art. 1335.
95. *Id.* art. 1340.
96. *Id.* art. 1337.
97. *Id.* art. 1260(2)
98. *Id.* art. 1304(1)(4).
99. *Id.* art 1334(1).
100. *Id.*
101. *Id.* art. 1335(2).
102. Directive 96/9/EC, the legal protection of databases, 1996 O.J. (L 077) 20.

the requirement for the change to be "substantial" (in investment terms) in order to renew the term of the protection.[103]

To summarize, the chapter covers legal rights of artistic performers, phonogram producers, and broadcasters. As a legal novelty, it also protects database producers and public-domain material publishers. Some of the database-related provisions seem controversial.

D. Patent Law

Chapter 72 is devoted to patent rights. Patent rights are the intellectual rights in (1) inventions, (2) utility models, and (3) industrial designs.[104] Note that all three types of objects are envisaged by the Paris Convention.[105] The author initially owns the exclusive right and the right of authorship, as well as some other rights (such as the right to obtain a patent).[106]

In Russia exclusive rights in inventions, utility models, and industrial designs are recognized only if they are certified for patents issued by the relevant state agency (currently Rospatent), or patents covered by appropriate international treaties (currently the Eurasian patent).[107]

As always, the author is an individual (or several individuals—co-authors).[108] Some objects "contrary to public interests, the principles of humanity and morality," such as human cloning methods, are explicitly excluded from the subject matter of patent protection.[109]

An invention is described as a technical solution in any field which is related to a product (in particular, a device, a material, a culture of a microorganism, a culture of plant or animal cells) or a

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103. *Compare id.* art. 10(3) *with* GK RF art. 1335(2).

104. GK RF art. 1345(1).

105. Paris Convention for the Protection of Industrial Property art. 1(2), *supra* note 23. Note, however, that the terminology is somewhat different: the Convention mentions "patents, utility models, and industrial designs," whereas the Russian law introduces the notions of "inventions, utility models, and industrial designs," all protected by patents (a patent being a certifying document). Arguably, the Russian terminology is more consistent.

106. GK RF art. 1345(2)–(3).

107. *Id.* art. 1346. On the Eurasian patent, see Eurasian Patent Convention, *supra* note 29.

108. GK RF arts. 1347–48.

109. *Id.* art.1349.

method (a process of manipulating a material object by physical means). An invention is patentable if it is (1) new, (2) a non-trivial "inventive step" [non-obvious, in the U.S. patent parlance], and (3) "industrially applicable" [useful].[110] All terms are carefully defined.[111] The disclosure of the invention-related information does not exclude invention patentability if the application for a patent is filed within six months from the date of disclosure.[112] Discoveries, scientific theories and mathematical methods, aesthetic solutions, business methods, computer programs, etc. are not recognized as inventions.[113] Plant varieties and animal breeds (excluding microorganisms), as well as integrated circuit topologies are not inventions (they are protected separately, as discussed below).[114] Special provisions are envisaged for "[state-]secret inventions."[115]

A utility model is described as a technical solution related to a device. A utility model is protectable if it is (1) new and (2) industrially applicable. Note that non-obviousness is not required for a utility model. Other provisions related to inventions are reproduced *mutatis mutandis*.[116]

An industrial design is described as an artistic design solution of a product of industry or useful art, determining its appearance. An industrial design is protectable if it is (1) new and (2) original. Functional solutions, most architectural objects, as well as "unstable-form" objects (made of a liquid or like substance) are not protected as industrial designs.[117]

Exclusive rights in inventions, utility models, and industrial designs are protected subject to their registration by a state agency (currently Rospatent) that issues a relevant patent.[118]

The author of an invention, utility model, or industrial design owns a (moral) right of authorship, that is, the right to be called its author. This right is unassignable.[119] She also initially owns the right to obtain a patent; however, this right is assignable.[120] The

110. *Id.* art. 1350(1).
111. *Id.* art. 1350(2)–(4).
112. *Id.* art. 1350(3).
113. *Id.* art. 1350(5).
114. *Id.* art. 1350(6).
115. *Id.* arts. 1349(2), 1401–05.
116. *Id.* art. 1351.
117. *Id.* art. 1352.
118. *Id.* art. 1353.
119. *Id.* art. 1356.
120. *Id.* art. 1357.

exclusive (economic) right to "use" the invention, utility model, or industrial design belongs to the patent owner; this right is also transferable.[121] "Use" is carefully defined and includes importation, manufacture, application, offer to sale, and sale of the relevant products.[122] Certain "fair-use" exceptions are envisaged by the law, including scientific experimentation with the product and its use for personal non-commercial needs.[123]

Note that the Russian priority system is "first-to-file" rather than "first-to-invent."[124] Perhaps the "first-to-file" system is somewhat less fair but it is much easier to administer. To enhance fairness, a "prior-use" exception is envisaged by the law: if a person in good faith used a solution in Russia (invention etc.) that is identical to a patented one but created independently before the priority date of the solution, then that person has the right to continue with its use, but without expanding the scope of the usage.[125] If a patent owner does not use her invention etc. for a certain period, a court can grant a compulsory non-exclusive license to any interested person.[126]

The term of protection is twenty years for inventions, ten years for utility models, and fifteen years for industrial designs, beginning with the date of filing. In some circumstances the term can be prolonged (for five years—in case of inventions related to medicines etc.; for three years—in case of utility models; for ten years—in case of industrial designs).[127] On the expiration of the protection term the solution falls into the public domain.[128]

Patent owners rights can be assigned or licensed to another person; both types of contracts are subject to state-agency registration.[129]

If an invention, utility model, or industrial design is created for hire, the authorship right belongs to the author, but the exclusive (economic) right belongs to the employer, absent provisions to the contrary in the employment or other contract between the parties.

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121. *Id.* art. 1358.
122. *Id.* art. 1358(2)–(3).
123. *Id.* art. 1359.
124. *See Id.* art. 1350(2).
125. *Id.* art. 1361(1).
126. *Id.* art. 1362.
127. *Id.* art. 1363.
128. *Id.* art. 1364.
129. *Id.* arts. 1365–69.

However, if within the time period of four months the employer does not file a patent application, transfers the right to someone else, or decides to keep it secret, the right to obtain a patent passes to the employee.[130] The excusive rights in a solution created by an independent contractor generally belong to that contractor, with industrial designs created in pursuance of a contract being an exception.[131]

Formalities related to filing an application and obtaining a patent are covered in detail in the Fourth Part of the Civil Code.[132] The application for a patent for an invention must include (1) the indication of the author and the patentee; (2) a description of the invention "disclosing it with the completeness sufficient for implementation"; (3) the "formula of the invention" expressing its essence [claims]; (4) drawings etc., if needed; and (5) a synopsis.[133] Essentially the requirements for a utility model patent application are the same.[134] An industrial design patent application must contain (1) the indication of the author and the patentee; (2) a set of graphic images of the product; (3) drawings etc., if needed; (4) a description; and (5) a list of important features of the design.[135] Amendments to the application may be made before the patent is issued, unless they change the "essence" of the solution (as defined).[136] In certain circumstances an application for an invention can be converted into an application for a utility model.[137]

As mentioned above, the priority is determined by the date of filing.[138] The priority of a foreign invention, utility model or industrial design may be established by the filing date of the first application in a country-participant of the Paris Convention, if the application in Russia is filed within twelve months (for inventions and utility models) or six months (for industrial designs) from the filing of the original application; the applicant should also notify (during a certain period) the Russian state agency of her intention to file such an application.[139] If two identical applications have the

130. *Id.* art. 1370.
131. *Id.* arts. 1371–72.
132. *Id.* arts. 1374–80.
133. *Id.* art. 1375.
134. *Id.* art. 1376.
135. *Id.* art. 1377.
136. *Id.* art. 1378.
137. *Id.* art. 1379.
138. *Id.* art. 1381.
139. *Id.* art. 1382.

same priority date, the patent can be issued only under one of the applications, as it should be determined by an agreement between the applicants.[140]

The expert examination of the application for an invention first includes a formal examination (as to the completeness of the set of documents).[141] After eighteen months form the filing date the information about the application is officially published, provided the application passed the formal examination.[142] The expert examination of the invention on the merits is carried out on a petition from an applicant submitted in three years from the application filing date.[143] The examination on the merits includes (1) an information search and (2) a verification of the patentability of the invention.[144] The information search results are reported to the applicant normally within six months from the beginning of the examination on the merits.[145] If the examination is passed, the state agency issues a patent; otherwise, it issues a refusal to grant a patent.[146] The applicant may challenge the refusal in the Patent Dispute Chamber.[147] Note that there is no way for a third party (say, an independent inventor) to challenge a pending application in the Patent Dispute Chamber.

In case of a utility model the expert examination does not include any verification of the model's patentability.[148] That is, the examination is only formal; any potential problems with patentability are left to be resolved by future litigation. In contrast, the expert examination of an industrial design includes both formal examination and examination on the merits.[149]

Temporary legal protection is granted to an invention between the date of the publication of the application information and the date the publication of the information on issuing the patent (provided the patent is issued).[150]

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140. *Id.* art. 1383.
141. *Id.* art. 1384.
142. *Id.* art. 1385.
143. *Id.* art. 1386.
144. *Id.* art. 1386(2).
145. *Id.* art. 1386(3).
146. *Id.* art. 1387.
147. *Id.* art. 1387(3).
148. *Id.* art. 1390.
149. *Id.* art. 1391.
150. *Id.* art. 1392.

An invention, utility model, or industrial design is entered into the state register on issuing the patent.[151] The information about the patent is officially published.[152]

In six months from the application date the applicant is allowed to file a similar application in another country unless she is informed that the application contains information that is a state secret.[153] A prior Russian application is not required, if the international application is filed through the Russian state patent agency under the terms of the Patent Cooperation Treaty or the Eurasian Patent Convention (see above).[154]

A patent can be invalidated in the following cases: (1) the solution is unpatentable; (2) the formula etc. in the issued patent does not correspond to that in the application; (3) the patent has been issued with a violation of priority rules; (4) the author or the patent owner indicated in the patent is wrong.[155] In the first three cases the first-instance forum is the Patent Dispute Chamber, in the fourth case a patent is challenged in court.[156] A patent can be challenged by any person.[157] A patent can be also terminated in case of non-payment of maintenance fees.[158] Generally, patent-right-related disputes are solved either by courts (for issues related to the establishment of authorship or patent ownership, to infringements etc.) or by the Patent Dispute Board, an administrative body (for issues related to expert examination, patentability etc.), with a possibility to appeal to a court.[159]

Comparing the new statutory provisions with those of the existing patent law, we see that the changes are relatively minor. Most notably, new terminology is introduced: the rights for inventions, utility models, and industrial designs are now called "patent rights," a previously unknown term. The terms of protection for utility models and industrial designs are now longer (ten vs. five years for utility models and fifteen vs. ten years for industrial designs). Otherwise, the changes are mostly editorial.

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151. *Id.* art. 1393.
152. *Id.* art. 1394.
153. *Id.* art. 1395(1).
154. *Id.* art. 1395(2).
155. *Id.* art. 1398(1).
156. *Id.* art. 1398(2).
157. *Id.*
158. *Id.* art. 1399.
159. *Id.* art. 1406.

To summarize, "patent rights" protect inventions, utility models, and industrial designs. The term of protection for inventions is twenty years. The priority rule is "first-to-file." Utility models significantly differ from inventions in that (1) utility models are not necessarily non-obvious, and (2) there is no examination on the merits carried out for utility models.

E. Agricultural Selection Achievement Law

Chapter 73 is devoted to the legal protection of "agricultural selection achievements," that is, plant varieties and animal breeds. The author of the achievement initially owns the exclusive right in it and the right of authorship, and can own some other rights, like the right to obtain a patent.[160] To be protected, the achievement must be patented.[161] The objects of the intellectual rights in selection achievements are plant varieties and animal breeds registered in the relevant register, if they satisfy certain criteria; "variety" and "breed" are carefully defined.[162] Patents are issued only for plants and animals of certain species, the list of which is determined by a governmental agency.[163] To be protectable, the selection achievement must be (1) new, (2) distinguishable, (3) homogenous, and (4) stable.[164] A selection achievement is subject to state registration.[165] A state agency (this is not Rospatent, but a separate agricultural agency) issues a patent to the applicant and may also issue an "authorship certificate" to the author.

The patent holder owns the exclusive right to "use" (as defined) the selection achievement.[166] Certain statutory exceptions are envisaged, including personal non-commercial use, experimentation, and most actions with the plants and animals put into "civil circulation" (stream of commerce) by the patent owner herself.[167] In three years form issuing a patent, a compulsory license is available for any interested person.[168] The term of protection is thirty years

160. *Id.* art. 1408.
161. *Id.* art. 1409.
162. *Id.* art. 1412.
163. *Id.* art. 1413(1).
164. *Id.* art. 1413(2).
165. *Id.* art. 1414.
166. *Id.* art. 1421.
167. *Id.* art. 1422.
168. *Id.* art. 1423.

from the date of the state registration of an achievement.[169] After the expiration of the term the achievement falls into the public domain.[170]

The exclusive right in a selection achievement may be either assigned or licensed.[171] If an achievement is created for hire, the authorship right belongs to the employee, but the exclusive right generally belongs to the employer.[172]

An application for a patent for an agricultural selection achievement must include (1) a statement identifying the author and the patentee, (2) a form describing the achievement, and (3) a confirmation of the payment of the state duty.[173] The priority date is the date of filing.[174]

The examination includes a preliminary examination (within a month from the date of filing),[175] an examination for novelty (only if petitioned for by "any interested party"),[176] and tests for distinguishability, homogeneity, and stableness.[177] If it passes examination, the state agency will register the selection achievement and issue a patent.[178] The patent owner is obliged to maintain the plant variety or animal breed during the whole term of the patent duration.[179] A patent can be invalidated (on certain grounds) by the same state agency on a petition of "any person."[180] Information on the applications and patents is officially published.[181]

Infringement, as defined by the law, includes not only unauthorized "use" of the achievement, but also trademark-like violations, such as improper use of the name of the achievement.[182] A patent owner may request publication of a court decision recognizing the infringement.[183]

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169. *Id.* art. 1424.
170. *Id.* art. 1425.
171. *Id.* arts. 1426–29.
172. *Id.* art. 1430.
173. *Id.* art. 1433.
174. *Id.* art. 1434.
175. *Id.* art. 1435.
176. *Id.* art. 1437.
177. *Id.* art. 1438.
178. *Id.* art. 1439.
179. *Id.* art. 1440.
180. *Id.* art. 1441.
181. *Id.* art. 1443.
182. *Id.* art. 1446.
183. *Id.* art. 1447.

To summarize, *sui generis* protection is granted to plant varieties and animal breeds. State registration is required. The term of protection is thirty years.

F. Integrated Circuit Topology Law

Chapter 74 is devoted to the legal protection of microchip topologies. Integrated circuit topology is described as "spatial geometric arrangement of the set of integrated circuit elements and relations between them."[184] To be protectable, the topology must be original.[185] The author of the topology initially owns the exclusive right in the topology and the right of authorship, as well as some other rights.[186] The state registration of a topology is optional.[187] The application includes (1) a statement identifying the applicant and (optionally) the author, (2) an identification of the topology, and (3) a duty payment confirmation.[188] The application is filed with the authorized state agency (currently Rospatent).[189]

The exclusive right is the right to "use" the topology (reproduction of the topology, importing and sale of a relevant chip); however, a person who independently created the same topology also owns independent exclusive rights to use it.[190] Several exceptions (actions not being an infringement) are envisaged, such as using the topology for personal non-commercial needs, evaluation, analysis, research, or education.[191] A notice on the topology or microchips (like [T] Ivanov 2008) is optional.[192] The term of protection is ten years from the first use or from the date of state registration, whichever is earlier.[193] The exclusive right can be either assigned or licensed.[194] If a topology was created in the context of an employment relationship, then the employee owns the authorship rights, but the employer owns an exclusive right.[195]

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184. *Id.* art. 1448(1).
185. *Id.* art. 1448(2).
186. *Id.* art. 1449.
187. *Id.* art. 1452.
188. *Id.*
189. *Id.*
190. *Id.* art. 1454.
191. *Id.* art. 1456.
192. *Id.* art. 1455.
193. *Id.* art. 1457.
194. *Id.* art. 1460.
195. *Id.* art. 1461.

To summarize, *sui generis* protection is granted to microchip topologies. State registration is optional. The term of protection is ten years. For a typology, authorship rights remain with the employee who created the typology, but the employer receives an exclusive right.

G. Trade Secret Law

Chapter 75 is devoted to trade secrets. In a literal translation, its title is "Right for a Secret of Production (Know-How)." Note that the statutory language refers to secrets of "production." However, the term is defined rather broadly (see below), and we translate it as "trade secret" rather than "secret of production." Note also that "know-how" is used as a synonym for a trade secret. That is, in Russia there is no such thing as a non-secret know-how.

A trade secret (know-how) is defined as "any information (industrial, technical, economic, organizational, etc.), including information about results of intellectual activity in scientific and technical sphere, and also information about means of carrying out professional activity, [1] which derives actual or potential commercial value from being unknown to third parties; [2] to which third parties do not have legally permissible access; and [3] in respect to which the information owner introduced the regime of commercial secrecy."[196]

The regime of commercial secrecy is defined separately, by the legislation on commercial secrecy. Note that in this case the existing legislation (Commercial Secrecy Law, see above) is not intended to be abolished, except for some provisions. The regime of commercial secrecy includes certain statutorily prescribed measures, such as (1) determining the list of the information constituting commercial secret; (2) limiting access to this information; (3) registering the persons having access to the information; (4) contractually regulating the usage of the information by employees and commercial partners; (5) marking secret documents with a stamp "Commercial Secret of . . . ."[197]

A trade secret owner has the exclusive right of use. However, a person who obtains in good faith and independently the same information as contained in the trade secret owns an independent ex-

196. *Id.* art. 1465.

197. Commercial Secrecy Law art. 10.

clusive right for the same trade secret.[198] The right is exclusive for as long as the information remains confidential.[199]

A trade secret can be either assigned or licensed; in the latter case both the licensor and the licensee must keep the information secret.[200] The exclusive right in a trade secret created for hire belongs to the employer.[201]

An infringer, including both the person who illicitly obtained the information (and later disclosed or used it) and the person who illicitly disclosed the information, is liable for damages, unless other liability is envisaged by law or a contract.[202]

To summarize, trade secrets, broadly defined, are legally protected as long as owners keep them secret. The protection is lost if the information is no longer confidential.

H. "Means of Individualization" Law

Chapter 76 is devoted to "means of individualization," including firm names, trademarks and service marks, appellations of (geographical) origin of goods, and commercial designations. As mentioned above, domain names have been excluded from the original draft. The relevant articles are grouped into four sections.

1. Firm Names

Although the drafters of the first three parts of the Civil Code apparently meant by "firm name" something different from just "company name" (perhaps something similar to a trade name), in the Fourth Part the term is defined as a synonym to the name of a company. (Accordingly, some amendments to the other parts of the Civil Code will be needed.) Only commercial organizations' names can be properly called "firm names." A firm name includes an indication to the organizational form of the company (Limited Liability Company, Closed Joint-stock Company, Open Joint-stock Company, etc.).[203]

198. GK RF art. 1466.
199. *Id.* art. 1467.
200. *Id.* art. 1469.
201. *Id.* art. 1470.
202. *Id.* art. 1472.
203. *Id.* art. 1473.

A company owns the exclusive right to use its firm name as a means of individualization, including its usage in letterheads, signboards, ads, and for marking goods. The right is unassignable. The usage by another company of an identical or similar name is not allowed, if the second company carries on "analogous activity." The priority date is the date of the state registration of the firm name. The other (infringing) company must cease using the firm name in respect to the "analogous activities" and pay damages.[204]

The exclusive right is based upon the (federal) registration of the firm name in the Unified State Register of Legal Persons.[205] (Note that multiple entries of identical names are allowed.) A firm name or its elements can be used by the right owner as a part of its commercial designation or trademark (service mark).[206]

To summarize, firm names are company names. While generally firm names can be similar or even identical, the usage of a similar firm name for carrying out similar activity is not allowed for another company.

2. Trademarks and Service Marks

The provisions of this subsection, in essence, restate the provisions of the current Trademark law. A trademark is described as a designation for identification of the goods of legal persons or individual entrepreneurs. A service mark is a similar designation identifying works or services. The rules for service marks are the same as those for trademarks.[207]

Only a legal person or individual entrepreneur can own exclusive rights in a trademark (that is, an individual not being a registered entrepreneur can not be a trademark owner).[208] The exclusive right for a trademark in Russia originates from the trademark registration with the relevant state agency (currently Rospatent) or from an applicable international treaty (all current treaties also require registration in Russia).[209] The registering agency issues a trademark certificate attesting the exclusive right to use the mark and the pri-

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204. *Id.* art. 1474.
205. *Id.* art. 1475.
206. *Id.* art. 1476.
207. *Id.* art. 1477.
208. *Id.* art. 1478.
209. *Id.* art. 1479.

ority date.[210] Unregistered trademarks are not protected by trademark law (but see below on the protection of "commercial designations").

Any "verbal, graphic, three-dimensional, and other designations or their combinations" can be registered as trademarks. A trademark can be registered "in any color or combination of colors."[211] (Apparently though, pure color is not registerable as a trademark.)

There is a long list of reasons why a designation cannot be registered as trademark. A trademark can not be registered if it does not have "distinctive capacity." A mark also cannot be registered if it (1) became widespread for designation of certain goods [generic]; (2) is a commonly used symbol or term; (3) characterizes goods [descriptive]; or (4) represents the form of the good determined by its purpose [functional]. However, this restriction does not apply if a designation acquired distinctive capacity as a result of its use [secondary meaning]. Certain elements, like state symbols are not allowed to be registered as trademarks. Also disallowed are false designations and those "contrary to public interests, principles of humanity and morality." Special restrictions are envisaged for foreign wine names (in accordance with international treaties of which Russia is a signatory). A designation cannot be registered as a trademark if it is identical or "similar to a degree of confusion" to (1) a trademark filed for registration with an earlier priority date by another person with respect to similar goods; (2) a trademark already protected in Russia, including those protected under an international treaty, with respect to similar goods; or (3) a trademark recognized as "well-known" [famous] with respect to similar goods. (On famous marks see below.) A designation also cannot be registered if it is identical or similar to a degree of confusion to a protected geographical indication of origin, a protected firm name, commercial designation, or the name of an agricultural selection achievement. Unregisterable are designations identical to a well-known name of a book, its character etc. (without a permission of the right owner), to the name, portrait, etc. of a publicly known person (without her permission), as well as to an existing industrial design, certification mark, or domain name.[212]

Note that no prior use or intent to use is required for a trademark registration.

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210. *Id.* art. 1481.
211. *Id.* art. 1482.
212. *Id.* art. 1483.

A mark owner owns the exclusive right to use the mark in any legal way, such as for marking goods, displaying the mark in relation to services provision, placing the mark on the documents related to goods, using it in advertising, or in the Internet (e.g., in a domain name). Nobody can use a similar mark for the same or similar goods, if it would result in a probability of confusion.[213]

The notice sign (®) is optional.[214] If a mark is not used for a period of three years, its protection can be terminated on a petition of an interested person to the Patent Dispute Chamber.[215]

The exclusive right in a trademark can be either assigned or licensed.[216] Both types of contracts must be registered with the state agency.[217] The term of protection is ten years, but it can be prolonged for an unlimited number of times.[218]

The application for trademark registration must include (1) a statement identifying the applicant; (2) the claimed designation; (3) a list of the goods in respect to which registration is required; (4) a description of the claimed designation.[219] Any person has the right to access the application documents.[220] The priority is determined by the date of filing of the application.[221] Under the terms of the Paris Convention, the priority can also be determined by the date of filing in another member country, if the applicant filed an application in Russia within six months from the original filing.[222] If the priority dates for two applications are the same, the mark is registered in the name of only one applicant, as determined by an agreement between applicants.[223]

The state agency (Rospatent) carries out an examination of the application. It includes a formal examination (whether the set of documents is complete), done within a month from the date of application, and an examination of the designation (whether it is registerable). Notably, while the examination of the designation includes check it against the existing trademarks and geographical

213. *Id.* art. 1484.
214. *Id.* art. 1485.
215. *Id.* art. 1486.
216. *Id.* arts. 1488–89.
217. *Id.* art. 1490.
218. *Id.* art.1491.
219. *Id.* art.1492.
220. *Id.* art. 1493.
221. *Id.* art. 1494.
222. *Id.* art. 1495.
223. *Id.* art. 1496.

designations of origins, it does not include checking against the existing firm names, commercial designations, domain names, etc.[224] Thus, any possible coincidences are left to future litigation.

In case of a positive decision the state agency enters the trademark into the state register and issues a certificate for the trademark.[225] Relevant information is officially published.[226] Russian legal or physical persons can register a trademark in a foreign country or internationally (in accordance with an international treaty). An international registration application is filed with the same Russian state agency.[227]

Well-known [famous] trademarks are protected separately. A mark can be recognized as famous by the state agency (Rospatent) if the mark became widely known in Russia among relevant consumers in respect to goods of the mark owner as a result of intensive use of the mark. It is important to note that, in order to be recognized as a famous mark, a designation need not be a registered trademark. Even an unregistered designation can become a famous mark. However, a mark cannot be recognized as famous if it became widely known after the date of priority of a similar registered mark of another person that is related to similar goods. Legal protection of a famous mark is similar to the protection of a "normal" mark, although unlimited in time. It also covers non-similar goods if its use by another person will mislead consumers, possibly impairing interests of the famous mark owner.[228]

If the state agency recognizes a mark as famous (on application of the mark owner), it enters it into the register of famous marks and issues a relevant certificate.[229]

Separate provisions govern collective marks, defined as trademarks for identifying goods produced or sold by persons belonging to a certain association, such goods having common quality or other characteristics. A collective mark cannot be assigned or licensed.[230] A collective mark is also subject to state registration.[231]

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224. *Id.* arts. 1498–99.
225. *Id.* arts. 1503–04.
226. *Id.* art. 1506.
227. *Id.* art. 1507.
228. *Id.* art. 1508.
229. *Id.* art. 1509.
230. *Id.* art. 1510.
231. *Id.* art. 1511.

Registration of a trademark can be cancelled and trademark legal protection removed on a number of grounds. Registration is cancelled if the mark was initially unregisterable. However, if the reason for invalidation is the trademark identity or similarity to another mark or geographical indication of origin, the cancellation is possible only in five years from the official publication of the trademark registration information. There are also other reasons for trademark invalidation, including "abuse of rights" and "unfair competition" by the mark owner.[232]

Legal protection of a trademark can be challenged in the Patent Dispute Chamber of the state agency (Rospatent), whose decisions can be further challenged in a court.[233]

Goods, labels and packaging illicitly bearing a trademark, or a designation similar to it to a degree of confusion, are considered counterfeit. The right owner has the right to require withholding from circulation and destroying the counterfeit items. Instead of damages, the right owner may demand from the infringer a statutory compensation in the amount of (1) 10,000 to 5 million rubles, or (2) double the value of the goods or double the value of the relevant license under similar conditions.

To summarize, the legal protection of a trade mark is based on its state registration. The priority rule is "first-to-file." Neither prior use nor intent to use is required for the registration. However, the mark can be cancelled if not used for three years. The term of protection is ten years, with the possibility of unlimited prolongation. Famous marks are registered and protected separately.

3. Appellations of Origin of Goods

The provisions of this subsection also mostly preserve the already existing Trademark Law. A protectable appellation of origin of goods is a toponym (geographical indication) that became known as a result of its use in relation to a good, the special qualities of the good originating exclusively or essentially from place-specific natural or human factors. The producers of such goods may obtain the exclusive right to use the appellation of origin. Geographical indications that became generic are not recognized as protectable appellations of origin.[234]

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232. *Id.* art. 1512.
233. *Id.* art. 1513.
234. *Id.* art. 1516.

Note the "special quality" requirement: a geographical indication is protectable only in relation to specific characteristics of the goods originating from the place.

For protection the appellation of origin must be registered with the state agency (Rospatent). If the geographical object in question is located in a foreign country, the appellation of origin can be registered in Russia, but only if the appellation is also protected in that country.[235]

An appellation of origin can be registered in the name of one or several legal or physical persons. They all have the exclusive right to use the appellation, provided they maintain the special quality of the goods. However, any person producing goods in the same place with the same special qualities can also obtain the exclusive right to use the appellation of origin.[236]

The exclusive rights of an appellation of origin owner are similar to those of a trademark owner. However, an appellation of origin can not be assigned or licensed.[237]

Notice on goods ("Registered Appellation of Origin") is optional.[238] The protection can last as long as there are conditions to produce the "special quality" goods.[239]

An application for appellation of origin registration must include (1) an identification of the applicant, (2) the claimed appellation, (3) identification of the good, (4) identification of the place, and (5) a description of special qualities of the good. Also needed is a certificate issued by an authorized state agency saying that the applicant in that place produces those goods with the special qualities originating exclusively or essentially from the place-specific natural or human factors. If the geographical object is abroad, a document certifying the right of the applicant to use the appellation in the relevant country is needed.[240]

The state agency carries out a formal examination and the examination of the designation. If the examination is passed, the appellation of origin is registered.[241] A relevant certificate is is-

235. *Id.* art. 1517.
236. *Id.* art. 1518.
237. *Id.* art. 1519.
238. *Id.* art. 1520.
239. *Id.* art. 1521.
240. *Id.* art. 1522.
241. *Id.* arts. 1523–26.

sued.[242] A negative decision of the state agency can be challenged in the Patent Dispute Chamber.[243]

The term of protection is ten years from the date of filing; it can be prolonged indefinitely if the right owner presents a state-agency certificate saying that he continues to produce the same quality goods in the same place (in case of a foreign appellation–that he still owns the right in the country of origin).[244]

The registration of an appellation of origin can be challenged on certain grounds, including confusing similarity to a trademark with earlier priority.[245] The legal protection is also removed if the production of the "special quality" goods is no longer possible for some reason.[246] The remedies in case of an infringement are similar to those applicable in case of a trademark (including the amount of the statutory compensation).[247]

To summarize, appellations of origin are geographical indications associated with special-quality goods; such special qualities originating from the place-specific natural or human factors. The legal protection of appellations of origin is similar to that of trademarks, but multiple producers can own relevant exclusive rights. State registration is required. The term of protection is ten years, but it can be prolonged indefinitely.

4. Commercial Designations

Commercial designations are a substantial novelty for Russian IP law; previously, although they were mentioned in passing in the second part of the Civil Code, nobody knew for sure what they are. Now commercial designations are described as designations, other than firm names, used for the individualization of trade, industrial, and other enterprises. A commercial designation can be used either by a legal person (including non-commercial organizations having the right to carry on entrepreneurial activity) or by an individual entrepreneur. No state registration is required or allowed for a commercial designation. A commercial designation can be used for the individualization of one or more enterprises; however,

242. *Id.* art. 1530.
243. *Id.* art. 1528.
244. *Id.* art. 1531.
245. *Id.* art. 1535.
246. *Id.* art. 1536.
247. *Id.* art. 1537.

one enterprise cannot be individualized by two or more commercial designations.[248]

The owner has the exclusive right to use her commercial designation for the individualization of her enterprise in any legal way, including placing them on signboards, letterheads, goods and their packaging, if the designation is distinctive and known within a certain territory. Disallowed is the use of a misleading commercial designation, in particular, similar "to a degree of confusion" to a firm name, trademark, or protected commercial designation belonging to another person (if his exclusive right appeared earlier). A commercial designation can be transferred only together with the relevant enterprise. The right to use the commercial designation can be granted in relation to a contract of lease of the enterprise or a franchise contract.[249]

The right to use a commercial designation is terminated if the designation is not used for one year.[250] The exclusive right for a commercial designation is independent of the right for a firm name (that is, the two can be completely different). A commercial designation or its elements can be used in a trademark; however, the commercial designation is protected independently.[251]

Therefore, in some respects a commercial designation is similar to an "unregistered trade name," while in other respects it is similar to an "unregistered trademark."

To summarize, a commercial designation is a designation for identifying an enterprise, like an unregistered name of a shop or a factory. In some respects commercial designations are similar to trademarks. However, no state registration is required for the legal protection of a commercial designation.

In sum, there is a number of legally protected "means of individualization," including firm names, trademarks and service marks, appellations of origin of goods, and commercial designations. At present, it is not exactly clear how their legal protection will interact (e.g., where a commercial designation of one person is similar to a firm name of another person). Apparently, many questions are left to be solved by the judicial practice.

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248. *Id.* art. 1538.
249. *Id.* art. 1539.
250. *Id.* art. 1540.
251. *Id.* art. 1541.

I. Unified Technology

Finally, Chapter 77 is devoted to something previously unknown to Russian law called "unified technology". A unified technology is described, somewhat vaguely, as a result of scientific and technical activity, expressed in an objective form, and comprising inventions, utility models, industrial designs, computer programs, or other protectable results of intellectual activity, that can be a technological basis of a certain practical activity in the civil and/or military spheres. A unified technology can also include non-protectable results of intellectual activity, like technical data or other information. All elements of the unified technology are protected under appropriate rules (and are not necessarily owned by the technology owner). However, the right to use them in combination belongs to the person who "organized the creation" of the unified technology based on contracts with the respective exclusive right owners of the technology elements.[252]

Notably, the provisions of the chapter are applicable only to the technologies created using the state (federal or regional) financing.[253] The person who "organized the creation" of a state-financed unified technology has rights in the technology as well as the obligation to implement it in practice.[254] In certain cases (such as defense technologies) the rights in a certain technology belong to the state.[255] In certain cases the state can assign its rights in the technology to another person.[256] A private person generally can assign or license its rights in the technology.[257] The technology should "preferably" be used in Russia; exporting a state-financed technology requires the permission of the state as well as state registration.[258]

J. Other Provisions

Besides the Fourth Part of the Civil Code, there is also the law on its enactment.[259] It says that the Fourth Part is effective beginning

252. *Id.* art. 1542.
253. *Id.* art. 1543.
254. *Id.* arts. 1544–45.
255. *Id.* art. 1546.
256. *Id.* art. 1547.
257. *Id.* art. 1550.
258. *Id.* art. 1551.
259. Federal'nyi Zakon, *supra* note 8.

on January 1, 2008, and abolishes a number of existing laws, decrees, etc.[260] Certain transitional provisions were also made.[261]

A number of amendments were made to the First and Second Parts of the Civil Code, reflecting new terminology, such as the new notion of "intellectual rights." Most importantly, the fundamental list of the "civil right objects" (found in Art. 128 GK RF) will now read as follows: "[1] things, including money and securities,[262] other property, including property rights; [2] work and services; [3] protected results of intellectual activity and means of individualization equated to them (intellectual property); [4] non-material benefits." Notably, "information" has been excluded form the list.[263]

Apparently, "information" has been excluded with a view to avoid an overlap with "intellectual property" (as earlier discussed, "trade secrets" are defined as certain information). However, the status of non-secret information is now rather uncertain. Apparently, it is no longer a civil right object. Arguably, this holds some tension with the existing law relating to information.[264]

Note that "intellectual rights" are not the same as "intellectual property," as now defined. The intellectual rights being exclusive rights (e.g., in an invention) are "property rights," belonging to the first category.[265] The intellectual rights being personal non-property (moral) rights are "non-material benefits," belonging to the fourth category.[266] The status of "other" intellectual rights (such as the right of access to one's own work) is not exactly clear.

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260. *Id.* arts. 1–2.

261. *Id.* arts. 5–14.

262. The Russian notion of "securities" is somewhat broader than its U.S. counterpart: it includes all promissory notes and drafts (bills of exchange). *Compare* GK RF art. 142 *with* 15 U.S.C. § 78c(a)(10) (defining the notion). At least one U.S. scholar commentator translates the single Russian term into U.S. legal English as "commercial papers and securities." *See* CHRISTOPHER OSAKWE, RUSSIAN CIVIL CODE ANNOTATED: TRANSLATION AND COMMENTARY 313 (2000).

263. Federal'nyi Zakon, *supra* note 8, art. 17.

264. Federal'nyi Zakon ob Informacii, Informacionnyh Tehnologijah i o Zashchite Informacii [Federal Law on Information, Information Technologies and Protection of the Information] No. 149-FZ, July 27, 2006, art. 5(1), 31 SZ RF (Part I) item 3448 (2006) (stating that information can be an object of public, civil, and other legal relations).

265. GK RF art. 1226.

266. GK RF art. 150.

The First Part of the Civil Code is also supplemented by Art 152[1], protecting an individual against misappropriation of his or her image (a photograph, etc.).[267]

The most important amendments to the Second Part of the Civil Code are made to the chapter describing a franchise contract. The amendments reflect new understanding of the notion of "firm name" that is now just a company name that cannot be licensed to a franchisee. In addition, the franchise contract must now be registered with the state agency in intellectual property (Rospatent) rather than with a tax authority.[268]

A number of other amendments to various laws are also made. Most importantly, certain provisions of the Commercial Secrecy Law are abolished.[269]

Most of the above-mentioned provisions will also have legal effect starting on January 1, 2008.

While this is outside of the scope of this paper, it is also noteworthy that certain IP rights in Russia are protected not only by the civil legislation, but also by the criminal and administrative legislation currently in force.[270]

IV. CONCLUSION

The new Russian IP legislation is an important step in the development of Russian IP law. It systematizes and unifies existing law. In many respects the new legislation restates the existing laws with relatively minor amendments. However, some completely new notions, like that of a "unified technology," are introduced.

Despite certain arguably minor inconsistencies, the new IP legislation seems to be generally sound and well thought-out. It corresponds to the current international standards and treaties, and can be tentatively characterized as "WTO-ready." In addition to the Civil Code itself, IP rights are also protected by Russia's current administrative and criminal legislation.

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267. Federal'nyi Zakon, *supra* note 8, art. 17.

268. *Id.* art. 25.

269. *Id.* art. 34.

270. *See* Ugolovnyi Kodeks Rossiyskoi Federatsii [Criminal Code of the Russian Federation] (1996) (as amended 2003) arts. 146–47, 180; Kodeks Rossiyskoi Federatsii ob Administrativnykh Pravonarusheniyakh [Code of Administrative Offences of the Russian Federation] (2001) (as amended 2005) arts. 7.12, 14.10.

Importantly, the new legislation addresses the nagging problem of phony right-management organizations and, therefore, albeit indirectly, of the music-selling websites licensed by such organizations. Beginning from January 1, 2008, the right-management organizations engaged in "non-contractual" licensing will operate under state supervision. This is definitely good news for the U.S. music industry, let alone Russian musicians. This move may help Russia to shed its negative reputation in the international copyright community.

The most important problem now is enforcement. How the new Fourth Part of the Civil Code will be applied by Russian courts is yet to be seen in the future. Nevertheless, the authors of this article are cautiously optimistic about the new IP legislation. We believe that the legislation is of sufficiently high quality to promote progress in Russian commerce, industry, and the arts, as well as progress in Russia's international relations.