

COPYRIGHT AND NEIGHBORING RIGHTS PROTECTION IN THE RUSSIAN FEDERATION

Igor Pozhitkov
Of Clifford Chance, London

A separate Law on Copyright and Neighboring Rights was adopted by the Russian Parliament in late April 1993 following its final reading and was then signed by the Russian President with minor changes in early July¹. It took only three months for the Russian Parliament committees to deal with all the changes proposed during the first reading (late January 1993) of the draft and then approve it at the final reading in late April. While the adoption of the Law may appear to some to have occurred too swiftly, in fact, it constitutes the end of nearly five years of intense efforts on the part of Russia's creative and legal community to achieve a sufficient level of copyright protection.

The drafters of the present Law have responded to heavy criticism of the international copyright/intellectual property community to provide an adequate level of protection for literary, scientific and artistic works in accordance with the provisions of the 1886 Berne Convention, for the Protection of Literary and Artistic Works and its 1971 Paris version. The new Russian law has also introduced a comprehensive protection of the rights of performers, phonogram producers and broadcasting organizations in conformity with the 1961 Rome Convention, for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the 1971 Geneva Convention, for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.

The Law significantly increases liability for the unlawful use of intellectual property. New measures include provisions permitting the confiscation of illegally-produced copies of works as well as equipment used for such reproduction. The Law also provides an author with the possibility to reclaim income derived from the unauthorized use of a copyrighted work, rather than seeking damages. In the past, when book publishing as well as other copyright-related industries were controlled by the State and "piracy" in the form in which it exists now was practically non-existent, protection of an author's copyright generally consisted of compensating the author for losses. Those were calculated on the basis of remuneration not received. For unlawful, non-contractual use of an author's work, a court might only have ordered the

1. *Rossiiskaia Gazeta* 3 August 1993. All references to "Articles" refer to articles of this particular Law unless otherwise specified.

defendant to pay the author the fee which would have been due to him for the lawful use of the work under a standard contract and according to statutory schedules of remuneration. The new Law lays down the legal basis for setting up independent and efficient organizations to administer rights on a collective basis, truly representing the interests of creators rather than the State or its agencies.

The Legal Situation in the USSR and Post-December 1991 Russia

The Soviet law on copyright was included in the "Fundamentals of Civil Legislation" of the USSR and Union Republics" of 1961 (hereinafter "Fundamentals") amended in 1973, 1976, 1981 (Section IV – Articles 96-106)², and redrafted in 1991 (Section IV – Articles 134-143)³, the republican civil codes (the 1964 Russian Federation Civil Code hereinafter "Civil Code")⁴ amended in 1974, 1976, 1987 (Articles 475-516)⁵ and in a great number of sub-statutory normative acts. Those acts, e.g. numerous administrative decrees and ordinances, dealt with many relevant or related topics (including schedules of remuneration and manners of payment, texts of model authors' contracts, etc.) and were a characteristic feature of the copyright protection regime. The USSR Supreme Court regularly issued opinions providing authoritative interpretations of substantive and procedural law in this field.⁶ In certain cases, infringement of copyright can be prosecuted under the Criminal Code.⁷ In fact, however no such cases were reported and hardly any were possible since the State, through its agencies and organizations, was the sole right user.

After the USSR ceased to exist, there was a period when the law governing relations in the field of copyright protection was a strange mixture of the old "Civil Code" and new 1991 Fundamentals. Section IV of 1991 Fundamentals governing copyright and neighboring rights consisted of ten articles regulating copyright, although in the republican legislation there was no mention of

2. *Vedomosti Verkhovnogo Soveta SSSR* (hereinafter *Ved.SSSR*) 1961 No.50 item 525; 1973 No.9 item 138; 1976, No.42 item 585; 1981 No.44 item 1184.
3. *Vedomosti S'ezda Narodnykh Deputatov SSSR i Verkhovnogo Soveta SSSR* (hereinafter *Ved.SND.SSSR*) 1991 No.26 item 733.
4. *Vedomosti Verkhovnogo Soveta RSFSR* (hereinafter *Ved. RSFSR*) 1964 No.24 item 406.
5. *Ved.RSFSR* 1974 No.10 item 286; 1976 No.42 item 1270; 1987 No.9 item 250.
6. See, for example, decree No.3 of 14 March 1975, *Biulleten' Verkhovnogo Suda SSSR* 1975 No.2, 21-22; S.L. Levitsky, "USSR Supreme Court Issues New Guidelines for Soviet Court in Settling Copyright Disputes", 12 *Review of Socialist Law* 1986, 375-392.
7. Article 141 of the RSFSR Criminal Code.