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# Legal Highlights: The New Anti-Piracy Law: Changes in the Pipeline?

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*The Legal Highlights section did not involve the reporting or the editorial staff of The Moscow Times.*

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The new anti-piracy law, which introduced sweeping legislative changes to intellectual property rights protection in Russia, has been in effect for several weeks. Against the backdrop of one of those rare occasions when nobody is indifferent, neither business interests nor ordinary Internet users, it is already the subject of heated debate. Most Internet users have long been conditioned to free, on-demand, music and films on the Internet, often including the latest releases. However, now that the new law has come into effect, their favorite music and films have started disappearing from social networks, and online music and video resources. The result is a disgruntled Internet using public.

Unlike representatives from Internet companies and the various business associations uniting these companies, who criticize the new law for poor wording, and the excessive procedural stringency in particular, many ordinary users are upset about the anti-piracy law being passed at all. Social networks, blogs, and forums are overflowing with sometimes violent objections to the blockage of illegal content, and against the introduction of payments to right owners, as well as the enforcement of copyright and neighboring or related rights to intellectual property on the internet in general. As most previously free electronic music and video libraries, where virtually any song or film could be found, are being replaced by fee-paying sites with a vastly reduced range, most concerns come down to “everything will cost money now” or “everything will be deleted.”

We still think it is worthwhile to get to the bottom of the anti-piracy amendments and assess them from more than just a legal standpoint. Most of all, we need to understand how the anti-piracy law will be enforced in the near future, considering the positions taken by the leading music and film studios on the economic goals they are pursuing.

## Where were we before the anti-piracy law was passed?

Over the last 15 years, when there were no effective legal rules enabling the rapid elimination of copyright infringement on the Internet, an entire network industry developed around websites distributing music and films. Their audiences sometimes number in the hundreds of millions. The owners of these websites make substantial profits, particularly from advertising, yet nothing is paid to content generators and right owners of content — including songwriters, performers, producers and actors. Systematic infringement of copyright and neighboring rights on a mass scale has become the business strategy of most Internet sites distributing music and films.

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This strategy has resulted in popular films, television shows, songs and video clips disappearing from the Internet since the new law was passed. If even a small portion of the impressive profits made by video and music Internet distribution company owners, from advertising and other commercial activities, had been passed on as licence payments to those who created the music and films, users would not have even noticed when the new law come into effect. It is precisely the stand taken by owners of network resources that has caused the impact of the new law to fall heavily on public users' interests. For many years, video and music Internet distribution company owners have shown no interest in the possibility that their audiences might lose the opportunity to enjoy their favorite films or music at any time, because the owners of the legal rights to the music and video were being ignored as copyrighted works were being illegally placed on the Internet. In addition to this, when users take advantage of the services offered on such sites, they break the law themselves, together with the owners of the resources, which again did not seem to have concerned those placing unlicensed content in online music and video distribution sites.

## What now?

Without going into too much detail, two groups of amendments to the law are worth noting. First, there are amendments designed to fill gaps in the legislation, introducing new concepts relating to the Internet and Internet companies. The term "information intermediary" has emerged and, considering the way it is described, may be applied to the administrator of any site, and to any hosting provider, of any site posting, containing, or even linking to, illegal resources.

The conditions on which information intermediaries may be released from liability for infringing intellectual rights have been determined. One condition is that they take necessary and sufficient measures to terminate an infringement after a claim is lodged by the right owner. The introduction of such rules ends the lengthy discussions about whether the owners of network resources could be held liable for information posted on their pages not by users, and not site administration. From now it is quite clear that an information intermediary, including a company providing platforms to post materials on the internet, does carry clear liability for infringement of copyright and neighboring rights, and may be released from this only on specific conditions.

We should recall that for a long time internet companies have argued that they should be released from liability because they merely provide a platform for users, who themselves determined what information they posted. For some time, this concept allowed them to fight off legal suits from right owners quite successfully, but the new law has made it much more difficult to be sure of avoiding liability.

The second notable group of amendments are intended to facilitate the quick address of infringements without resorting to legal suits. The Moscow City Court may, after an application from a right owner, introduce interim relief and block access to disputed content even before a suit has been filed, provided a suit is subsequently filed within fifteen days. The Russian Supervisory Committee (Roscomnadzor) has been authorised to enforce blocking, based on judicial acts through a procedure involving hosting providers, and, if the hosting providers for some reason fail to carry out the required blocking, through communications operators.

These are the legal changes that have given rise to the most heated discussion with widespread dissatisfaction expressed over the quite rigid and authoritarian procedure (particularly the short time allowed for blocking notices, and the impossibility of hosting providers lodging objections or responding) and the vague wording. The law does not specify clearly or precisely what should be blocked: a specific link, or page, or the resource as a whole. There are also questions concerning how the procedure is applied. We can most likely expect extensive clarifications and commentaries provided in individual judicial acts, and the law itself can be expected to be regularly edited, also.

The first group of amendments are undoubtedly positive ones, since they have brought the exchange of information on the Internet within the realm of the law, whereas the second group of amendments (and in particular the authority given to the Moscow City Court and Roscomnadzor) faces a less enthusiastic reaction. We should try to avoid going from one extreme to another. On the one hand, right owners really do need to be able to rapidly block access to, for example, recent film releases where these can be found on the Internet, because it violates legal rights and has a direct and immediate impact on a business. On the other hand, the large scale removal of films and music from illegal Internet-based libraries and distribution channels, given the very modest number of legal alternatives and their generally inferior music and video libraries, will ultimately mean the general public has less access to the entertainment they have come to expect, in the circumstances they have come to expect it, and that consequently they can certainly be expected to continue protesting against the legal walls closing in on intellectual property rights piracy.

The best way out, we believe, is not to try and close down all pirate sites, but to seek a compromise retaining all the Internet opportunities to which the public have become accustomed, while at the same time promoting the legal posting of music and films. The aim of the music and film industries should be to expand cooperation with Internet companies, and to conclude licensing agreements with them, and they should seek out various models for appropriately allocating the profits from Internet based film and music distribution.

Let us hope that the harsh response measures now at the disposal of intellectual rights owners become not a weapon of destruction, but only an argument in favour of launching an effective dialogue between the Internet business and the video industry.

### What about the near future?

Despite our best hopes, until some compromise is reached, we can anticipate waves of litigation between right owners and pirate resources. It is not inevitable that the right owners will always come out on top. There are enough gaps in the legislation and sufficient vagueness in the wording for Internet-based companies to defend their position. For example, one of the major problems for right owners is, as strange as this may seem, providing the court with convincing evidence of their rights to specific works. The fact is that with leading foreign film producers, for instance, rights are generally formalized in agreements subject to foreign law. What is acceptable and normal under U.S. law or European law often raises questions for Russian courts. More particularly, if rights to hundreds of films are infringed, court proceedings involving, for example, just 200 films at one time can become far too complex: first, documents have to be collected with respect to all of these films, and then the court has to be persuaded to study this entire mass of documents and to take the side of the claimant — the right owner — despite differing legal regulation contested by a defendant. Paradoxically, facts that are apparently well-known, such as a given blockbuster movie having been made by a certain renowned studio, may have to be proven in court in a fierce legal battle. This could easily become significantly more complex when trying to prove rights to old Soviet films, for example, where convincing documentation may be profoundly difficult to find.

For this reason the fight against piracy can be expected to continue, and right owners cannot assume they have already triumphed with the advent of the new law; rather, they have a new weapon and will need to wield it appropriately. Yet, just as the development of new weapons generally drives new defence technology, Internet companies currently infringing copyrights can be expected to adapt rather than give up easily. Additionally the consuming public will also, no doubt, continue to respond to their problems by posting instructions on the Internet to technically get around any blocks.

* Goltsblat BLP is the Russian practice of Berwin Leighton Paisner (BLP), an award-winning international law firm headquartered in London and with offices operating in major commercial and financial centres throughout the world — Moscow, Abu Dhabi, Beijing, Berlin, Brussels, Dubai, Frankfurt, Hong Kong, Paris and Singapore.
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