

Legal Highlights: Anti-Piracy Law: First Results

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Elena Trusova has been an attorney since 2002. With her participation, judicial and arbitration disputes have been successfully resolved and a multitude of large-scale consultation projects implemented, including ones relating to sports. She worked successfully with such clients as the International Federation of the Phonographic Industry (IFPI), Estee Lauder, Axel Springer Russia and Novator and Elena herself advised within the scope of the Sochi Winter Olympics.

The so called "Anti-piracy law" has been in effect for a few months now. The Law amends the legislation in a way allowing access to Internet sites hosting illegal audiovisual works to be restricted under preliminary relief measures before there is a final court judgment or even before a relevant lawsuit is filed.

So we believe that the first results may already be summarised. The new Law can be said to be used extensively. Judging from publicly available information, there have been more than a hundred new Law based applications, with sites covered by interim relief measures being counted in the dozens.

The courts passing their rulings in favour of the plaintiff frequently use quite a general wording to describe the measures applied to the defendant, such as: "desist from creating technical conditions allowing hosting, distribution and other use of a motion picture on a certain website". This approach provides some freedom of action for both the plaintiff and Roskomnadzor, in charge of enforcing the ruling during the enforcement stage. In particular, on the basis of this wording, it is quite possible not only to block access to an individual link or separate page of web-site but also to the information source as a whole, if, for instance, all its contents are used for publishing illegal content or links thereto.

At the same time, among the plaintiffs successfully applying the Anti-Piracy Law, the number of national motion picture companies exceeds that of foreign ones. The reason is not that foreign companies do not believe court actions can be effective or that they are not interested in this, which they are. It is explained by the major problem of obtaining documents confirming the rights of foreign companies to disputable films. Owing to the differences between Russian and foreign law, it is difficult, if not impossible, to collect the documents usually required by the Russian court. The standard proof of foreign courts (e.g., affidavits or legal presumptions applied before they are refuted by reliable evidence) may be treated sceptically by our courts.

The Anti-piracy Law still does not apply to music. Even so, in this field the opposition between right-holders and the Internet industry continues. Recently, three major record companies: Sony Music Entertainment, Universal Music and Warner Music UK Limited filed a claim against OOO V Kontakte for protection of neighbouring rights. Goltsblat BLP will represent the right-holders in the court proceedings.

In future, we are likely to see further amendments to the legislation. In particular, the Anti-piracy Law might apply to music and other intellectual property. The time when the Internet has been beyond the common legal control is slipping away.

Off-line and on-line business ethics (as well as legal restraints on such business) is becoming unified not only in codes and laws but in also in practical work.

* 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. The firm has a team of 100 Russian, English and US law qualified lawyers based in Moscow and over 800 lawyers in the other international offices. Goltsblat BLP currently has over 700 clients among the major international investors operating in Russia, including 23 Fortune 500 companies.

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