



HOW RUSSIA'S MEMBERSHIP IN THE WORLD TRADE ORGANIZATION STRENGTHENS INTELLECTUAL PROPERTY RIGHTS PROTECTION AND ENFORCEMENT IN THE RUSSIAN FEDERATION

PRE-ACCESSION SITUATION IN RUSSIA

Russia continues to present important challenges in the area of intellectual property rights (IPR) protection and enforcement. A 2006 bilateral United States-Russia agreement on IPR achieved important success in improving Russia's legal framework for IPR and some progress on enforcement against piracy, but additional and ongoing work will be necessary, drawing on new obligations that will apply to Russia as a WTO Member. As Russia approaches WTO Membership, the current state of affairs can be summarized as follows.

- While making some initial progress following conclusion of the 2006 Bilateral Agreement on IPR, Russia fell far behind in implementing the terms of the Agreement, as recognized in subsequent Special 301 Reports issued by the Office of the U.S. Trade Representative. Enforcement of IPRs remained a significant problem, with respect to notorious markets selling physical goods and IPR-infringing content on the Internet. Numerous pay-per-download websites as well as cyberlockers, BitTorrent sites, and unauthorized music services, operated in Russia.
- Russia eventually adopted Part IV of the Civil Code governing IPR protection, and then amended it to implement parts of the World Trade Organization (WTO) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), but gaps remained with regard to implementing WTO provisions. Significant problems with enforcement continued, in particular with regard to infringement taking place over the Internet.
- In 2010, as part of Russia's efforts to complete negotiations on accession to the WTO, Russia adopted measures required to implement key provisions of the TRIPS Agreement and other commitments it would undertake, including measures on protection of test and other data from unfair commercial use, providing *ex officio* authority to Customs officials, and measures necessary to address optical disc piracy. These steps, though long delayed, fulfilled key aspects of Russia's commitments under the 2006 Agreement.
- Russia has reduced counterfeiting and piracy of physical goods (CDs, DVDs). Russia has also closed down operations of all optical disc plants engaging in production of pirated media located on Russian state-owned restricted access regime enterprises sites, pursuant to the 2006 Bilateral Agreement on IPR. Piracy over the Internet remains, however, an ongoing matter of major concern.

BENEFITS TO IPR OWNERS OF RUSSIA'S ACCESSION TO THE WTO

- On day one of its membership in the WTO, Russia must comply with all of the obligations of the WTO TRIPS Agreement, which sets out minimum requirements for protecting and enforcing intellectual property rights, including with respect to key rights relied on by the U.S. copyright-based industries, such as the software, motion picture and sound recording industries, as well as industries that rely on patents, trademarks, trade secrets, and test data protection.

- In addition, Russia must comply with rules governing the enforcement of intellectual property rights, covering *inter alia* civil and administrative procedures and remedies, provisional measures (*i.e.*, preliminary injunctions), customs measures to enforce IPRs at the border, and criminal procedures.
- Russia is also undertaking and must implement specific commitments regarding areas of concern, including piracy over the Internet and enforcement generally.
- Of particular importance are Russia's specific obligations with respect to addressing IPR infringement on the Internet, requiring transparent and fair operation of collecting societies, improving the protection of well-known trademarks, conducting enforcement actions and requirements to impose criminal penalties in connection with websites that promote illegal distribution of content protected by copyright or related rights, such as sound recordings, and investigate and prosecute companies that illegally distribute protected content on the Internet, valuing goods subject to criminal penalties for copyright piracy, and establishing thresholds for initiating criminal prosecutions.
- Other specific obligations concerning IPR enforcement include providing for fair and equitable civil and administrative procedures (*e.g.*, written and timely notice, evidentiary requirements, injunctive relief, adequate damages); border measures (*e.g.*, suspension of suspected counterfeit trademark and pirated copyright goods by customs authorities); and criminal procedures (*e.g.*, disciplines on the value thresholds for initiating criminal copyright piracy proceeding, criminal procedures and penalties that reflect the commercial market place.)
- Russia must have in place the legal framework necessary to implement its WTO IPR obligations as of day one of its membership in the WTO.
- Russia's implementation of its WTO obligations, once it is a Member, will be subject to WTO dispute settlement procedures.
- Russia will also increase transparency in developing laws and regulations on IPRs that will permit participation by interested parties, including U.S. owners of IPRs.
- Russia's WTO commitments reflect lessons learned from previous WTO accessions, including significant precedents and developments at the WTO since China's accession in 2001.
- For instance, regarding willful trademark counterfeiting or copyright piracy on a commercial scale, Russia's WTO accession Working Party Report incorporates important elements of the findings in WTO *China IPR* dispute related to the criminal enforcement provisions of the TRIPS Agreement.

BILATERAL EFFORTS AND WORK AFTER ACCESSION

- IPR enforcement challenges in Russia are not susceptible to "moment in time" resolution and will require ongoing work beyond the date of Russia's accession. U.S. officials are committed to sustaining a high level of priority on this dimension of U.S.-Russia trade relations.
- The U.S.-Russia IPR working group provides an on-going platform for engagement that is an important aspect of the bilateral relationship.
- In that and other fora we have urged Russia to take vigorous, sustained, and measureable enforcement actions to address IPR infringement online and generally. We are looking for a long term commitment, including meaningful engagement with rights holders and regular reporting on actions taken.
- We will be working with Russia to agree on metrics for evaluating IPR enforcement efforts.
- We will monitor Russia's compliance with its WTO obligations and other aspects of IPR protection and enforcement, including through USTR's annual Special 301 Report process.