



GUIDE TO GOING GLOBAL

IPT

Russia



Downloaded: 19 Apr 2024

INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Intellectual Property and Technology*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

INTELLECTUAL PROPERTY AND TECHNOLOGY

Inside this guide, we outline crucial aspects of IPT laws in over 40 jurisdictions that are particularly relevant to businesses seeking to expand their operations globally. We also summarize some fundamental commercial terms that customarily appear in IPT-related agreements.

You will find answers to such common questions as:

- Which jurisdictions recognize moral rights?
- What does my business need to do to have an enforceable assignment of intellectual property from an employee, from a consultant?
- What kind of liability can be excluded from a commercial contract?

With this edition, we've also included a section for each country that discusses the enforceability of electronic signatures.

Our goal is to make the guide as readable and informative as possible, providing you just the background you need to get an overview of the IPT laws in the selected jurisdictions. This is not a substitute for professional legal advice. If you have questions regarding specific matters, we encourage you to contact one of our contributors listed in the contributors section of this guide. With nearly 500 dedicated IPT lawyers around the globe, DLA Piper's IPT group is ready to handle your legal needs wherever you do business.

Also, please note that the guide's use of the term "trademarks" also refers to service marks, unless specifically addressed separately. The summary of intellectual property covers only the most commonly used categories worldwide (for example, we have not addressed plant patents). We have also referred to international treaties and conventions with their most commonly used names and not their formal titles (such as the TRIPS Agreement, the Berne Convention, the Paris Convention and the Patent Cooperation Treaty).

We hope that you find this guide valuable and we welcome your feedback.

This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that intellectual property and technology law is dynamic, and the legal regime in the countries surveyed could change.

RUSSIA



Last modified 19 April 2023

INTELLECTUAL PROPERTY FRAMEWORK

Overview

As a general matter, intellectual property rights are governed by Part IV of the Russian Civil Code.

COMMERCIAL CONTRACT FRAMEWORK

Overview

There are a number of laws that may apply to commercial contracts, depending on the type of contract and on the industry involved. However, the general provisions are contained in the Russian Civil Code (Parts I and II).

COPYRIGHTS

Nature of right

Copyright protection is available to works that have a creative character and pertains to works of literature, science and arts, regardless of their purpose, qualities and the mode or form of expression. Computer programs and databases are generally protected as literary works.

Copyright owners have certain exclusive rights, including the right to reproduce, distribute, publicly display, import, loan, perform publicly by any distance medium, communicate by air, communicate by cable, translate/transform, implement (in relation to architectural and design projects) and convey the work to the public.

In addition to the above, the author (individual creator of the work) has moral (personal inalienable) rights such as the right to claim authorship of their work, the right to indicate or not indicate their identity, the right to integrity of the work and the right to make the work available to the public.

Legal framework

Part IV of Russian Civil Code governs copyrights.

Russia is also party to the main international copyright treaties and conventions such as the Universal Copyright Convention, Convention for the Protection of Producers of Phonograms, Berne Convention, WIPO Performances and Phonograms Treaty and WIPO Copyright Treaty.

Duration of right

Copyright protection lasts for the life of the author plus an additional 70 years, starting from the first calendar year after the death of the author. The law provides certain specifics in relation to anonymous works or works published under pseudonym, to works published post mortem and for certain categories of authors (such as participants of the Second World War).

In the case of joint works, the duration of rights is determined in relation to the life of the last-surviving co-author.

Unless differently specified, with regard to neighboring rights, the period of protection is 50 years and occurs from the date of broadcasting or performance.

Personal inalienable rights never expire. Upon the death of the author, the rights may be enforced by the author's heir(s). Furthermore, such rights cannot be waived.

Ownership / licenses

Joint ownership of copyright is recognized with regard to joint works.

Transfer of copyright ownership (exclusive rights to a work) is allowed and must be in writing for most types of use. In general, the transfer of 1 or more copies of a copyrighted work does not imply the transfer of the copyright, unless differently agreed.

Remedies for infringement

The copyright owner or exclusive licensee is entitled to the following primary remedies:

- i. Demand to stop infringement
- ii. Demand to redress damages in full
- iii. As an alternative to claiming damages, to demand monetary compensation in the amount from RUB10,000 to RUB5 million, or in double the amount of the cost of originals of the work or imputed license fee and
- iv. Demand seizure of media bearing infringing objects.

MASK WORKS / TOPOGRAPHIES

Nature of right

The topography of a semiconductor product is a series of fixed or encoded correlated designs, representing the

3-dimensional pattern of the layers that make up a semiconductor product.

Mask work owners have the exclusive right to totally or partly reproduce the topography in any method or shape and commercially exploit the mask work – in particular, keeping or distributing for commercial purposes or importing a topography or a semiconductor product in which the topography is fixed.

Legal framework

Part IV of the Russian Civil Code governs the protection of semiconductor topographies.

Duration of right

The protection is granted for 10 years starting from the earlier of either the filing date of the application or the date when the semi-conductor containing the topography was put on sale for the first time in any part of the world.

Ownership / licenses

The owner of the mask work is the author that has expressed a creative intellectual effort resulting in a topography.

Remedies for infringement

The owner of the mask work or an exclusive licensee is entitled to the following primary remedies:

- i. Demand to stop infringement
- ii. Demand to redress damages in full and
- iii. Demand seizure of media bearing infringing objects; criminal penalties may also apply under certain circumstances.

PATENTS

Nature of right

Patent protection is available for inventions that are deemed to be new, not obvious, and suitable for application in the industrial field.

From the grant of the patent, the patent owner has the exclusive right to forbid third parties from producing, using, trading in, selling or importing the product (should the invention be a product) or applying the method, or using, trading in, selling or importing the product that is directly obtained from the method (should the invention be a method).

There are separate legal provisions on protection of utility models and industrial designs, which have the basic regime of legal protection similar to that granted to inventions, but with certain distinctions.

Legal framework

Part IV of the Russian Civil Code governs patents.

Russia is a party to the Patent Cooperation Treaty and Paris Convention.

Duration of right

Patent protection lasts for 20 years from filing the application, based on a first-to-file principle.

Ownership / licenses

Ownership of (or exclusive right to) a patent may be transferred to third parties by means of assignment, as well as license, authorizing the exploitation of the patent within the limits determined by the parties. Transfers of ownership and exclusive licenses must be registered to be effective.

Remedies for infringement

The owner of the patent or an exclusive licensee is entitled to the following primary remedies:

- i. Demand to stop infringement
- ii. Demand to redress damages in full and
- iii. Demand seizure of media bearing infringing objects; criminal penalties may also apply under certain circumstances.

TRADEMARKS

Nature of right

Trademark protection is available to signs that can be represented graphically, provided that they are capable of distinguishing the goods or services of a company from those of other companies. In particular, it is possible to register words and their combinations (including personal names), drawings, the combination of both as well as less traditional marks, such as 3-dimensional marks and sounds. To qualify for protection, a trademark must be registered with the Russian Trademark Office (Rospatent) or protected in Russia by virtue of the Madrid Protocol.

The trademark owner has the right to forbid third parties from using a sign identical or confusingly similar to its trademark if it is used in relation to goods or services identical or similar to those for which the mark was registered. This also captures the use on the internet, including within domain names. The enforcement of trademark rights against violation in relation to dissimilar goods and services is much more difficult, but might be possible in rare cases depending on circumstances (typically through an unfair competition action).

An unregistered trademark does not enjoy legal protection. The exception is taking the intensively used designation into account when confronting with bad faith applicants or users. However, this requires a significant amount of evidence and is resolved on a case-by-case depending on the circumstances of each specific dispute.

Legal framework

Part IV of the Russian Civil Code governs trademarks.

Russia is a member of the Singapore Treaty and Madrid Convention and Protocol.

Duration of right

Trademark registration lasts 10 years from the filing date (unless the registration is waived by the owner) and it can be renewed, within the date of expiration, an unlimited number of times.

Ownership / licenses

A trademark can be transferred to a third party (legal entity or individual entrepreneur) by way of trademark assignment. A trademark can be the object of a license, including non-exclusive licenses, for all or part of the goods or services for which it was registered. The transfer of rights under both trademark assignment and licenses must be registered with the Rospatent.

Remedies for infringement

The trademark owner or exclusive licensee is entitled to the following primary remedies:

1. Demand to stop infringement
2. Demand to redress damages in full
3. As an alternative to claiming damages, to demand the monetary compensation in the amount from RUB10,000 to RUB5 million, or in double the amount of the cost of counterfeit originals or imputed license fee and
4. Demand seizure or destruction of media bearing infringing objects.

Criminal or administrative penalties may also apply, under certain circumstances.

TRADE SECRETS

Nature of right

Trade secrets are defined as any company information of technical, economical, organizational, manufacturing and other nature, which:

- i. Is kept secret by its holder
- ii. Has an economic value due to its secrecy or
- iii. Is subject to a commercial secrecy regime.

The disclosure or unlawful use of trade secrets is a breach of the rights to commercial secrets.

Legal framework

Part IV of the Russian Civil Code governs trade secrets.

Duration of right

Trade secret protection is potentially perpetual if the owner can keep the information secret.

Ownership / licenses

The holder of the trade secret is the owner of such secret (joint ownership is possible). The right to trade secret may be assigned or licensed.

Remedies for infringement

The owner of the trade secret is entitled to demand to redress damages in full. Criminal penalties may also apply under certain circumstances.

OTHER KEY IP RIGHTS

Nature of right

Not applicable.

Legal framework

Not applicable.

Duration of right

Not applicable.

Ownership / licenses

Not applicable.

Remedies for infringement

Not applicable.

INTELLECTUAL PROPERTY IN EMPLOYMENT CONTEXT

Employees

The patentable and copyrightable works created by an employee in an employment context are deemed to be owned by the employer, unless the parties agree otherwise or, in case of patentable objects, unless the employer fails to timely formalize its patent rights. However, the employee is entitled to remuneration payable by the employer. While the law is more liberal in relation to copyright works and generally allows the remuneration for

their creation to be part of the salary, for patentable works, the stand-alone remuneration must be agreed on and paid

The author retains personal inalienable rights to created objects in any case.

Consultants / contractors

The [rules for employees](#) do not automatically extend to non-employees, such as consultants and contractors. Unless the parties specify the allocation of intellectual property rights in a written contract, in most types of contracts, the respective intellectual property rights would generally vest on the creator and would not automatically be transferred to the party who ordered the respective work.

KEY COMMERCIAL CONTRACT CONSIDERATIONS

Registration of commercial agreements

There is no general registration requirement with regard to commercial agreements, though certain kind of contracts, such as contracts involving transfer of trademarks and patents, require a prior registration.

Recognized language of commercial agreements

The agreement can be executed in any language. However, for agreements concluded with Russian consumers (B2C), the Russian version is necessary as its absence may entail the risk of consumer claims based on "lack of information on the goods." In addition, Russian counterparties may request a Russian translation for administrative purposes, such as for tax inspections.

Country-specific issues for online content

In regard to internet-related infringements, under certain circumstances, the copyright owner or exclusive licensee may request the court to order blocking of an infringing website even before consideration of the case on the merits.

Enforceability of online/clickwrap/shrinkwrap terms

There is still no established practice on acceptance or enforceability of online terms. In most cases, however, such online terms should be deemed binding if accepted by the addressee (eg, by click method), and such accepting party can be identified in case of dispute.

Governing law

The law can be freely chosen by the parties. However, the parties must consider the possibility of certain "super-imperative" provisions of Russian laws which may be applicable regardless of the choice of law (eg, registration of contract, currency control regulations and consumer laws).

KEY COMMERCIAL CONTRACT TERMS

Enforceability of warranty disclaimers

Warranty disclaimers may be recognized as invalid if they contradict mandatory Russian legal provisions, especially in the consumer context, where minimal statutory warranties in relation to specific goods or services are provided.

Enforceability of exclusions/limitations of liability indemnification

The liability may be limited, but not entirely excluded, by the parties only in the B2B context but, even in that case, liability for willful actions cannot be limited or excluded.

Indemnification

Indemnification is currently recognized as enforceable in Russia, but in limited scope. Additionally, this concept is still very new and untested.

Electronic signatures

The requirements for electronic signatures (ES) in Russia are regulated by Federal Law "On the electronic signature" dated April 6, 2011 (ES Law). Under the ES Law, the electronic signature made on an electronic document is equivalent to a handwritten signature on an ordinary paper document. The electronic signature technically represents a number of symbols attached to an electronic document that is being signed and that identifies the signatory.

There are 2 types of the electronic signatures:

- Simple electronic signature and
- Enhanced electronic signature.

Depending on the level of encryption protection, enhanced electronic signatures may be "unqualified" or "qualified."

A simple electronic signature is an electronic signature formed using codes, passwords and other means that confirm the formation of the electronic signature by a particular person. As opposed to unqualified and qualified enhanced electronic signatures, a simple electronic signature is not produced by a certification center.

The ES Law states that any electronic message signed with a simple electronic signature is deemed to have the same legal effect as a paper document signed by hand, provided that:

1. The parties have expressly agreed to use electronic signatures when exchanging messages through the relevant electronic messaging system
 2. Rules established in the relevant electronic messaging system for use of electronic signatures are complied with
- The electronic message contains information regarding the person on behalf of whom the electronic message was generated and/or sent and

- The parties' agreement on exchanging messages through an electronic messaging system must at least also contain provisions related to:
 - Identification of a person signing electronic messages based on its simple electronic signature and
 - The parties' obligation to keep the means for generating the simple electronic signature (eg, codes, passwords) confidential.

An enhanced electronic signature is produced by certification centers (accredited certified centers in case of qualified electronic signatures) and shall be used in documents which require a seal. The enhanced electronic signature is more highly protected compared to the simple electronic signature, and its validity is subject to control by relevant certification centers. Enhanced electronic signatures are created by cryptographic processing of information by an electronic signature key, and they help to identify the person that signed the document or made changes to such document.

The qualified type of enhanced electronic signature is even more highly protected, and it has a specific qualifying certificate created by means approved by the competent state authority. The qualified type of enhanced electronic signature is produced by certified centers accredited by the Ministry of Telecom and Mass Communications of the Russian Federation. The Ministry keeps a register of qualified electronic signatures that can be accessed to verify such electronic signature.

KEY CONTACTS

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2023 DLA Piper. All rights reserved.