

Advisory Committee on Enforcement

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ENFORCEMENT OF RIGHTS TO AUDIOVISUAL WORKS UNDER THE FEDERAL ACT NO. 187-FZ OF JULY 2, 2013 ON AMENDMENTS TO CERTAIN LEGISLATIVE ACTS OF THE RUSSIAN FEDERATION CONCERNING THE PROTECTION OF INTELLECTUAL RIGHTS IN INFORMATION AND TELECOMMUNICATION NETWORKS; AND OTHER MEASURES UNDERTAKEN TO COMBAT PIRACY AND COUNTERFEITING ON THE INTERNET

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1. The Federal Act No.187-FZ of July 2, 2013 on *Amendments to Certain Legislative Acts of the Russian Federation Concerning the Protection of Intellectual Rights in Information and Telecommunication Networks* ("the Act") came into force on August 1, 2013.
2. The adoption of the Act marked the beginning of the regulation on the handling of information on the Internet. It is an important first step in stopping violations of intellectual property rights in films, including theatrical and television films, on information and telecommunications networks. Since it came into force, the application of the Act has been welcomed by rights holders of theatrical films.
3. Article 144.1 of the Russian Civil Procedural Code, introduced by the Act, provides that the court may, on the basis of a written request from an organization or a citizen, take provisional protective measures intended to ensure that exclusive rights in films are enforced on information and telecommunications networks, including the Internet, until a suit is filed. A request can also be submitted to the court by completing the form available on the court's

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

official site on the Internet and signing it using a certified electronic signature, in the manner established by federal law.

4. The requests for the provisional enforcement of exclusive rights in the films are submitted to the Moscow City Court. On filing such a request, the complainant submits documents to the court confirming the use on the Internet of works subject to exclusive rights and the rights of the complainant to the intellectual property concerned. Failure to submit these documents to the court is a basis for making a decision refusing the provisional enforcement of exclusive rights, in which the court states the right to submit another request that meets the requirements of article 144.1 and the right to file a suit in the usual manner.

5. The court shall rule on the provisional enforcement of exclusive rights in the films, including theatrical and television films, on information and telecommunications networks, including the Internet. The ruling shall set a deadline of no more than 15 days from the date it was issued, in which to file a suit where necessary, in connection with which measures shall be taken by the court to secure the financial interests of the complainant. The ruling is published on the official website of the Moscow City Court no later than the day after its pronouncement.

6. If the court takes provisional protective measures, the complainant shall file a suit with the Moscow City Court on the enforcement of exclusive rights in films, including theatrical and television films, on information and telecommunications networks, including the Internet. Furthermore, on the basis of a ruling issued by the court on the application of provisional protective measures, the rights holder is entitled to contact the federal executive authority responsible for monitoring and oversight in the field of mass information, mass communications, information technologies and telecommunications ("Roskomnadzor") with a request that measures should be taken to restrict access to information resources that are disseminating the films or information.

7. Within three working days, the Roskomnadzor shall:

- Determine the hosting provider, or other entity rendering accessible the information resource on behalf of the owner, of the website where the information has been displayed containing films, including theatrical and television films, or the information required to obtain them without the permission of the rights holder or other legal grounds through information and telecommunications networks;
- Send the hosting provider, or other entity rendering accessible the internet resource on which illegal content has been placed in electronic format, a notice in English and Russian of the violation of the exclusive rights in the films, including theatrical and television films. The notice should state the name of the work, its author, the rights holder, the domain name and the network address that identify the website where the information has been placed containing films, including theatrical and television films, or the information required to obtain them without the permission of the rights holder or other legal grounds through information and telecommunications networks, indexes for the pages of the website allowing such information to be identified, and require that measures should be taken to remove the information.
- Set the date and time for sending notice to the hosting provider, or other entity rendering accessible the internet resource on which the illegal content has been placed, using the appropriate information system.

The hosting provider is obliged to inform the owner of the site it hosts of the rights holder's claim and of the need to promptly remove the content placed there illegally. The owner of the internet resource must promptly remove the information. In cases where the owner of

the internet resources refuses to do so, the hosting provider must restrict access to the resource.

- If the hosting provider does not inform the owner of the internet resource of the need to remove the content placed there illegally, and also does not block access to it, the telecommunications operator for the network connectivity system shall take measures to restrict access to the resource.

8. The Act introduced article 1253.1 into the Civil Code of the Russian Federation, which addresses the special responsibility of information intermediaries. A person or entity that transfers material on an information and telecommunications network, including the Internet, provides for the placement of material or information required to obtain the material through an information and telecommunications network, or provides access to the information on this network – an information intermediary – is responsible for the violation of intellectual property rights on the information and telecommunications network on the general grounds provided for in the Civil Code, if found guilty in view of the particular conditions set out in this article. Furthermore, an information intermediary that transfers material on an information and telecommunications network is not responsible for a violation of intellectual property rights occurring as a result of that transfer if all the following conditions are met:

- It is not the initiator of the transfer and does not determine the recipient of the material;
- It does not change the material when providing connection services, with the exception of changes undertaken as part of the technological process of transferring the material;
- It was not aware and was not obliged to be aware of the fact that the use of the results of intellectual activity or brand identity by the party that initiated the transfer of the material containing the results of intellectual activity or brand identification was unauthorized.

9. The information intermediary, in providing for the dissemination of material on an information and telecommunications network, is not responsible for the violation of intellectual property rights occurring as a result of the dissemination of material to a third party or on a third party's instructions if the information intermediary meets all of the following conditions:

- It was not aware and was not obliged to be aware of the fact that the use of the results of intellectual activity or brand identity contained in the material was unauthorized;
- Upon receipt in writing, of the rights holder's claim of a violation of intellectual property rights indicating the page of the website and/or the network address on the Internet where the material had been placed, it promptly took necessary and appropriate measures to stop the violation of intellectual property rights. A list of necessary and appropriate measures and the procedure for their implementation may be established by law.

10. The Russian Ministry of Culture has proposed that these measures and the procedure for their implementation should be set out in the "Draft Federal Act on Amendments to Certain Legislative Acts of the Russian Federation in order to Stop Violations of Copyright and Related Rights in the Information and Telecommunication Networks" (the "Draft Act") which provides for a pre-trial procedure to effectively put a stop to piracy on the Internet.

11. It should be noted that, while drafting the Draft Act the Ministry of Culture set up a working group that involved active participation from representatives of the Russian federal

executive authorities (Ministry of Economic Development, Ministry of Communications and Mass Media and the Ministry of Education and Science), rights holders and the Internet industry. As a result of the working group's efforts, a compromise was reached that took into consideration the views and interests of all stakeholders.

12. The main aim of the Draft Act is to establish an effective mechanism to stop the violation of copyright and related rights for works that are placed on the Internet by users without the permission of the rights holder.

13. The principles on which the Draft Act is based:

- The dissemination of information through the Internet must be undertaken in accordance with intellectual property law, specifically that placing, downloading and other uses of work subject to copyright and related rights (that has not lapsed into the public domain) on the Internet are only possible with the permission of the rights holder.
- The principle of restricting the responsibility of the Internet intermediary, who will not be considered responsible, neither towards the rights holder for the violation of copyright, nor towards the user for damage suffered due to the blocking of information that had been available, if it meets all the requirements of the law.
- The Internet intermediary is not obliged to check whether the complainant is the genuine rights holder; the assumption should be one of authorship, which is the standard in copyright law under which authorship is recognized as legally valid until such time as proven otherwise, and the author is considered the person indicated as such on the original work.

14. The main aim of the Draft Act is to establish an effective mechanism to stop the violation of copyright and related rights for works that are placed on the Internet by users without the permission of the rights holder.

15. The Draft Act extends to all works subject to copyright or related rights, with the exception of phonograms with recorded performances of musical works (with or without a text). The following procedure on measures to restrict access taken by information intermediaries is set out in the Draft Act:

- In accordance with the rights holder's request, the site owner takes measures to restrict access to information placed there illegally;
- The rights holder's request must meet the requirements established in the Draft Act. It must contain sufficient information to identify the copyright holder, the object of copyright of which is being violated, the webpage address or webpage on the Internet where the content has been placed and the contact details of the rights holder.
- If the site owner has not taken measures to restrict access within 24 hours, the hosting provider is obliged to take the necessary measures independently within 24 hours.

16. Particular attention is paid in the Draft Act to the sending of objections. Within 48 hours, the site owner is obliged to send information on the measures taken and a copy of the rights holder's request to the party that has placed the information on the site containing the work subject to copyright and related rights, and who in turn has the right to send objections to the site owner within ten days.

17. If the party that has placed the information on the site containing work subject to copyright and related rights sends objections to the website owner attesting to the legality of

placing the information there, the website owner shall forward those objections to the complainant without delay, as well as information adequate to identify and contact the party, and shall inform the complainant that access to the disputed information will be reinstated 14 working days from the date of the notice.

18. If, 14 working days after forwarding the objections to the complainant, the site owner has not been informed that the complainant is appealing to the court to enforce the violated copyright and related rights, the site owner is entitled to reinstate access to the information containing the work subject to copyright and related rights. In this case, if the complainant appeals to the court within the given time to enforce the violated copyright and related rights, the period in which access to the information and/or its dissemination is suspended (blocked) is extended until the court takes provisional measures.

19. The Draft Act establishes the administrative responsibility of information intermediaries for the failure to observe the standards provided for in the Draft Act, and administrative responsibility for knowingly presenting false information to the owner of a resource or to a hosting provider claiming rights to a work subject to copyright and related rights placed on information and telecommunications networks, including the Internet.

20. The scale of administrative fines is as follows:

- For citizens – up to 300,000 roubles;
- For State officials – up to 600,000 roubles;
- For legal entities – up to 1,000,000 roubles.

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