

# Intellectual Property in Russia: The correlation of private and public elements

## Propiedad Intelectual en Rusia: La correlación de los elementos privados y públicos

A N Al Ali NASER [1](#); Maria Sergeyevna LAVRENTIEVA [2](#); Elena Vladislavovna BATEEVA [3](#); Roman Marselievich DZHAVAKHYAN [4](#); Inna Leonidovna BUROVA [5](#)

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#### ABSTRACT:

The institute of intellectual property formation began in XVIII century with the spread of natural rights concepts. Currently, the development of intellectual property and its legal protection are among the priorities in many countries. The article deals with issues related to the management of intellectual property, the history of its progress and formation, as well as the features of bringing to legal responsibility for offenses and crimes in the intellectual property field.

**Keywords:** intellectual property, intellectual property objects, responsibility, objects, law, management, executive authorities, prosecution.

#### RESUMEN:

El instituto de defensa de la propiedad intelectual comenzó en el siglo XVIII con la difusión de los conceptos de los derechos naturales. Actualmente, el desarrollo de la propiedad intelectual y su protección legal se encuentran entre las prioridades en muchos países. El artículo trata cuestiones relacionadas con la gestión de la propiedad intelectual, la historia de su progreso y formación, así como las características de llevar a la responsabilidad legal por delitos y delitos en el campo de la propiedad intelectual. Palabras clave: propiedad intelectual, objetos de propiedad intelectual, responsabilidad, objetos, ley, administración, autoridades ejecutivas, enjuiciamiento.

## 1. Introduction

### 1.1. Introduction of the Problem

The intellectual property concept began to form since the Great French Revolution of the XVIII century. During this period, the ideas of natural rights became widespread. The founders of this theory believed that everything produced by man, both material objects and

the results of creative work, gives him the exclusive right to control them.

In international legal documents, the very concept of "intellectual property" was first officially defined by the Stockholm Convention in July 14, 1967 (this Convention established WIPO - the world organization of intellectual property). Although the Bern Convention for the Protection of Literary and Artistic Works dated September 9, 1886 already used the term "results of intellectual creativity" in a similar sense.

The Russian Federation acceded to the Stockholm Convention only on March 13, 1995, and only on January 1, 2008 the fourth part of the Civil Code of the Russian Federation came into force. The bill of Part 4 of the Civil Code was created by a group of developers headed by professor A.L. Makovsky, head of the Research Center for Private Law under the President of the Russian Federation.

We will dwell in more detail on the history of the emergence and development of the intellectual property institute in the Russian Federation.

## **1.2. Importance of the Problem**

The history of the emergence and development of the intellectual property institute in the Russian Federation can be divided into 5 stages:

### **1 stage**

May 16, 1928, the CEC and CPC of the USSR Resolution was adopted. It was one of the first significant regulatory legal acts in the field of copyright after the October Revolution of 1917.

One of the features of this Resolution was the existence of regulations introducing state regulation of the industry. Thus, the terms of the contract on the transfer of rights to public performance of works, the publishing contract were regulated by the legislation of the Union republics. The possibility of compulsory redemption of copyright for a work by the government of the USSR was established.

### **2 stage**

At this stage, the legislator used a different approach the industry regulation, i.e. the normative legal regulation of copyright was included in the codified law, which was not done in the Civil Code of the RSFSR in 1923. The Code adopted in 1964 provided for a far more complete and detailed development of copyright.

Both of the above-mentioned acts foresaw the possibility of granting legal protection to intellectual property objects of other countries of the world - works of foreign authors under relevant international agreements (bilateral or multilateral). However, there were no such agreements until 1973, with the exception of the USSR's bilateral treaties.

For example, the Treaty between the USSR and Norway on trade and navigation of 15.12.1925 in Article 13 provides: "Until these conventions are concluded, the above-mentioned rights of industrial, literary and artistic property will be exercised by citizens of one of the High Contracting Parties in the territory of the other Party within and on the terms of the domestic laws of this latter Party and international conventions, agreements or treaties concluded by it with that of other states, which in this respect is most favored. "

1973 - USSR joined the World Copyright Convention in the wording of 1952 (Geneva edition).

This accession determined the USSR's obligation to ensure a minimum level of granting rights to authors whose works were first published abroad:

the exclusive right of the author to translate;

to publish translations;

to permit the translation and publication of translations of works.

### **3 stage**

July 9, 1993 - the Law of the Russian Federation "On Copyright and Neighboring Rights"

which acquired a key sectoral significance was adopted. The Law includes five sections:

General provisions;

Copyright;

Neighboring Rights;

Collective management of property rights;

Protection of copyright and neighboring rights.

Also the Decree of the President of the Russian Federation of 07.10.1993 No. 1607 "On State Policy in the Field of Protection of Copyright and Neighboring Rights" had been adopted.

#### **4 stage**

1995 - the period of accession of the Russian Federation to the Universal Copyright Convention in the wording of 1971 (the Paris edition) and the Bern Convention for the Literary and Artistic Works Protection of 1886 (as amended by the Paris Act of 1979). The Paris edition of the World Convention was an intermediate stage for the preparation of the Russia legislation, as well as other civil institutions of the society, for the full implementation of the of Bern Convention requirements, in spite of the fact that both the Bern Convention and the 1971 World Convention entered the territory of the Russian Federation simultaneously. This was due to the retro-protection regime introduced by the Bern Convention, i. e. restoration of the terms of works protection. The Berne Convention introduced a much higher level of minimal protection of works published abroad, the granting of copyright protection without observing any formalities, and the national regime principle.

In 2004, an amendment was made to the Law of the Russian Federation "On Copyright and Neighboring Rights". By means of these amendments, the Law:

fully restored the regime of the so-called retro-protection, established by the Bern Convention,

corrected the terms of granting protection to works,

introduced a new "Internet law" for more effective legal regulation of the use of copyright in digital networks, and more.

#### **5 stage**

On January 1, 2008, the fourth part of the Civil Code of the Russian Federation came into effect.

The bill of Part 4 of the Civil Code was created by a group of developers headed by Professor A.L. Makovsky, head of the Research Center for Private Law under the President of the Russian Federation.

The bill of this importance was presented personally by the Chairman of the Government of the Russian Federation Dmitry Anatolyevich Medvedev to the State Duma deputies. He called it the "Constitution" for participants in the intellectual activity field.

International legislation in the field of intellectual property is represented by various conventions, agreements and treaties. Let's consider those International legal acts in which Russia is a participant:

1. The Bern Convention on the Protection of Literary and Artistic Works of 1886.
2. The World Copyright Convention of 1952.
3. The Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 1961.
4. The Geneva Convention on the Protection of Producers of Phonograms from the Unauthorized Reproduction of Their Phonograms of 1971.
5. The Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994 (TRIPS).
6. The WIPO Copyright Treaty of 1996.

7. The WIPO Performances and Phonograms Treaty, 1996.

There is also a number of international norms, where Russia is not a party.

For example:

1. The Hague Agreement Establishing the International Patent Bureau in 1947.
2. The European Convention on Formal Requirements for a Patent Application of 1953.
3. The Lisbon Agreement on the Protection of Indications of Origin of Goods and their International Registration 1958.

Currently, the legislation of the Russian Federation in the field of intellectual property is presented as a set of normative legal acts, the central place among which belongs to the Constitution of the Russian Federation. Article 44 of the Constitution does not disclose the content of intellectual property, but declares that this property is protected by law. Article 71 of the Constitution states that the legal regulation of intellectual property is assigned to the jurisdiction of the Russian Federation.

Chapter 4 of the Civil Code, in turn, details the issues of intellectual property, specifies and regulates them.

The system of legal regulation methods in the sphere in question includes a wide range of methods and ways of legal influence, characteristic both for private and for public branches of law. These include: the method of contracts; method of power regulation; autonomy of the individual, and public interest.

The method of power regulation includes legal regulation. At the same time, the primary goal of legal regulation of intellectual property is to create an optimal regime for achieving by a creative person a socially significant result.

In this regard, the intellectual property right should be defined as a civil law sub-sector, which includes a set of regulations and institutions that regulate relations in the sphere of origin, use, and protection of intellectual property.

Some issues are reviewed in the following fundamental research works, such as "Rights to the results of intellectual activity of the author and patent owner: status and prospects" (Bautin 2012), "Copyright in the publishing business and the media: a practical guide" (Nevskaya et al., 2012). Certain aspects of intellectual property are analyzed in the articles of Vasilieva (2011), Gulidov (2013), etc. Different aspects, connected with the property were considered in works of Lutovinova et al. (2014), Lutovinova et al. (2016), Ryzhik et al. (2017), Zolotareva et al. (2017), Gevorkov (2015).

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## 2. Method

A set of general scientific and private law methods was used as the methodological foundation for this article, including systematic, structural, formal legal, technical legal, comparative legal methods, etc. The main methods used in this work were historical and systematic methods that allowed revealing the correlation of private and public elements in sphere of the intellectual property in Russia.

The technical legal method was applied to analyze the specific features of intellectual property protection.

The formal legal method was applied to review the legal provisions of protection of intellectual property in Russia.

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## 3. Results and Discussion

The current legislation provides the following division of intellectual property:

- first, the objects, the exclusive right to which arises as a result of state registration;
- second, the objects, the exclusive right to which does not depend on state registration;
- third, the objects, state registration of which is carried out on a voluntary basis.

While addressing directly to the objects of intellectual property law, it is advisable to clarify what they are: patents for inventions; useful models; industrial designs; trademarks and

service marks; company names. These also include computer programs, know-how, trade secrets, copyright and neighboring rights, and so on.

Thus, the intellectual property management should be viewed as a set of measures aimed at creating and using intellectual property objects at the level of organizations, institutions, enterprises, industries, and the national economy as a whole.

When considering the development of the institution of intellectual property in the Russian State and the administrative and legal regulation of this institution, one should not ignore the issue of understanding state policy in sociological sciences, since politics is directly related to the relationship between subjects of the society, and the relationship between state policy and state strategic planning. Touching upon the issues of state regulation of intellectual property, we should note that when defining the objectives of state policy in this sphere, the key element should be the Long-Term Strategy for the Development of the Intellectual Property Sphere, which, unfortunately, today exists only as a project.

As is well known, the implementation of the policy in the field of intellectual property is vested in the executive authorities, which carry out actions to implement regulatory requirements in this area. One of the central bodies functioning in the field of intellectual property is the Federal Service for Intellectual Property (Rospatent) - a federal executive body that performs functions of intellectual property rights registration, control and supervision in the field of legal protection and use of intellectual property objects, patents and trademarks and the intellectual activity results involved in economic and civil-law turnover, compliance with the interests of Russia the Russian Federation and Russian natural and legal persons in the distribution of rights to the intellectual activity results including those created within the international scientific and technical cooperation framework.

Rospatent exercises the following powers in the established field of activity:

1. Organizes the receipt of applications for intellectual property objects, their consideration, examination and issuance of patents of the Russian Federation in accordance with the established procedure;
2. Carries out registration of contracts on granting the right to inventions, utility models, industrial designs, trademarks, service marks, protected computer programs, databases, integrated microcircuits layouts;
3. Carries out the attestation and registration of patent attorneys of the Russian Federation, as well as the issuance of registration certificates for them;
4. Publishes information on registered objects of intellectual property, applications filed and patents and certificates issued thereon;
5. Transfers the paid patent and registration fees to the federal budget and refunds to the payers incorrectly or excessively paid duties and fees.

Rospatent is in charge of:

1. Federal State Budgetary Institution "Federal Institute of Industrial Property" (FIPS), which is a subordinate organization of the Federal Service for Intellectual Property. FIPS is authorized to conduct preparatory work for the implementation by Rospatent of legally significant actions related to legal protection and the following results of intellectual activity and means of individualization.

FIPS is a key infrastructural link in the system of providing inventive, rationalizing and innovative activities in Russia, combining research, expert-analytical, legal, communication, marketing and other areas of the patent business in its activities. The structure of FIPS includes:

- All-Russian Patent and Technical Library;
- Patent Disputes Chamber.

2. Federal State Budgetary Institution "Federal Agency for Legal Protection of the Results of Intellectual Activities of Military, Special and Dual Use" (FGBU "FAPRID"). FGBU "FAPRID" was established in 1998 in accordance with the Decree of the President of the Russian Federation from May 14, 1998, No. 556 "On the legal protection of the results of scientific

research, experimental, design and technological work of military, special and dual-purpose ". In 2011, this institution was transferred from the Ministry of Justice of Russia to the Federal Service for Intellectual Property (Rospatent).

FGBU "FAPRID" carries out legal protection of interests of the Russian state in the process of economic and civil-legal turnover of the results of intellectual activity of military, special and dual-purpose.

Rospatent, in its turn, is a subordinate organization of the Ministry of Economic Development of the Russian Federation. The Ministry of Economic Development of the Russian Federation is empowered to develop state policy and regulatory and legal regulation in the field of control and supervision in the sphere of legal protection and use of the results of intellectual activity.

Rospatent has the authority to submit to the Ministry of Economic Development of the Russian Federation draft federal laws, normative legal acts of the President of the Russian Federation and the Government of the Russian Federation and other documents requiring a decision of the Government of the Russian Federation, as well as issues related to the sphere of reference of the Service. These provisions indicate that Rospatent is deprived of the independent ability to implement legal regulation in the field of intellectual property.

The issues of state administration in the sphere of intellectual property are constantly raised and gradually solved at the governmental level. Thus, in the future, it is planned to create a single regulator in the field of intellectual property on the basis of Rospatent. All the powers related to intellectual property, which at the moment are divided among several ministries, for which intellectual property is not the main line of business, are planned to transfer to the new service. For example, the Ministry of Economic Development of Russia (we already noted this earlier in the article), dealt with intellectual property issues within the framework of the development of innovation activity and the adoption of normative legal acts. The Ministry of Education and Science of the Russian Federation - in the framework of scientific research. The Ministry of Culture of the Russian Federation - partially as part of the regulation of copyright and related rights. Issues related to intellectual property by federal executive bodies were perceived only as secondary, auxiliary.

Now, intellectual property is again recognized as one of the main directions of economic activity, which needs its own special body.

The proposed modernization of the Federal Service for Intellectual Property, the creation on the basis of Rospatent of a single body in the field of intellectual property, opens completely new opportunities for activities. Currently, within the scope of its powers, Rospatent is engaged in legal protection, control and supervision. However, it cannot deal with issues of rulemaking, assistance to business and state bodies in the creation of intellectual property, in the withdrawal of new products to the market, in the commercialization of intellectual property.

As mentioned earlier in the article, an interdepartmental program (strategy) for the development of intellectual property should be created, from the training of personnel (education) to the commercialization and support of foreign patenting. However, in our opinion, this strategy should be based on the principles laid down by Federal Law No. 172-FZ of June 28, 2014, "On Strategic Planning in the Russian Federation," Decree of the President of the Russian Federation of December 1, 2016 No. 642 "On the Strategy for Scientific and Technological Development of the Russian Federation" and other normative legal acts.

It is necessary to dwell, in our opinion, in more detail on the issue of legal protection of the institute of intellectual property.

Thus, in order to secure the rights to the results obtained in the process of research and development, this right is required to be registered in the established order. We believe that the authors (developers) should be given the right - at a certain time (established by law) to perform any actions foreseen by law on the use and disposal of these results, including the right to prohibit their use by third parties without the permission of the right holder.

At the same time, issues of protection of intellectual property, including those outside the Russian Federation, remain open so far. It's an open secret that unscrupulous competitors

attempt to obtain a patent for an intellectual product developed on the territory of Russia, in countries with a shorter period of consideration of an application for an invention, utility model and industrial design, or to obtain a patent in countries where the search in "search bases" of the Russian Federation is not obligatory, or by obtaining a patent for a utility model (industrial design) instead of an invention.

The above examples testify to the imperfection of the copyright protection system both in the Russian Federation and abroad.

In our opinion, activities to combat infringements in the field of intellectual property should be carried out both at the state level, by using all the provided instruments of influence on unfair competitors, and at the interstate level, during the signing of various international agreements.

First of all, it seems reasonable to increase the status of patent attorney, for which it is expedient to provide for the development of new requirements for them, for example, to improve their qualifications, compulsory legal education and experience in the field of intellectual property no less than 10 years.

Considering the issue of protection of copyright, neighboring, inventive and patent rights, in our opinion, it seems particularly relevant to implement this protection through administrative law. For example, it is especially important for preventing and suppressing their illegal use, considering that as a result of such use, harm is caused not only to the owner of copyright and neighboring rights, but also to the state as a whole. A similar situation exists for example, in the area of responsibility in the field of tourism activity; when issues of liability are subject both to civil and administrative law (Kuzakhmetova et al. 2016; Shilovskaya et al. 2016; Malcev et al. 2017; Malcev et al. 2016, Vinogradova et al. 2016; Starodumova et al. 2016).

Thus, the Code of the Russian Federation on Administrative Offenses provides for administrative liability in a number of articles, the main ones, in our opinion, are Article 7.12 of the Administrative Code of the Russian Federation "Violation of Copyright and Neighboring Rights, Inventive and Patent Rights" and Article 14.10 of the Code of Administrative Offenses of the Russian Federation "Illegal Use of Individualization of Goods (works, services) ".

In accordance with clause 1 of Article 28.3 of the Code of Administrative Offenses of the Russian Federation, the officials of the bodies of internal affairs (police), customs officials, etc., make up the records of administrative violations provided for by Articles 7.12 and 14.10 of the Code of Administrative Offenses of the Russian Federation. However, only the judges consider these offenses. (In accordance with Art. 23.2 of the Code of Administrative Offenses, in the event that the subject of the offense is a minor aged from 16 to 18 years, cases on administrative offenses are reviewed by juvenile commissions).

Article 128 of the Civil Code of the Russian Federation "Objects of civil rights" defines intellectual property as an object of civil law. The mechanism of its protection is built mainly on the system of private law. Although some mechanisms in sphere of intellectual property remain poorly developed even in civil law sphere, for example, the institute of the appraisal of the intellectual property results (Zhesterov et al. 2017). At the same time, effective protection is impossible without the use of public legal methods, including coercion by the state.

In our opinion, the main articles of the Criminal Code of the Russian Federation through which criminal and legal protection of intellectual property is carried out include articles: 146 - "Violation of copyright and neighboring rights"; 147 - "Violation of inventive and patent rights"; 180 - "Illegal use of means of individualization of goods (works, services)" (Skuratov et al. 2016).

First of all, the protection of intellectual property rights is based on the initiative of rightholders - individuals and legal entities, who are given the right to choose an application for the protection of their rights to the state (administrative) body; law enforcement agencies; and to court. Also, the state has the right, in certain cases, to apply criminal or administrative legislation on violators on its own initiative.

These criminal offenses are often associated with direct deception of consumers, misleading them regarding the quality and origin of goods. For example, when purchasing counterfeit goods (with illegally used - another's trademark) consumers purchase products of inferior quality, possibly dangerous for their life and health (Svirin et al. 2017). This also damages the lawful rightholder of the trademark.

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## 4. Conclusion

Taking into account the abovementioned circumstances (as already mentioned), the state is obliged (in certain cases) to interfere in the regulation of relations between the rightholders, the authors of intellectual property products and their users.

At the same time, it is beneficial for rightholders and authors of intellectual property products to use the mechanism of state coercion, namely, administrative and criminal liability measures to identify and suppress illegally used intellectual property, which allows them to save money, including the lawyers' fees.

In the world practice, the actions of police authorities are carried out in a limited legal field that intersects, but does not replace, the possibility of actions of rightholders. Thus, for example, neither in European countries, nor in the US - public prosecution does not replace a private accusation in these cases.

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1. Moscow Institute of state management and law (MIGOP). 115487, Russian Federation, Moscow, Gardeners street, 2, post office box 6. E-mail: [NaserAA@mail.net](mailto:NaserAA@mail.net)

2. Russian State Social University (RSSU), 129226, Russian Federation, Moscow, Wilhelm Pieck Street, 4, build.1. E-mail: [LavrentevaMS@rgsu.net](mailto:LavrentevaMS@rgsu.net)

3. Russian State Social University (RSSU), 129226, Russian Federation, Moscow, Wilhelm Pieck Street, 4, build.1. E-mail: [BateevaEV@rgsu.net](mailto:BateevaEV@rgsu.net)

4. The Fund of assistance to development of legal technologies of the XXI century, 101000, Russian Federation, Moscow, Armenian lane, 3/5-2. E-mail: [corpuscivilis@mail.ru](mailto:corpuscivilis@mail.ru)

5. The bar Association of the city of Moscow "Lebedeva, Burova and partners", 109240, Russian Federation, Moscow, Moskvoretskaya embankment, 7, building 1. E-mail: [burova\\_inna@bk.ru](mailto:burova_inna@bk.ru)

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