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**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: English

REVIEW OF LEGISLATION

ADDITIONAL FOLLOW-UP QUESTIONS POSED BY THE UNITED STATES¹

Addendum

By means of a communication from the delegation of the United States, 24 October 2014, the Secretariat has received a copy of the following questions that it has communicated to the Russian Federation.

RUSSIAN FEDERATION

The United States noted the communication dated 10 June 2014, IP/C/W/592/Add.1, but requests further clarification as follows:

Additional Follow-Up to Question 3: This is likely a translation problem, but we would like to confirm our understanding of your explanation of Article 1232 and therefore will restate our previous question: Would a foreign author who enters a license contract have to register the license contract in Russia? If a foreign author does not register the license contract in Russia, what consequences, if any, would the failure to do so have on the validity of the license?

Additional Follow-Up to Question 4: The Russian Federation notes that portions of the Russian Civil Code correspond to Article 14bis of the Berne Convention. Article 14bis permits countries to establish, by legislation, ownership of cinematographic works. If a country has established among the copyright owners in the cinematographic work the authors who have brought contributions to the making of the cinematographic work, such country may provide that authors who contribute to cinematographic works cannot object to certain uses of the works (e.g., reproduction, distribution, public performance) in the absence of any contrary or special stipulation. The Russian Federation's answer to our question does not appear to address the specific language of Article 14bis "in the absence of any contrary or special stipulation." The Russian Civil Code appears to prohibit contrary and special stipulations (which 14bis(2)(c) permits a country to require in writing). As an example: In the U.S., music composers maintain the right of public performance in their contracts when their musical works are used in motion pictures, and then license the public performance of their music when the motion picture is communicated to the public via television or cable. This does not appear to be a possibility under your law. Please explain how Russian law complies with Article 14bis(2)(b).

Additional Follow-Up to Question 10: We would like to confirm our understanding of the application of the three-step test to exceptions for parody and caricatures. The Russian Federation's response noted that courts are generally guided by the three-step test when

¹ The original questions posed by the United States are contained in document IP/C/W/589 and the responses provided to them in document IP/C/W/592.

considering parodies and caricatures. Please confirm our understating that in Russian law, parodies and caricatures are generally considered to comprise exceptions to copyright law, but that courts must apply the three step test when considering whether the parody or caricature exception is applicable in any particular case. Also, please confirm our understanding of the Russian case referenced in the Government's response. It appears that the court decided that the defendant's use of the musical work was an infringement because the musical work was not a subject of parody even though the music video itself was a parody.

Additional Follow-Up to Question 13: The Russian Federation's response explains that under the Russian Civil Code exclusive rights for works from a database and rights for a database itself are separate and "not absorbing each other." Please confirm our understanding that a copyrighted work that happens to be included in a database retains its separate copyright and that the right in the database only protects the overall selection, coordination and arrangement.

Additional Follow-Up to Question 17: As explained in the further follow up to Question 4, the Russian Federation notes that portions of the Russian Civil Code correspond to Article 14*bis* of the Berne Convention. Article 14*bis* permits countries to establish, by legislation, ownership of cinematographic works. If a country has established among the copyright owners in the cinematographic work the authors who have brought contributions to the making of the cinematographic work, such country may provide that authors who contribute to cinematographic works cannot object to certain uses of the works (e.g., reproduction, distribution, public performance) in the absence of any contrary or special stipulation. The Russian Federation's answer to Questions 4 and 17 does not appear to address the specific language of Article 14*bis* "in the absence of any contrary or special stipulation." The Russian Civil Code appears to prohibit contrary and special stipulations (which 14*bis*(2)(c) permits a country to require in writing) and the response suggests that such provisions would be invalid. As an example: In the US, music composers maintain the right of public performance in their contracts when their musical works are used in motion pictures, and then license the public performance of their music when the motion picture is communicated to the public via television or cable. This does not appear to be a possibility under your law. Please explain how Russian law complies with the provision in Berne Convention Article 14*bis*(2)(b) which allows authors who contribute to cinematographic works to make a special stipulation retaining the right to object to certain uses of their work (e.g., public performance).

Additional Follow-Up to Question 20: Please provide examples, if any, of instances when courts or other governmental authorities determined that counterfeit goods should be recovered for societal interests.
