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Council for Trade-Related Aspects of
Intellectual Property Rights

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REVIEW OF LEGISLATION

RESPONSES FROM THE RUSSIAN FEDERATION TO ADDITIONAL FOLLOW-UP QUESTIONS POSED BY THE UNITED STATES OF AMERICA

Addendum

By means of a communication from the delegation of the Russian Federation, dated 17 December 2014, the Secretariat has received the following responses to additional follow-up questions posed by the United States, as circulated in document IP/C/W/589/Add.2.

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?

If in question 3 author is considered as citizen who created a work of science, literature or arts (object of copyright) by his creative work, it is necessary to take into consideration that the Civil Code of the Russian Federation (hereinafter – CC RF) does not require the state registration of the license contract under which the author or other rightholder of work provides or undertakes to provide the right to use this work to the other party.

At the same time it should be borne in mind that the in CC RF the term "author" is used not only in relation to the authors of works (objects of copyright). The CC RF also establishes provisions for the authors of other results of intellectual activity, for example, the authors of Topographies of Integrated Circuits (Article 1450 of the CC RF).

According to para 2 of Article 1460 of the CC RF, if the topology of integrated circuits has been registered in the Federal executive authority on intellectual property (Article 1452), a granting of right to use topology under a license contract shall be subject to state registration in the manner prescribed by Article 1232 of the CC RF. In this case, it is necessary to take into account para 6 of Article 1232 of the CC RF. This para stipulates that if the requirement of state registration of granting of right to use an integrated circuit layout to another person under a license contract was not met, the granting of right to use is considered invalid.

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).

The provisions of Part 4 of the CC RF contain the references to the "contrary or special conditions" as provided by Article 14 bis (2) (b) of the Berne Convention. According to subpara 4 of para 2 of Article 1263 of the CC RF the producer of audiovisual work shall be entitled to an audiovisual work as a whole, unless otherwise follows from the contracts concluded by him with the authors of an audiovisual work (director, script writer and composer).

In this case, the right to use audiovisual work will oblige the user to obtain the consent not only from the producer of an audiovisual work, but also from the author of such work.

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 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.

We confirm your understanding of three-step test applied to exceptions for parodies and caricatures.

In relation to the case on the claim of "Pervoe muzykalnoe izdatelstvo" (English: "First music publishing company"), LLC to "MTF Production", LLC the court concluded that the subject of parody was certain elements (dances) of music band performance, recorded by technical means. It was dancing at the center of stage number. Musical works (with text) accompanying the parody performance are not the subject of parody and thus their use resulted in a violation of the copyrights of right holders.

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.

According to Article 1260 of the CC RF the author of database owns the copyright in the selection or arrangement of materials (compilation).

The inclusion of the work in the database requires the consent of the author or other right holder of the original work.

Author of the work, included in a database, has the right to use his work, regardless of the database, unless otherwise provided by the contract with the author of the database.

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 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 Questions 4 and 17 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) and the response suggests that such provisions would be invalid. 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 the provision in Berne Convention Article 14bis(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).

The provisions of Part 4 of the CC RF contain the references to the "contrary or special conditions" as provided by Article 14 bis (2) (b) of the Berne Convention. According to subpara 4 of para 2 of Article 1263 of the CC RF the producer of audiovisual work shall be entitled to an audiovisual work as a whole, unless otherwise follows from the contracts concluded by him with the authors of an audiovisual work (director, script writer and composer).

In this case, the right to use audiovisual work will oblige the user to obtain the consent not only from the producer of an audiovisual work, but also from the author of such work.

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.

There are no any court decisions providing that counterfeit goods should be recovered for societal interests.

However, in the enforcement practice of customs authorities there are cases when counterfeit goods seized in the framework of administrative proceedings, after the court decision to confiscate the subject of an administrative offense, are not destroyed, and passed with the consent of the right holder to the social institutions (orphanages, hospitals, nursing homes, etc.), provided that these products are not dangerous for life and health of consumers.
