

## Country Report Russia

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### Copyright

2008 was marked with serious changes in copyright legislation in Russia; Part IV of the Civil Code came into effect. What impact did it have on library operation, on authors and publishers?

### Background

The first copyright law appeared in Russia as long ago as in 1828. In the USSR copyright was regulated by the republics' Civil Codes as well as by some all-Union and republican acts.

In 1992 "Civil Legislation Basics of the Soviet Union and Republics" law came into effect but lasted just for one year, and a Russian Federation law "On Copyright and Related Rights" was adopted in 1993. It was subsequently revised in 1995 and 2004 and substituted by Part IV of the Russian Federation Civil Code in 2008.

The Russian Federation Constitution has the highest legislative power in the country legislation, and some of its clauses pertain to copyright and related rights. For instance, Article 44 of the RF Constitution guarantees the freedom of literary, artistic, scientific, technical and other types of creative work.

Federal laws adopted by the parliament are another portion of legislation on copyright and related rights. Russia being a federation stipulates differentiation of legislative power between the federation itself and the federation subjects; however, according to Article 71 of the RF Constitution, regulation of intellectual property is the prerogative of the Russian Federation, not the federation subjects and so it is common on the whole RF territory.

International agreements play an important role in the regulation of copyright and related rights. According to the clauses of paragraph 4, article 15 of the RF Constitution, RF international agreements are an integral part of its legislative system. If an international agreement provisions are different from the country legislation then the international agreement applies.

Russia is a member state of the following international agreements on copyright and related rights: Stockholm (WIPO) Convention of 1967 as amended in 1979 and effective in Russia since 1970; Berne Convention of 1886 effective in Russia since 1995, Geneva Convention of 1852 as amended in 1971 and effective in Russia since 1973, Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961) effective in Russia since 1995. Russia has signed bilateral copyright protection agreements with Austria, Hungary, Poland, Sweden, China, Armenia and other countries.

According to the RF Constitution (article 29, p.4), every citizen has the right to freely search, receive and transfer information in every legal way. Besides, Russian libraries, as guided by the "Law on Librarianship" of 1994, are to provide universal access to information collected and stored in libraries.

### *Changes in copyright law and problems*

However, there are some contradictions in the copyright laws in force. The main contradiction is between the protection of author's and other rightholders' rights (that is, the protection of creator's right for receiving income) and public interests in free access and transfer of information. Library services for remote users, including electronic document delivery has been affected most. It has also complicated the situation with library services for the disabled who had previously used electronic products at home.

Adoption of the RF Civil Code Part IV in 2008 has changed the situation with copyright. Key clauses of the new legislation in many cases coincide with the Law on Copyright and Related Rights but the crucial difference is the introduction of a strict principle "what is not permitted is forbidden" instead of the previously adopted principle "what is not forbidden is permitted".

What new has happened in the legislation starting 2008?

Changes in contract law as relates to copyright took place. According to articles 1235, 1286 of the RF Civil Code that now regulate rights transfer on exclusive or non-exclusive basis, a contract is accepted as

valid only if signed in written (articles 1334, 1235 of the RF Civil Code) excluding cases when the Civil Code provides for a possibility of oral contracts. For instance, a contract for using the work in press can be oral (p.2, article 1286 of the RF Civil Code). License agreement for granting the right of databases and computer software use allows for the use of the contract of adhesion, terms of which are to be written on the acquired item (package, disc label, etc). The date when the product is first used is considered the agreement commencement date (purchase and subsequent use are regarded as the user's consent to the agreement).

A contract should necessarily state the amount of author's or other right-holder's remuneration and its calculation order (articles 1234, 1235 of the RF Civil Code). All signed contracts (as well as their outcomes) that do not comply with these requirements shall be considered invalid.

A possibility of transfer of all author's exclusive rights has been expanded to cover copyright (articles 1334, 1235 of the RF Civil Code). Now the author's exclusive rights can be totally alienated from the right-holder (they can also be sold, pawn, given away as a gift). Intellectual non-property right remains non-transferable, they remain with the author for the term of life and are inherited. The author's right to demand compliance with the work use terms is now legislatively stated.

Big changes have happened in the regulation of collective rights management. The new legislation directly states that collective right management organizations should:

- Be built on membership principle (articles 1242 of the RF Civil Code);
- Be accredited by the state (in case when they wish to act on behalf of all their right-holders);
- Accept all willing right-holders as members (in case when the organization wishes to receive state accreditation).

Reduced number of areas that allow for collective right management is another important change. Reprographic copying has been excluded from the list of areas allowing for collective right management on behalf of all right-holders. Now each library or any other owner of a copying machine shall have an agreement directly with the exclusive right-holder for each work to be copied (article 1244 of the RF Civil Code). Preference in the collective management has been given to music rights while authors' and publishers' rights for literary, artistic, photographic and other works remained "in the background".

Responsibility for copyright and related rights violation has been increased up to criminal liability.

Prohibition of full hard copies wasn't such a big news for libraries. Libraries have always had a copy limit of 15-20% of the total volume in full compliance with the law. However, prohibition of any digital copies of works is a serious blow to many library services.

Previously, readers in Russian libraries were allowed to scan portions of works that they later used as quotes (both text and graphic parts). Today this process is prohibited in accordance with the Part IV of the Civil Code. This limitation had a serious impact on document delivery to other organizations and regions. Certainly, as libraries have to perform their main information function, they seek compromise. For instance, they use the legally authorized temporary copy as an intermediate stage in copying process. This way is questionable and legally risky but it allows for information support of specialists working in different Russian regions.

We need to take into account that a considerable amount of publications are not regulated by this law, which makes them clear for copying and scanning. Authors themselves are becoming more and more interested in providing access to their works and grant the right to copy and scan to certain organizations, libraries and even private persons.

Electronic textbooks created as a result of scanning print textbooks and put on university web sites for students to use in the academic process are another problem. Often this has been done without authors permissions so universities now have to rethink this practice, delete the electronic textbooks from their sites or receive authors' permissions.

As is well known, information on non-traditional media (audio and video, CDs, all computer software, including digital copies of literary works) is an object of copyright protection along with other intellectual products. However, here we also have some particular features of this law.

According to article 1273 that allows for reproduction and copy "for private purposes", there are 6 prohibiting paragraphs, 4 of which were inherited from the previous law. Architectural works, databases (or their major parts), computer software programs cannot be copied for private purposes; books and

sheet music cannot be copied completely. Additionally, the article prohibits video recording of audiovisual work public performance (making a screen copy) and copying of films by means of professional equipment not intended for home use. The latter case describes films only but not music works.

Presently, a number of documents are being considered by the State Duma of Russian Federation, including a proposal to make changes to the 'Law on Librarianship' and to Part IV of the Civil Code as relates to digitizing.

Today Russian libraries are forced to seek compromise between the copyright law and the library responsibility as an information source supporting the development of science, education and culture. The main portion of changes introduced in the Civil Code is still raw and unproven and the absence of court precedents and law enforcement practice complicates the situation. These changes will be tested in practice for a long time while Russian libraries already have to live according to the new legislation.

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