

can co-exist within the same framework, may produce results that are unintended, inconsistent and detrimental to certain groups of authors.<sup>75</sup> For the most part, the CCA accommodates FOSS and CC models, promoting the interests of all authors and performing artists notwithstanding their preferred mode of exploitation. With regard to equitable remuneration, while it is not immediately apparent from a reading of the Act's provisions, alternative modes of exploitation have nonetheless been taken into consideration and efforts have been made to ensure that competing visions can co-exist. How this will play out in practice remains to be seen.

## Russia's New Anti-Piracy Law: A Critical Analysis

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<sup>✉</sup> Blocking injunctions; Copyright; Enforcement; Interim injunctions; Online infringement; Russia

*This article analyses Russia's new anti-piracy law aimed at improving online enforcement of copyright and related rights. The article places the new developments in the context of the prior intellectual property rights enforcement regime and Russia's international and constitutional obligations to secure the right to freedom of expression. The author discusses and critically assesses the most important changes introduced by the new law, and draws conclusions about their correlation with freedom of expression, overall effectiveness and the impact on right holders, internet users and the internet industry.*

### Introduction

With the penetration of the internet, online piracy has become one of Russia's landmarks. Russians' habit of accessing culture almost for free, exacerbated by the lack of availability of lawful content and the absence of an

effective intellectual property enforcement system, has made pirates by far the exclusive suppliers of music, video and books.

Despite the efforts of Russia's audiovisual media and publishing industry, the turning point of the reform of Russia's copyright enforcement regime occurred only in 2013. Officially, this move followed Russia's accession to the World Trade Organization. Simultaneously Russia joined the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) without a transition period. In addition, by signing the Intellectual Property Rights Action Plan with the US in December 2012, Russia promised to "support special legislation to combat Internet piracy" and to establish a "fair framework" for the liability of internet services providers.<sup>1</sup>

On May 1, 2015, the second so-called "anti-piracy" law<sup>2</sup> took effect in Russia. This law amends the Federal Law of the Russian Federation "On Information, Information Technologies and Information Security" (the Law on Information) and the Code on Civil Procedure of the Russian Federation. In particular, it affects the provisions on preliminary interim blocking injunctions (provisional measures)<sup>3</sup> for intermediaries introduced by the first "anti-piracy" law<sup>4</sup>, which took effect on August 1, 2013.

It is the opinion of the author that the new law fails to introduce even a hint of a balance between intellectual property rights and conflicting rights, the most important of which in this context is the right to freedom of expression.

### Background

Work on the second anti-piracy law started at around the same time as its predecessor took legal effect. The first of the drafts of the second anti-piracy law was submitted to the State Duma (lower chamber of the Parliament) already on September 17, 2013.<sup>5</sup> The draft, which was adopted, was brought to the State Duma on February 24, 2014.<sup>6</sup>

Unlike the first law, which was signed by the President in less than one month, and took effect in less than two months after it was brought into the State Duma, the second law underwent some public discussion, and is said to have taken account of the internet industry's opinion.

<sup>75</sup> Senftleben, "Copyright and Creators' Interests" (November 2014), pp.13–19, SSRN, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2522855](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2522855) [Accessed July 2, 2015].

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<sup>1</sup> United States–Russian Federation Intellectual Property Rights Action Plan, <https://ustr.gov/sites/default/files/uploads/IPRAActionPlan%2014Dec12%20fin.pdf> [Accessed July 2, 2015].

<sup>2</sup> Federal' nii zakon ot 24.11.2014 No.364-FZ, "O vnesenii izmenenii v Federal' nii zakon 'Ob informatsii, informatsionnikh tekhnologiiakh i o zashchite informatsii' i Grazhdanskii protsessual' nii kodeks Rossiiskoi Federatsii" (Federal Law of November 24, 2014 No.364-FZ "On Amending Federal Law On Information, Information Technologies and Information Security and the Code on Civil Procedure of the Russian Federation"). Official text of the law in Russian available at <http://www.rg.ru/2014/11/27/gpk-dok.html> [Accessed July 2, 2015].

<sup>3</sup> Preliminary interim injunctions were introduced into the Civil Procedure Code exclusively for cases concerning the protection of intellectual property rights to video content by the first anti-piracy law (art.144.1 of the Civil Procedure Code). Such injunctions are granted in ex parte proceeding, even before the lawsuit on the protection of intellectual property rights is brought.

<sup>4</sup> Federal' nii zakon ot 02.07.2013 No.187-FZ, "O vnesenii izmenenii v zakonodatel' nye akty Rossiiskoi Federatsii po voprosam zashchity intellektual' nikh prav v informatsionno-telekommunikatsionnykh setiakh" (Federal Law of July 2, 2013 No.187-FZ, "On amendments to a number of legislative acts of the Russian Federation on the protection of intellectual property rights in information and telecommunication networks"). An unofficial English translation of the law is available at [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=334516](http://www.wipo.int/wipolex/en/text.jsp?file_id=334516) [Accessed July 2, 2015].

<sup>5</sup> Nikita Malevanny, "New Russian Legislation on ISP Liability and Copyright Enforcement" [2014] I.I.C. 212, 218, <http://link.springer.com/article/10.1007%2Fs40319-014-0165-3#page-1> [Accessed July 2, 2015].

<sup>6</sup> Official website of the State Duma of the Russian Federation, <http://www.duma.gov.ru/systems/law/?number=458668-6&sort=date> [Accessed July 2, 2015].

This was indispensable, given that the first anti-piracy law received unprecedented public resistance. Nevertheless, the final version of the law takes account only of the suggestions of the right holders and the Russian Ministry of Culture.<sup>7</sup>

The first anti-piracy law was strongly criticised by the internet industry, the user community and internet and freedom of expression activists.<sup>8</sup> The human rights organisation Article 19 acknowledged that the procedures adopted by the law provide for “some safeguards for freedom of expression”, but raised serious concerns in respect of the way the law will be applied in practice.<sup>9</sup>

The Russian Government was not very responsive to the critique and rather focused on the positive effects of the first anti-piracy law. According to the Russian Ministry of Telecom and Mass Communications, measures introduced by the law proved to be efficient. Within five months of 2013 the number of consumers of paid legal content increased by 30 per cent and grew to eight million people. Within 2014 this number increased by four million. The target of the Ministry is 30 million by 2018.<sup>10</sup> The sources of these statistics are not disclosed.

It remains questionable whether the efficiency of the anti-piracy measures can be evaluated solely by the number of consumers of paid legal content. It can be argued that this number may be influenced, for example, by the increase in availability of such content and its price. Ultimately, it is rather premature to make any conclusions without a proper empirical research.

## Novelties in the copyright and neighbouring rights enforcement system

The new law introduces the following four main changes, which deserve special attention and will be discussed in this article. The law:

1. extends the scope of works rights to which can be protected by preliminary interim injunctions;
2. attempts to make preliminary interim injunctions more targeted;
3. introduces the possibility to block a website with illegal content permanently; and
4. introduces notice and takedown provisions for internet website owners.

To place these novelties in context it is necessary to discuss them in conjunction with the provisions of the first anti-piracy law.

## Definitions

To make the analysis transparent, it is important to clarify the terms it operates. Within the framework of anti-piracy legal provisions, the actors to whom preliminary interim injunctions (*predvaritel'nye obespechitel'nye mery*) are addressed (also referred to in this article as “intermediaries”),<sup>11</sup> include:

- the hosting provider or other person ensuring placement of the information resource in an IT network, including the internet (art.15.2(2)(1) of the Law on Information). “Hosting provider” is defined as a person rendering services on the provision of computing power for the placement of information in the information system, permanently connected to the internet (para.18(2) of the Law on Information). Case law also qualifies internet services providers such as YouTube as hosting providers.<sup>12</sup> For simplicity, the hosting provider and other persons ensuring placement of the information resource in an IT network will be further referred to as the “hosting provider”;
- The network communications provider, rendering services of internet access (internet access provider) (art.15.1(10) of the Law on Information).

The term “internet website owner” is defined as a person who independently and at their own discretion determines the order of use of the internet website, including the procedure for placing of information on such a website (art.2(17) of the Law on Information).

In practice, “internet website owner” is interpreted as the registrant or owner of the domain name. If rights to use the domain name have been transferred by contract to a third party, the latter also qualifies as an internet website owner.

Notably, in a case where identity of the domain name registrant/owner was concealed by a privacy protection services provider (Privacy Protection Service Inc), Moscow City Court equated such a service provider to the internet website owner. In the court’s opinion, by concealing the identity of the domain name owner, the

<sup>7</sup> Anastasiia Golitsina, “Antipiratskii zakon razreshit shtrafovats’ pol’zovatelei” (“Anti-piracy law will allow to fine users”) (June 30, 2014), *Vedomosti*, <http://www.vedomosti.ru/technology/articles/2014/06/30/antipiratskij-zakon-razreshit-shtrafovats-polzovatelej> [Accessed July 2, 2015].

<sup>8</sup> Malevanny, “New Russian Legislation on ISP Liability and Copyright Enforcement” [2014] I.I.C 212; Ilya Kiriya and Elena Sherstoboeva, “Russian Media Piracy in the Context of Censoring Practices” [2015] I.J.O.C. 839, 840, <http://ijoc.org/index.php/ijoc/article/viewFile/3743/1343> [Accessed July 2, 2015].

<sup>9</sup> Article 19, “Russia: Federal law on amendments of several acts on the protection of intellectual property rights in information and telecommunication networks”, <http://www.article19.org/data/files/medialibrary/37202/Russia%E2%80%99s-new-legislation-on-online-copyright-enforcement-.pdf> [Accessed July 2, 2015].

<sup>10</sup> Official website of Ministry of Telecom and Mass Communications of the Russian Federation <http://www.minsvyaz.ru/ru/activity/directions/409/> [Accessed July 2, 2015].

<sup>11</sup> Civil Code of the Russian Federation (Pt 4) of December 18, 2006, No.230-FZ, which codifies legal provisions on intellectual property rights, uses the term “information intermediaries”. According to the definition in the Civil Code, the term implies, in essence, the same actors. However, the definition of “information intermediaries” in the Civil Code is not aligned with the Law on Information. In particular, the Civil Code does not employ such terms as “hosting provider” or “network communications provider”.

<sup>12</sup> Reshenie (Resolution) of Moscow City Court of December 1, 2014 No.3-218/2014.

provider undertook the risk of unfavourable consequences of such behaviour, and in particular the risk of legal responsibility.<sup>13</sup>

### ***Broadening the scope of protected works***

The most far-reaching amendment introduced by the second anti-piracy law is a substantial broadening of the scope of works protected by copyright and neighbouring rights, the online infringement of rights to which may lead to preliminary interim injunctions against intermediaries.

The first anti-piracy law concerned only online infringement of exclusive rights to films, including movies and TV films, and information necessary for obtaining these works via information and telecommunication networks, including the internet (video content). The new law covers (1) all subject-matters of copyright and neighbouring rights, and (2) information necessary for obtaining them via information and telecommunication networks, including the internet, except for photographs and works created by methods similar to photography (together in this article referred to as “illegal content”).

It is unclear why the legislator privileged copyright and related right holders (right holders) of video content earlier, and discriminates against right holders of photographs in the new law. It is the author’s opinion that this is a gradual process of trial and error. Quite possibly, the inequality of the treatment of photographs will be rectified by further amendments to the law. In March 2015 the President of the Federal Assembly (Russian Parliament), Sergei Naryshkin, noted that, surely, in the course of application of the second anti-piracy law new problematic areas would be identified, and new amendments would have to be introduced into existing legislation.<sup>14</sup>

The main risk inherent to the definition of the subject-matter covered by anti-piracy laws lies in the all-embracing formula “information necessary for obtaining [the works] via information and telecommunication networks, including the internet”. It seems to be settled case law that such information includes torrent files.<sup>15</sup> Whether this formula also includes internet links remains unclear. This creates a lot of uncertainty for the internet industry.

### ***An attempt to make preliminary interim injunctions more targeted***

The first anti-piracy law gave right holders of video content an opportunity to seek preliminary interim injunctions against intermediaries in the case of online

infringement of their rights, without suing the infringer in the first place. This type of injunction was unknown to Russian civil procedural law and was introduced exclusively for these types of cases.

Even though a specialised intellectual property rights court was established in Russia earlier in 2013, the first anti-piracy law gave exclusive jurisdiction to grant preliminary interim injunctions to Moscow City Court (Mosgorsud).<sup>16</sup> Mosgorsud also obtained exclusive jurisdiction to consider subsequent lawsuits on merits in the first and appellate instances (art.26(3) of the Code on Civil Procedure).

The new law extends the exclusive jurisdiction of Mosgorsud to the same types of cases concerning the broadened scope of subject-matter capable of protection by preliminary interim injunctions. Thus the idea of granting these powers to the specialised intellectual property rights court, considered in the course of adoption of the law, was finally given up.

The whole idea of granting exclusive jurisdiction in cases of online infringement of intellectual property rights to Mosgorsud instead of the specialised court is quite striking, as rightly noted by Nikita Malevanny.<sup>17</sup> However, after this idea has been implemented with respect to video content, it would be illogical to grant jurisdiction for the same types of cases in relation to other types of content to a different court.

Mosgorsud has to decide on introducing a preliminary interim injunction *ex parte* on the basis of the right holder’s application within one day. The court’s decision granting an injunction takes effect immediately. The court is not required to, and normally does not, specify the exact blocking measures. Since the enforcement of preliminary interim injunctions is carried out by a governmental agency—Federal service for supervision of communications, information technology and mass media (Roskomnadzor)—injunctions are addressed not only to intermediaries, but also to Roskomnadzor.<sup>18</sup> Mosgorsud consistently formulates the injunction as follows: “to stop provision of technical conditions, ensuring placement, distribution and other use” of protected subject-matter.

Having obtained an injunction, the right holder is obliged to bring a lawsuit on the protection of its exclusive rights within a maximum of 15 days. Otherwise, the injunction is revoked by Mosgorsud at its own initiative. However, the whole injunctions enforcement procedure takes no more than 10 days. Thus, access to allegedly illegal content can be limited for at least five days before court proceedings on the merits even start. Having brought a lawsuit, the right holder can request an extension of the preliminary interim injunction as an interlocutory injunction of the lawsuit.

<sup>13</sup> Reshenie (Resolution) of Moscow City Court of October 6, 2014 No.3-187/2014.

<sup>14</sup> Olga Churakova, “Antipiratskoe zakonodatel’stvo mozhet byt’ skorrektirovano” (“Anti-piracy legislation may be corrected”) (March 20, 2015), *Vedomosti*, <http://www.vedomosti.ru/politics/articles/2015/03/20/antipiratskoe-zakonodatelstvo-mozhet-bit-skorrektirovano> [Accessed July 2, 2015].

<sup>15</sup> Reshenie (Resolution) of Moscow City Court of May 12, 2014 No.3-65/2014; Reshenie (Resolution) of Moscow City Court of December 25, 2013 No.3-184/2013.

<sup>16</sup> Moscow City Court is a court of general jurisdiction. The intellectual property rights court (Sud po intellektual’nym pravam) is a specialised court within the system of commercial courts.

<sup>17</sup> Malevanny, “New Russian Legislation on ISP Liability and Copyright Enforcement” [2014] I.I.C. 212, 215.

<sup>18</sup> As a rule Roskomnadzor is also involved as a third party in the subsequent proceedings on merits.

Despite the recommendations of Article 19<sup>19</sup> and the expectations of the internet industry, the second anti-piracy law reasserts the previously introduced intellectual property rights enforcement regime. It leaves intact the approach that gives Mosgorsud *carte blanche* in granting preliminary interim injunctions without considering any other conflicting rights (such as the right to freedom of expression or the right to conduct business), except for the ones of the right holder, and intermediaries—*carte blanche* in choosing the means of limiting access to illegal content.

The main provisions giving grounds to argue that the new anti-piracy law, as compared with the previous one, makes interim preliminary injunctions more targeted and respectful of the rights of Internet website owners and users, are those that:

- oblige the hosting provider and the internet website owner to take measures on “limitation of access” to illegal content, instead of taking measures on its deletion (art.15.2(2)(2) of the Law on Information); and, most importantly
- prescribe that internet access providers limit access *only to illegal content* (emphasis added). Access to the website as a whole can be limited only if limitation of access to illegal content is not technically possible (art.15.2(7) of the Law on Information).

Being overall sufficiently vague, the latter provision seems to imply the preferability of URL blocking to the general IP blocking commonly practised by Russian intermediaries. Ideally, this would provide safeguards against the blocking of legal content located on the same website as well as protection of rights of innocent owners of websites which share the IP address with the infringing website and thus can be affected by IP blocking.

Unfortunately, this is nothing more than a Potemkin village. First, the “not technically possible” criterion is too ambiguous. Thus, its effectiveness depends solely on its future interpretation. In the opinion of the author, it can only be workable if interpreted objectively (as not reasonably possible), as compared with a subjective interpretation (as not possible for this particular internet access provider). Secondly, the law does not provide for any negative consequences for ignoring this provision. Therefore, the new law fails to effectively address the issue of wholesale and over-blocking.

Measures producing arbitrary effects and leading to wholesale blocking affecting innocent websites were explicitly declared contrary to the right to freedom of

expression by the European Court of Human Rights.<sup>20</sup> With respect to the first anti-piracy law, Article 19 has already concluded that, insofar as it allows wholesale blocking and does not provide safeguards against the arbitrary application of blocking measures, it does not conform to international standards of freedom of expression.<sup>21</sup>

Even though the right to freedom of expression is also guaranteed by art.29 of the Constitution of the Russian Federation,<sup>22</sup> the Russian Constitutional Court avoided consideration of the unconstitutionality of legal provisions leading to over-blocking. A complaint was filed by the owner of an internet library whose website was blocked by IP address, together with a website containing prohibited information promoting the use of drugs.

Unlike the European Court of Human Rights, the Russian Constitutional Court concluded that the rights of the innocent website owner were, in essence, affected not by the legal provisions permitting the limiting of access to the IP address, but rather by inappropriate actions (omissions) of the innocent website owner’s hosting provision. Thus, protection of his right to distribute information should be carried out, in the first place, in the relationship with the hosting provider. In other words, according to the Constitutional Court this is a contract law, not a human rights, issue.

The new law also extends the provision on the exemption from liability to users and right holders for limiting access to information and/or limiting its distribution in accordance with the anti-piracy law (art.17(4) of the Law on Information). According to the first anti-piracy law, this applied to internet website owners and hosting providers. From May 1, 2015 internet access providers have also enjoyed this safe harbour.

Thus, effectively, striking a fair balance between such conflicting rights as (1) copyright and related rights; (2) the freedom to conduct a business (guaranteed by art.34 of the Russian Constitution); and (3) the freedom of information of internet users (guaranteed by art.29 of the Russian Constitution), the importance of which was recently underscored by CJEU in case *UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH*,<sup>23</sup> does not seem to be an issue in Russia. Russian internet users do not obtain a locus standi before a Russian court, even if the method of blocking illegal content chosen by the intermediary has violated their rights.

<sup>19</sup> Article 19, “Russia: Federal law on amendments of several acts on the protection of intellectual property rights in information and telecommunication networks”, p.14, <http://www.article19.org/data/files/medialibrary/37202/Russia%E2%80%99s-new-legislation-on-online-copyright-enforcement-.pdf> [Accessed July 2, 2015].

<sup>20</sup> *Ahmet Yildirim v Turkey* (31111/10), December 18, 2012 at [68]. See Article 19, “Russia: Federal law on amendments of several acts on the protection of intellectual property rights in information and telecommunication networks”, pp.3, 14, <http://www.article19.org/data/files/medialibrary/37202/Russia%E2%80%99s-new-legislation-on-online-copyright-enforcement-.pdf> [Accessed July 2, 2015].

<sup>21</sup> Article 19, “Russia: Federal law on amendments of several acts on the protection of intellectual property rights in information and telecommunication networks”, <http://www.article19.org/data/files/medialibrary/37202/Russia%E2%80%99s-new-legislation-on-online-copyright-enforcement-.pdf> [Accessed July 2, 2015].

<sup>22</sup> An unofficial translation of the Constitution of the Russian Federation of December 12, 1993 is available at <http://www.constitution.ru/en/10003000-03.htm> [Accessed July 2, 2015].

<sup>23</sup> *UPC Telekabel Wien GmbH v Constantin Film Verleih GmbH* (C-314/12) EU:C:2014:192; [2014] E.C.D.R. 12 at [47].

### ***Permanent blocking of internet websites***

Case law on the application of the first anti-piracy law shows that in many cases illegal content is deleted from the website targeted by the preliminary interim injunctions before the hearing of the case on merits in Mosgorsud. This fact does not prevent Mosgorsud from granting the right holder a permanent injunction in the merits proceedings against the hosting provider and/or internet website owner with respect to illegal content at issue. Such injunctions clearly do not prevent website owners from retaining other illegal content not affected by the ruling on the website at issue, or posting additional illegal content.

The second anti-piracy law introduces provisions supposedly aimed at putting an end to such practices. According to the new law, Mosgorsud may grant the right holder permanent limitation of access to an internet website on which illegal content (recall that this may comprise merely a hyperlink) was placed repeatedly and illegally (art.26(3) of the Code on Civil Procedure, art.15.6 of the Law on Information).

Mosgorsud is required to consider such permanent blocking of a website irrespective of the right holder's request, if: (1) Mosgorsud has previously granted a preliminary injunction with respect to this website; (2) the consequent right holder's infringement lawsuit was sustained by Mosgorsud and the judgment took legal effect; (3) the same right holder brings another infringement lawsuit with respect to the same website. The first and the second infringement lawsuits may concern different content. It is irrelevant whether the first judgment has been implemented or not.

Permanent limitation of access to a website should be implemented by the internet access provider within 24 hours after receiving a request from Roskomnadzor. The law explicitly states that revocation of such limitation of access to a website is not allowed (art.15.6(2) of the Law on Information).

It has already been mentioned above that wholesale website blocking measures are as such not in compliance with international standards of freedom of expression. Moreover, the provisions on permanent blocking measures do not elaborate on the methods of blocking and do not provide for any standard of deliberation to be applied by Mosgorsud before granting such measures in order to enhance their compliance with the test of necessity in a democratic society (art.10 of the European Convention on Human Rights)<sup>24</sup> and the test of proportionality of limitation of human rights (art.55(3) of the Russian Constitution).

Even though this will not rectify the deficiency of the legal provisions, it is possible that the practice of their application will be more nuanced than their wording. Before the new law took effect, Mosgorsud once (to the knowledge of the author) resolved a lawsuit seeking to

prohibit the use of the whole website containing illegal content by banning access to and distribution of information on this website.

Disregarding the questionable legal grounds of the right holders for such a claim, the argumentation of Mosgorsud was remarkable. Rejecting the claim for permanent limitation of access to the website, Mosgorsud took into account the following factors: (1) the overall volume of the content on the website, which greatly exceeded the volume of information affecting the rights of the claimants; (2) the majority of content on the website, which was used lawfully; (3) the disproportionality of the legal consequences of prohibition to use the website to the copyright infringement at issue.<sup>25</sup>

Although Mosgorsud is not bound by its own decisions, there is hope that the consequences of these provisions will not be as serious as predicted.

### ***Notice and takedown procedure for internet website owners***

Another novelty introduced by the second anti-piracy law is the notice and takedown procedure for internet website owners. From May 1, 2015 each website owner must communicate on the website its name, address and email address, or create a website contact form, so that the right holder can send an electronic cease and desist letter (art.10(2) of the Law on Information). The law also regulates the content of such letter. The website owner must delete illegal content from its website within three days, provided that the right holder supplies it with all necessary information specified by law (art.15.7 of the Law on Information).

Although this, in the author's opinion, is generally a positive development, it will hardly be an effective safeguard against abuse of the right to apply for preliminary interim injunctions. Such abuse can be driven, for example, by intentions of censorship or damaging a competitor's business and reputation. The law does not require the right holder to send this cease and desist letter prior to applying for preliminary interim injunctions, thus making the whole procedure toothless.

It could be argued that the requirement for internet website owners to identify themselves would solve the problem of locating the infringer. However, this provision is not backed by enforcement. Therefore, it is unlikely that it will be respected by those specialising in the distribution of pirated content.

## **Conclusion**

In the author's opinion, the new law, just like its predecessor, will hardly affect internet piracy in Russia. It is not a secret that both providers and consumers of pirated content are well equipped to circumvent the injunctions.

<sup>24</sup> Russia ratified the European Convention on Human Rights in 1998.

<sup>25</sup> Reshenie (Resolution) of Moscow City Court of June 25, 2014, No.3-76/2014.

Moreover, as rightly observed by Malevanny, Kiriya and Sherstoboeva, public disapproval of the anti-piracy enforcement measures,<sup>26</sup> coupled with social acceptance of obtaining cultural goods for free,<sup>27</sup> are very likely to limit substantially the law's effectiveness. Piracy in Russia is a cultural phenomenon rather than an economic or legal issue.<sup>28</sup> Hence, legal means are not best placed to eliminate it.

Thus, the benefits (if any at all) to the right holders whose interests ultimately captured the provisions of both the first and second anti-piracy laws will not overcome the overall negative effects of these laws on the right of internet users to seek and receive information, and the right of innocent website owners to conduct business and exercise freedom of expression. The concerns and recommendations of Article 19 with respect to the first anti-piracy law still hold.<sup>29</sup>

It still remains to be seen whether Russia's efforts in this field will be appreciated by the US, which is the main driving force behind TRIPS. Russia still remains on the US Trade Representative Priority Watch List published

in April 2015. The US Trade Representative acknowledges the evolution of Russia's anti-piracy legislation, but finds its impact "unclear".<sup>30</sup>

The first month of operation of the second anti-piracy law was not marked by a flurry of right holders' claims to limit access to new types of illegal content. According to the publicly available information, Mosgorsud granted preliminary interim injunctions twice to music right holders against the popular websites Rutracker.org and Pler.com,<sup>31</sup> and once to a right holder of books.<sup>32</sup>

The "shock therapy" anti-piracy measures allowing the permanent blocking of domain names seems to have brought the first "human rights proof" fruits, favourable for right holders. Just before the relevant provisions took legal effect, some owners of popular pirate websites contacted right holders offering collaboration in legalising pirated content.<sup>33</sup> Shortly afterwards, one of the major Russian video content services providers, Rutube, announced their arrangements with pirates, whereby pirates cease to provide illegal content in exchange for the right to use Rutube's video player with legal content.<sup>34</sup>

<sup>26</sup> Malevanny, "New Russian Legislation on ISP Liability and Copyright Enforcement" [2014] I.I.C. 212, 216–217, 220.

<sup>27</sup> Kiriya and Sherstoboeva, "Russian Media Piracy in the Context of Censoring Practices" [2015] I.J.O.C. 839, 847.

<sup>28</sup> Kiriya and Sherstoboeva, "Russian Media Piracy in the Context of Censoring Practices" [2015] I.J.O.C. 839, 840.

<sup>29</sup> Article 19, "Russia: Federal law on amendments of several acts on the protection of intellectual property rights in information and telecommunication networks", <http://www.article19.org/data/files/medialibrary/37202/Russia%E2%80%99s-new-legislation-on-online-copyright-enforcement-.pdf> [Accessed July 2, 2015].

<sup>30</sup> 2015 Special 301 Report of the United States Trade Representative, p.54, <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf> [Accessed July 2, 2015].

<sup>31</sup> Anastasiia Golitsina, "Rutracker i Pler.com mogut zablokirovat' navsegda" ("Rutracker and Pler.com can be blocked forever") (May 20, 2015), *Vedomosti*, <http://www.vedomosti.ru/technology/articles/2015/05/20/rutracker-i-pleercom-mogut-zakrit-navsegda> [Accessed July 2, 2015].

<sup>32</sup> "Roskomnadzor v pervye primenil 'antipiratskii' zakon k knige" ("Roskomnadzor applied the 'anti-piracy' law to a book for the first time") (May 28, 2015), *Interfax.ru*, <http://www.interfax.ru/russia/444323> [Accessed July 2, 2015].

<sup>33</sup> Anastasiia Golitsina, "Piratskie saity khotiat sotrudnicat' s pravoobladateliymi" ("Pirate websites want to collaborate with right holders"), *Vedomosti* (April 23, 2015), <http://www.vedomosti.ru/technology/articles/2015/04/24/piratskie-saiti-hotyat-sotrudnicat-s-pravoobladatelyami> [Accessed July 14, 2015].

<sup>34</sup> Dar'ia Luganskaia and Elizaveta Sarganova, "Pod strakhom pozhiznennoi blokirovki: kak antipiratskii zakon izmenil Runet" ("Under penalty of permanent blocking: how anti-piracy law changed Runet"), *Rbc.ru* (May 15, 2015), [http://top.rbc.ru/technology\\_and\\_media/15/05/2015/555496aa9a7947b8f1ebe12c](http://top.rbc.ru/technology_and_media/15/05/2015/555496aa9a7947b8f1ebe12c) [Accessed July 14, 2015].