

The IPReport
Summer 2010

The Coalition for Intellectual Property Rights (CIPR) is pleased to offer select updates on pertinent IPR developments in Russia, other countries in the region and around the globe. Please let us know if you have questions or suggestions.

RUSSIA

Customs Union Officially in Force - The Customs Union between Russia, Belarus and Kazakhstan effectively came into force on July 6 after Belarus finally ratified the new Customs Union customs code after final agreements on outstanding issues were reached by the member states. Confusion surrounding the implementation and development of new customs laws for the Union still remains, however. Major international companies that trade extensively in the Custom Union zone have reported to CIPR that they have not received any guidance from the national customs services on how to comply with the new border requirements. A key question that concerns all rights holders is how intellectual property rights will be protected in the Customs Union. So far, the answer remains unclear. Kazakhstan, Russia and Belarus all have their own trademark registers for customs. A tri-country working group is in the process of creating a larger Customs Union trademark register, which is expected to be in operation only in 2012. During this interim period, it is unclear on what, if any, level of cooperation exists between the three countries to interdict against counterfeits and parallel imports.

Another issue of concern is parallel imports. The exhaustion of IP rights standard to be used in the Customs Union is also undecided. Belarus and Russia use a national exhaustion of rights standard while Kazakhstan uses an international standard. In Russia, the debate on parallel imports is raging. The courts have issued conflicting decisions on whether to allow parallel imports, which will likely only be decided by the Russian Supreme Arbitration Court. Supporters of parallel imports have been lobbying the Russian government to amend IP laws to introduce an international standard of IP rights exhaustion and the opponents, including CIPR, have been advocating against such a change in law, arguing that it would increase the flow of fake and substandard goods into the Russian marketplace. The legal position of the Customs Union on parallel imports will be provided in its customs code. It seems unlikely that the exhaustion of rights issue in the Customs Union will be decided before it is resolved in Russia. CIPR will continue to monitor these developments.

WTO Accession Progress – On Friday, October 1st, the United States and Russia announced that they had concluded a bilateral agreement on remaining WTO accession requirements. The talks will continue at the multilateral level and cap off a period of intense negotiations this summer. A week prior to President Medvedev's visit to the U.S. in June, Russia's lead WTO negotiator Maxim Medvedkov and his team came to Washington to meet with their counterparts at the Office of the U.S. Trade Representative

to focus on encryption and state-owned enterprises (SOEs) in advance of the two presidents' meeting. A key agreement from the Obama-Medvedev Summit was that September 30th became the deadline for completing all outstanding WTO accessions, which included all of the IPR issues set forth in the IP Side Letter from the U.S.-Russia Bilateral Agreement in 2006. In late July, the U.S.-Russia IP Working Group met in Moscow. In open and closed briefing sessions with members of the U.S. negotiating team, CIPR was informed that Russia has committed to enacting all outstanding IP legislation by September 30th, including amendments to Part IV of the Civil Code, ex officio language in the customs code and data exclusivity protections for the developers of innovative pharmaceutical medicines. What remains unclear in summer and now is what level of enforcement of IP protections will be considered enough for the WTO member states.

Another factor complicating Russia's WTO accession process is the Customs Union. The creation of the Customs Union changed Russia's customs legislation and policy, meaning that now approximately two-thirds of the WTO Working Party report must be rewritten to reflect these changes and receive WTO approval. This is a massive undertaking, which the U.S. has offered its technical assistance. The challenge for Russia is to demonstrate its commitment to meeting its WTO accession requirements by completing a significant portion of its outstanding obligations and making good faith efforts to make significant progress on the balance of its obligations by September 30.

Trademark Registrations Increase in Russia - According to a new report by Thomson Reuters that includes commentary from Eugene A. Arievich, brand protection in Russia is increasing. Between 2004 and 2009, Russian trademark registrations increased by 46%, which is the largest increase in any major trademark-protecting country during that period, including the United States. Over 36,000 trademarks were registered in Russia in 2009 alone.

UKRAINE

According to a recent survey commissioned by the Business Software Alliance, Ukraine has a very low rate of intellectual property protections, especially software copyright protection. The survey indicates approximately 85% of software in Ukraine is pirated – one of the highest rates in Europe and the ninth highest globally. This piracy results in losses of \$260 million in tax revenue opportunity. The report states that IP protections in Ukraine have weakened since 2005 due to poor enforcement and a perception that piracy is not a crime. For more information, click here: <http://www.usubc.org/site/recent-news/intellectual-property-rights-ipr-protection-very-low-in-ukraine>

CENTRAL ASIA

U.S./EU business groups Actively Working to Improve IPR protection in Kazakhstan - CIPR has been actively involved in shaping the IPR policy agenda of the

two major foreign business associations in Kazakhstan. As part of the Foreign Investors Working Group of the American Chamber of Commerce in Kazakhstan (AmCham), CIPR has contributed insights from our experience in Russia and the CIS to IP policy recommendations to be presented by the AmCham to the Government of Kazakhstan. That paper specifically noted the IP and product quality problems associated with allowing parallel imports into the marketplace under existing law, how the tripartite Customs Union raises additional concerns, and suggested changes to relevant legislation. The paper is currently under review by the board of AmCham (Kazakhstan) and will be submitted to the government in September.

Similarly, CIPR representatives have joined with the European Business Association (EuroBak) to advocate for better IP laws and enforcement practices. In cooperation with the legal subcommittee of the EuroBAK FMCG working group, CIPR met with the Minister of Innovation and New Technologies to discuss outstanding IP issues and their relation to economic growth. It was agreed that EuroBAK would prepare commentary and recommendations on a host of issues. CIPR will contribute to the development of Eurobak's IP policy recommendations and work with the subcommittee to reach a consensus on all IP policy priorities that will reflect international standards of law and practice.

International IPR Cooperation - USAID officials in Kazakhstan organized a training seminar for a specialized economic court in the Pavlodar oblast that was aimed at familiarizing the judges with international intellectual property rights, best practices and their implementation in Kazakhstan. Some of the issues discussed during the seminar included the necessity of improving Kazakhstan's IP legislation and ratifying several international IPR conventions. An additional important issue discussed was the systematization of the usage of IPR legislation by Kazakhstan courts. Specialists from the USAID project on judicial education intend to hold similar seminars in all of Kazakhstan's regional courts.

In June, the Head of the National Patent and Registration Institute of Finland traveled to Kazakhstan and met with Kazakhstani officials from the National Patent Institute. The purpose of the visit was to discuss possibilities for cooperation between the two countries on IP issues.

IP Trainings in Kazakhstan – In June, the Kazakhstan Association of Entrepreneurs hosted a seminar on copyright and allied rights for directors of TV channels and radio stations, restaurateurs, owners of fitness centers, hotels, entertainment and shopping centers in Astana. The aim of the seminar was to explain and educate participants on the Law on Copyright and Allied Rights.

Rights holders discussed strategies for maximizing the value of their IP at the training workshop "Evaluation and Commercialization of Industrial Property and the Commercial Value of Trademarks". The event was sponsored by the National Institute of Intellectual Property within the Committee on Intellectual Property Rights of the Ministry of Justice of the Republic of Kazakhstan.

The Taraz regional Committee on Intellectual Property Rights and the Kazakhstani Ministry of Justice held a seminar on protections for copyright and related rights. The seminar was held in the regional capitol, Taraz, and attended by representatives from the regional centers of the Intellectual Property Rights Justice Department, the National Democratic Party Nur-Otan and several regional governments.

IP Enforcement in Kazakhstan – The Kazakhstani Ministry of Justice developed and approved a plan for enforcing laws against the production and sale of counterfeits through the end of 2010. The plan includes ongoing cooperation between different law enforcement organizations from all regions of Kazakhstan. In other developments, in June, law enforcement authorities in Almaty destroyed 38,332 units of counterfeit DVDs and CD-ROMs, totaling more than 12 million tenge in value, or \$81,500.

Kyrgyzstan update - Kyrgyzpatent and the State Customs Service adopted an inter-ministerial action plan on cooperation on intellectual property rights for 2010-2011. The plan provides for joint efforts to identify and interdict against methods used to smuggle counterfeit products and goods containing intellectual property into Kyrgyzstan, such as more cooperation between customs officers and rights holders to seize counterfeit products during customs clearance checks and releasing seizure data to mass media to promote public awareness of the problems associated with the trade in fake products. According to international practice, more than 70 percent of counterfeit goods are intercepted during import into a country. The focus of the inter-agency plan is to bring the effectiveness of Kyrgyzstan's border controls in line with international standards.

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