



# CIPReport

Coalition for Intellectual Property Rights  
**WWW.CIPR.ORG**

Fighting counterfeits and protecting intellectual rights in the Former Soviet Union and Baltic States.

Friday, November 4, 2005

Volume 1 Issue 5

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## US-Russia IPR Bilateral Talks Progressing

Russia's mixed record of intellectual property rights (IPR) protection and enforcement remains the most significant obstacles in its negotiations to join the WTO. On 13-14 October the US-Russia Bilateral IPR Working Group met in Moscow to continue negotiations to resolve outstanding issues to meet the requirements of the TRIPS Agreement.

As expected, copyright protection, particularly for optical disks, and counterfeit pharmaceuticals were the major focus of the US-Russia Bilateral IPR Working Group meeting. Prior to the talks, CIPR briefed the US delegation on important trademark protections issues, including concerns on the application of the law regarding the requirements for attaining well-known trademark status in Russia, steps to reduce bad faith trademark registrations through enacting formal opposition procedures, and to amend laws to conform to the March 2005 WTO Panel decision on geographic indications. CIPR also discussed these issues with Rospatent.

"The US-Russia Bilateral IPR Working Group set the stage for important follow-up actions by both countries to address key trademark and copyright protection issues," said CIPR CEO Peter B. Necarsulmer.

The US delegation reported follow-up actions from the talks would continue through the balance of the year and into 2006. CIPR will continue to work with the US decision-makers and their Russian counterparts during this period.

On Monday, 17 October, at a meeting of the Foreign Investors Advisory Council, Minister of Economic Development and Trade German Gref told investors Russia is making good progress on IPR protection, but more needs to be done, especially in enforcement. He hopes all outstanding WTO issues will be resolved by the end of the first quarter of 2006.

The pressure on the Russian Government to fill gaps in IP legislation and improve enforcement has been intense. The Russian government has responded to concerns about deficiencies in the RF Administrative and Customs Codes, as well as the Law on Trademarks, with a flurry of legislative amendments.

On 2 May 2005, the Presidential Administration passed an Order to establish a working group to draft part four of the Civil Code before the end of the year, which will establish new, unified provisions on industrial property and copyright laws. The working group has met twice weekly since 6 September and includes some of Russia's most prominent legal experts.

The working group will release its first draft of part four of the Civil Code later this year and the RF government will organize hearings to receive public comments on the proposal. CIPR will monitor this process and participate in the public hearings. We will update CIPR members on all major developments.

Currently, Russian trademark law does not provide for the refusal of a GI if it conflicts with a prior existing trademark. A March 2005 WTO Panel Report requires that geographic indications that conflict with prior trademarks must be denied protection.

CIPR is advocating for the enactment of "First in time, First in right." amendments to bring the RF Law on Trademarks and Appellations of Origin into compliance with Article 16.1 of TRIPS, and will lobby for amendments in the State Duma by the end of the year.

A major breakthrough to help customs officials stop the flow of counterfeit goods entering and leaving Russia was recently achieved. CIPR is happy to report that our work over the past three years to add a provision for "ex officio" to the RF Customs Code has reached a new stage. The Federal Customs Service, which had previously opposed this change, has altered its official position and is now in favor of the amendment, which provides customs agencies with the power to act on their own initiative (ex officio) and suspend the release of goods if intellectual property rights are being violated. CIPR will work to get the draft amendment adopted in the nearest future.

Since last year, CIPR has been working with its State Duma allies to pass amendments to Article 180 of the RF Criminal Code to modify the requirements for a trademark owner to win a conviction against a counterfeiter. This amendment will be discussed on 15 November meeting of the RF Governmental Commission to Prevent Infringements in the Sphere of IP. The current language in Article

180 requires proof that a counterfeiter has repeatedly committed the violation and has caused substantial financial damage to the plaintiff. The proposed amendments would remove the requirement to prove a counterfeiter is a repeat offender and sets a minimum value for the income received by the violator, an amount that has yet to be determined. The amendments are gaining legislative supporters and we hope it will be passed before the end of the year.

CIPR will continue provide results of US-Russia bilateral negotiations on IPR and provide regular updates on legislative and policy developments, and our work with Russian government officials to improve Russia's IP regime.



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## Ukraine Celebrates as USTR Lifts Trade Sanctions



IP Conference in Ukraine, Alushta on September 6, 2005

*From left to right:*  
Mr. Valentyn Chebotaryov, Deputy Chairman of the State Department of Intellectual Property; Mr. Mykola Paladiy, Chairman of the State Department of Intellectual Property; Mr. Johan Amand — representative of the European Patent Bureau

In Ukraine, intellectual property right protection and enforcement has become a priority for the Government as it seeks to become more integrated into the West. Ukraine's goal of WTO accession has been a major driver for IP legislative and regulatory reform.

The joint efforts of the Ukrainian Government and the business community, including CIPR, have recently resulted in the adoption of essential amendments to the Optical Discs Law by the Ukrainian Parliament. The amendments, which came into force on August 2<sup>nd</sup>, 2005, more strictly regulates optical disc production, its exporting, and importing, trade, and turnover of disc production facilities.



Mr. Mykola Paladiy, Chairman of the State Department of Intellectual Property

In recognition of the Ukrainian Government's efforts to improve its protection of intellectual property rights (IPR), on August 31 the US Trade Representative (USTR) announced the lifting of 100% tariff sanctions on mineral fertilizers, refrigerator equipment, textiles, shoes, metallurgic products and other goods from Ukraine.



Mr. Yossifov, representative of the World Intellectual Property Organization

The US imposed the sanctions on Ukraine in January 2002, after USTR designated Ukraine as a "Priority Foreign Country" in the U.S. government's "Special 301 Process" in 2001 due to the country's failure to pass new legislation on intellectual property rights. At the time, USTR claimed that Ukraine was the largest producer and exporter of pirated optical media,

such as CDs, DVDs and CD-ROMs, in Europe.

Recent CIPR activities in Ukraine have concentrated on improving legislation and enforcement capacities in optical disc production and turnover. Serhiy Movchan of CIPR Ukraine, hailed the lifting of sanctions as the result of the, "dedication of government as well as business to protecting intellectual property." Movchan also praised the Ukrainian government for, "the commitment and willingness to take decisive action to bring the country up to international IPR standards."

USTR will also note any future progress in Ukraine when it conducts a Special 301 Out-of-Cycle Review (OCR). This report will focus on Ukraine's IPR enforcement and consider the country's status as a Priority Foreign Country and its eligibility for Generalized System of Preferences benefits.



Mr. Amond, representative of the European Patent Bureau

The newly passed piece of legislation will bring Ukraine's intellectual property legislation in line with TRIPS standards and may be a significant step forward for Ukraine on its WTO accession aspirations," said Serhiy Movchan, Ukraine's representative of the Coalition for Intellectual Property Rights (CIPR). "President Victor Yuschenko has made WTO accession for Ukraine a major government priority. We look forward to seeing a number of significant improvements in IPR protection and enforcement in the near future as part of the Government's work to achieve this goal."



"Court Hearing on Violation of Intellectual Property Rights", a seminar organized in the framework of IP Conference in Alushta.  
From left to right: Yulia Semenyi, Volodymyr Andriyenko, Bohdan Lvov, Valentyn Paliy, Dmytro Kartushin, Anton Koval.

Photo is a courtesy of the Intellectual Property Magazine, Ukraine.



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## IPR in EU-Russia relations: a Window of Opportunity?

*"What is the market access agenda we need to pursue bilaterally as well as multilaterally. First, we desperately need better recognition of intellectual property rights (IPRs) and an improved IPR enforcement. This is key to Europe's position in the knowledge economy." <sup>1</sup>*

— Peter Mandelson, EU Trade Commissioner



Peter Mandelson, EU Trade Commissioner

As Trade Commissioner Peter Mandelson made clear in a recent speech on "Europe's global trading challenge and the future of free trade agreements," recognition of intellectual property rights and improved enforcement are key issues for the EU. IPR is a very important topic on the trade agenda for the Commission generally and is important to the relationship between the EU, Russia and Ukraine.

The recent EU-Russia summit in London involving the European Commission, the current and incoming EU presidency and the Russian Government was seen as an opportunity to strengthen the relationship between the two groups. Discussions at the Summit focused on the Four Economic spaces, covering economic integration, freedom and justice, external security and research, and education. However, the summit talks were dominated by discussions on energy and visa issues more than on IPR. Does this mean there is no current window of opportunity for IPR in EU-Russia relations?



EU-Russia summit in London, United Kingdom, 4 October 2005

Russia is one of the EU's largest trading partners and, as its biggest neighbor, is an important strategic partner. With this in mind, it is not a big surprise that the EU is supportive of Russia's bid for WTO membership. On behalf of the EU, the European Commission, led by DG External Relations, is currently negotiating the conditions under which it can support Moscow's ambitions.

An obvious condition for EU support is Russian compliance with the TRIPS agreement. However, the EC currently has no concrete objections to Russia's IP regime and its accordance with TRIPS, and therefore the negotiations have proceeded rapidly. The biggest obstacle for Russia's membership application at the moment is formed not by the EU's concerns about Russian IPR policy or other issues, but by the Russian membership negotiations with the US, which are being held simultaneously. These negotiations are currently stalled and it seems unlikely that the negotiation process will be concluded at the WTO Hong Kong ministerial conference this coming December.

The conclusion of this might be that IPR doesn't play a mayor role in the current EU-Russia relations. The reality however proves to be different. This year, an important step will be made to institutionalize IPR in the EU-Russia bilateral relations in the form of a permanent dialogue on IPR issues. The initiative is currently in the agenda setting phase and terms of reference for such a dialogue have yet to be agreed upon, but the Commission believes that that the process can move forward by the end of the year.

The Dialogue is seen as an important opportunity to address a number of issues on the IPR agenda. The EU vision is to build a dialogue along the same lines as the EU-China dialogue in terms of scope. Whilst the issues and priority given by the parties need to be determined, key issues will certainly include enforcement and geographical indicators.

The focus in the current EU-Russia relations is currently not on IPR issues, but IPR still plays an important role in the relations between the two heavyweights. The recent initiative to launch a permanent dialogue on IPR is but one example of this. CIPR plans to contribute to this by providing the parties involved with concrete information on IPR cases which affects both the EU and Russia and to support the efforts of both parties to improve IPR protection and enforcement.

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<sup>1</sup> Speech, "Europe's global trading challenge and the future of free trade agreements", Foreign Policy Centre Debate, Brighton, United Kingdom, 26 September 2005



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## Landmark Intellectual Property (IP) Protection Legislation to Take Effect in Latvia



Destruction of Puma and D&G perfumes in Riga, Latvia.  
29 September, 2005

In the Baltics, momentum is slowly but steadily growing in support for Intellectual Property (IP) legislation adjustment and enforcement. Following many delays, Latvia's new Criminal Procedure Bill, which considerably increases the penalties and augments the enforcement mechanisms for IP protection, came into force on 1 October 2005.

The updated law comes at a critical time for IP protection in the Baltics — imports of counterfeit products have been significantly increasing and enforcement is now more difficult due to the open borders within the European Union.

The Criminal Procedure Bill, passed unanimously by Latvia's parliament, replaced the current ineffectual laws that have not been updated in over 40 years and ensured that Latvia meets international IP standards. Specifically, the new bill transfers the burden of proof in IP cases to the defendant, making the trials shorter and more transparent. In addition, an interagency IPR Coordination council will be created next year, in which CIPR is expected to play a large part.

The Latvian Justice Minister Solvita Aboltina praised the passage of the laws as a "historic moment" that will give law enforcement agencies a "modern and much more efficient instrument for fighting crime." Romans Baumanis, CIPR's representative to the Baltic States commented that, "this law should make criminal prosecution possible in practice. CIPR is working to ensure that the Ministry of Justice helps judges understand how to apply this new standards before they face the first cases in their court rooms."

CIPR has a long history of assisting the Baltic governments in improving IP protection and has worked with local and international officials in improving IP regulatory and enforcement standards to meet EU and WTO criteria. Additionally, CIPR has played an active role in many Latvian governmental advisory boards and councils, including advising the committee that drafted the new Criminal Procedure Law and the new Civil Procedure Law.

While the new legislation is an important advancement for Latvia, there is much to be done in the area of enforcement. Since 2004, CIPR has conducted a number of IPR enforcement programs in Latvia and Estonia in association with the SNB-REACT network. The number of successful enforcement cases is constantly growing due also to the cooperation and collaboration efforts of CIPR and State agencies such as the Police, Customs, State Revenue Service and Prosecutor's Office.

In past few months, important seizures of counterfeit sportswear, children toys, mobile phone accessories and batteries, designer clothes and cosmetics have been made. On 29 September, a major destruction event was held in Latvia, where 6000 of Puma sport shoes and 500 fake D&G perfumes were destroyed. Additionally, a number of local producers of counterfeit products have been discovered and shut down. Since 2004 when the SNB-REACT collaboration began, the Latvian government has made great strides in improving IPR protection.





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## World Trade Organization (WTO) Rules Against European Union in Geographic Indication Case



The new precedents set by the WTO regarding Geographic Indications (GI) will likely have an effect on both Russia and Ukraine's IP regimes. The highly anticipated WTO Panel Report issued earlier this year concluded that the relationship between trademarks and geographic indications must recognize priority, exclusivity and territoriality.

Russia is under pressure from the US to improve its IP regime in particular prior to joining the WTO, and the new requirements for GIs may come up during the bilateral Intellectual Property Working Group meetings to be held 13-14 October. In both Russia and Ukraine, the relevant amendments required to bring both countries' laws into accordance with the decision have already been drafted and are expected to be considered by the Government before the end of the year.

The ruling originated from a complaint brought against the European Union (EU) by the U.S. and Australia. The WTO panel ruled that the EU's regulations regarding geographic indications was not in compliance with its TRIPS obligations.

The core question the WTO panel had to answer was whether a prior trademark not only continued to enjoy protection if later on a confusing similar GI was registered, but also whether the trademark would be enforceable against such a later GI. The EU provisions under question made this doubtful.

The WTO Panel strongly endorsed the exclusivity of the prior trademark registration under the TRIPS Agreement. Where there is a relatively high likelihood of confusion between prior trademarks and a later GI, the GI must be refused and its use can be blocked by the trademark owner.

The ruling was momentous for trademark owners such as CIPR member Anheuser-Busch. The U.S. brewer has sought to protect its world-renowned trademark against a state-owned Czech brewery, Budejovicky Budvar, over the "Budweiser," or "Bud" name. The company began using the name Budweiser.

"The recent decision by the World Trade Organization is an important victory for Anheuser-Busch," Stephen Burrows, chief executive of the brewer's international unit, said in a statement. "[The WTO decision] halts Budejovicky Budvar's efforts to rely on this registration of "Budejovicke pivo" to justify its use of the Budweiser."

Russia and Ukraine, having already been criticized for allowing similar practices, will have to bring their regulations into line with the ruling in order to continue on the path to joining the WTO.

Peter Necarsulmer, CIPR President noted, "We hope that countries revising their trademark laws will take note of the WTO Panels' message and base their national law on priority, exclusivity and territoriality and provide for the refusal of a GI if it is confusingly similar to a prior trademark. This is the only way to ensure compatibility with the TRIPS agreement."



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27-29 October 2005	AIPLA Annual Meeting, Washington DC, USA
2-5 November 2005	The 9 <sup>th</sup> Open Forum, FICPI, Portugal, Lisbon
14-15 November 2005	Second Global Congress on Combating Counterfeiting and Piracy (Interpol, WCO, WIPO — organizers), Lyon, France
19-21 November 2005	INTA, Leadership meeting, Naples, Florida, USA
20 November 2005	Copy Post-Grokster (CIPR co-sponsor), London, UK
29 November 2005	INTA Roundtable on IP, Moscow, Russia
2-3 February 2006	Emerging Issues in Trademark Law Forum, Savannah, Georgia, USA,
1-7 February 2006	ABA, Midyear meeting, New Orleans, Louisiana, USA
3-5 May 2006	IACC Annual Spring Conference, Toronto, Ontario, Canada
6-10 May 2006	INTA, 128th Annual Meeting, Toronto, Ontario, Canada
22-26 May 2006	FICPI, World Congress, Paris, France
7-10 June 2006	ECTA, 25th Annual Conference, Warsaw, Poland
21-23 June 2006	LESI, Les Pan European Conference, Glasgow, Scotland

10-12 September 2006	IPO, Annual Meeting, Chicago, IL, USA
8-12 October 2006	40th World Intellectual Property Congress, AIPPI, Gothenburg, SE
19-21 October 2006	AIPLA, annual Meeting, Washington, DC, USA
8-11 November 2006	INTA, Leadership Meeting, Phoenix, Arizona, USA