



Russia & Eurasia

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COMMITTEE NEWSLETTER



See online version of this publication here:

<http://eurasian-law-newsletter.blogspot.com/>

Comments will be appreciated.

Welcome to the Russia/Eurasia Committee Newsletter

Our Newsletter brings you timely, in-depth articles to complement the news we deliver to you in our biweekly *Eurasian Law Breaking News*.

Our Newsletter counts on you for its content. We publish it whenever we have articles to publish. This way, your contributions reach our readers quickly. The more you contribute, the more frequently we publish. And we welcome timely articles that have been published elsewhere.

This issue features these articles:

The Overlap between Intellectual Property Laws and Competition Laws in the Russian Federation by Anne Wright Fiero. Anne Wright Fiero is the principal member of The Fiero Group, a research-based organization focused on assisting companies and individuals in developing and protecting their intellectual property globally. Anne is a graduate of the University of Chicago Law School, and obtained her degree from Duke University with high honors in Russian and Political Science. She has focused on the areas of intellectual property and competition law for almost twenty years. Anne also helps edit the Russian/Eurasian Committee's *Eurasian Law Breaking News*. Please feel free to contact her at: afiero@mchsi.com.

Update on the Personal Data Protection Regime in Ukraine by Irina Paliashvili and Olena Zolotarevska. Irina Paliashvili is the President and Senior Counsel of the Washington, D.C.-based RULG-Ukrainian Legal Group, P.A. Irina graduated with high honors from the Kiev State University Law School, where she also earned a Ph.D. in Private International Law. She also holds an LL.M. in International and Comparative Law from the George Washington University School of Law. Irina founded the CIS Local Counsel Forum, an informal network of managing and senior partners of leading business law firms in the CIS economic region. She currently holds the rotating chair of the CIS Leading Counsel Network. Irina is a Vice-Chair of the Russia/Eurasia Committee. Please feel free to contact her at: irinap@rulg.com.

Olena Zolotarevska is a Senior Counsel of the RULG-Ukrainian Legal Group, P.A. She graduated with honors in Private International Law from Kyiv National Taras Shevchenko University, Institute of International Relations. She co-founded and practices pro bono at the Law Clinic in Kyiv. At the RULG-Ukrainian Legal Group, she focuses her practice on commercial law and in private finance and the energy sector. Her email address is olena.zolotarevska@ulg.kiev.ua.



Overview of Ukrainian Deregulation Measures, also written by Irina Paliashvili, Yaroslav Shkovrets, and Olena Zolotarevska. Yaroslav Shkovrets is a Counsel at the RULG-Ukrainian Legal Group, P.A. He graduated from Kyiv National Taras Shevchenko University with a Master Degree in Law and a Master Degree in Translation with high honors. His practice includes corporate, labor, and real estate law. His email address is yaroslav.shkvorets@ulg.kiev.ua.

The RULG-Ukrainian Legal Group's contributions to this Newsletter were originally published as "legal alerts" in late May. Readers should check for more recent developments, as the matters covered in both articles might have been affected by recent legislative and administrative actions.

Please make plans now to attend the ABA Section of International Law's Third Annual Conference on the Resolution of CIS-Related Business Disputes in Moscow on September 12. This Conference, like its widely-acclaimed predecessors, is a "must attend" event for anyone interested in the resolution of business disputes in Russia and the other CIS countries. The Conference will feature world-class experts on topics including corruption in the courts, insolvency litigation, professional responsibility dilemmas in international disputes, shareholder rights, third-party funding of litigation and arbitration, state entities as parties in arbitration, choice of law in cross-border transactions, and a review of recent developments in business dispute resolution. A reception at Spaso House will follow the Conference. Registration is now open, and early registration is encouraged because the Conference and the Spaso House reception will be fully subscribed. This year's Conference will be held at the Ritz-Carlton. For more information, visit www.americanbar.org/groups/international_law or call +1-202-662-1660.

We hope you will enjoy this issue of the Committee Newsletter. We welcome your contributions to the next issue.

Dmitri Evseev

Christopher Kelley

Committee Co-Chairs

Russia

The Overlap Between Intellectual Property Laws and Competition Laws in the Russian Federation

Anne Wright Fiero

The relationship between intellectual property laws and competition laws is no stranger to debate. In the Russian Federation, as in the United States, the long-term goal of both systems is to benefit the consumer by ensuring free and fair competition and by encouraging investment and innovation in new technologies.¹ However, an inherent tension also exists between laws that may grant monopoly power to intellectual property holders and laws that restrict the exercise of that monopoly power.

Brief Overview of Russian Intellectual Property and Competition Laws

Russia amended its intellectual property laws in 2006 (effective January 1, 2008), consolidating them into the Russian Federation Civil Code. *See supra*, n. 2 ("Civil Code (Part Four)"). The latest iteration of intellectual property law provides for the private, exclusive ownership of intellectual activity, which includes the "individualization of legal persons, goods, works, and services." Civil Code (Part Four), art. 1225 (defining intellectual property,



³ In 2006, for example, FAS issued a “Direction to Terminate Infringement” to the company OOO, based on evidence that the company was infringing another’s copyright and/or authorship rights through the sale of counterfeit DVDs. Report of FAS on Competition Policy in 2006, *available at* <http://www.fas.gov.ru/english/decisions/15843.shtml>. In 2007, FAS issued similar Instructions to Terminate Trademark Violations to: (1) Ladoga Industrial Group (for using a birch tree logo confusingly similar to a registered trademark), and (2) KhimExpo (for using product labeling confusingly similar to a registered trademark). *See* FAS Press Releases of 13 March 2007, *available at* http://www.fas.gov.ru/english/news/n_11642.shtml and http://www.fas.gov.ru/english/news/n_11618.shtml. In 2008, FAS likewise issued Directions to Terminate Trademark Violations to: (1) Master Beverages Industries PTE, Ltd. (for using a confusingly similar product label) and (2) Delphin Industries (for using confusingly similar labels on its oil products). *See* FAS Press Releases of 12 December 2008 and 11 December 2008, *available at*: http://www.fas.gov.ru/english/news/n_21469.shtml and http://www.fas.gov.ru/english/news/n_21487.shtml.

⁴ The Economic Registry has some consequences for merger control (including heightened duties to notify FAS concerning board or leadership changes), and it allows the FAS to more closely monitor a listed entity for potential monopolistic behavior, but otherwise entry on the Registry imposes no specific duties or consequences.

⁵ ROSPATENT has proposed amendments to the Civil Code concerning the early termination of trademark and patent rights, but those draft regulations do not, as yet, provide for early termination or nullification of a patent based on its use in “unfair competition”. *See* http://www1.fips.ru/wps/wcm/connect/eeab8a004bfda528a5ebddoc7e0eb6d/reg_nedystv.pdf?MOD=AJPERES (text of proposed Administrative Rules (in Russian)). Nevertheless, ROSPATENT has recently invalidated a patent based on conduct that, at least in part, the FAS had found to be a violation of Competition Law, art. 11.1(8) (prohibiting concerted practices that may lead to high barriers to entry created by exclusive patent rights). *See* FAS Press Release of 10 February 2009, *available at*: http://www.fas.gov.ru/english/news/n_22115.shtml (invalidating Elektroapparat patent based on, among other things, improper use and marketing of patents). As the cooperation between these agencies continues to improve, actions against intellectual property holders who engage in unfair competition may increasingly be grounded not just in Competition Law, but in the intellectual property laws as well.

Ukraine

Update on the Personal Data Protection Regime in Ukraine

Irina Paliashvili

Olena Zolotarevska

Effective 01 January 2011, the Ukrainian Law On Personal Data Protection (the “Law”) took effect, introducing requirements for the gathering, processing, storing, and transferring of personal data (See RULG Legal Alert dated 19 November 2010 http://www.rulg.com/leg_alerts.asp).



Scope of Applicability

The Law is applicable to all owners and processors of personal data databases (except for physical persons who create a database for personal use, journalists who carry out their professional duties and creative figures implementing creative activity).

The Law provides for the establishment of State Register of Personal Databases, administered by the “authorized state body on data protection,” and stipulates that personal databases are subject to mandatory state registration according to the prescribed procedure

Important Caveats

- Since the Law will be fully functional only after all relevant regulations are adopted and take effect, and only a part of such regulations have been created, especially in the important area of registration of personal databases, creating the scope for inescapable technical breach of the Law.
- Owing to the complexity and ambiguity of some provisions, recourse to formal legal advice should be obtained well in advance of any plan for compliance measures within an organization.

Current Personal Data Protection Regime

The latest regulations in the sphere of personal data protection comprise the following:

- Regulation of the State Service of Ukraine on Personal Data Protection approved by the Decree N 390/2011 of the President of Ukraine (effective 6 April 2011): The State Service of Ukraine on Personal Data Protection is a central executive body that is directed and coordinated by the Cabinet of Ministers through the Minister of Justice of Ukraine. It is authorized to:
 - a) propose state policy on personal data protection;
 - b) implement state policy on personal data protection;
 - c) perform control over compliance with legislation on personal data protection; and
 - d) implement international legal cooperation in the sphere of personal data protection.
- Letter of the State Committee on Land Resources N 4280/21/11-11 dated 24 March 2011: This Letter establishes rules for filling out information on adjacent owners.
- Letter of National Bank of Ukraine N 18-311/695-2160 dated 08 April 2011: This order of processing of personal data being bank secret was adopted by the National Bank of Ukraine. Once personal data protection regulations are adopted by the Cabinet of Ministers of Ukraine, the authorized government agency for financial monitoring and the National Bank of Ukraine will amend existing rules of storage, protection, use, and disclosure of bank secrets.

Court practice

An overview of court decisions for the period from January 2011 to May 2011 indicates that judges already make references to the Law in decisions concerning the circulation of information. But still Ukrainian court practice does not yet have cases specifically in the sphere of personal data protection.

Liability for Violations in the Sphere of Personal Data Protection in Ukraine

On 3 February 2011, the Ukrainian Parliament adopted in the first reading a Bill introducing administrative and criminal liability in the area of personal data protection, namely:



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a) administrative liability for evasion of personal database registration, creation of or work with a personal database before its state registration, and breach of regime of accessing personal data resulting in fines in amount USD 638-4,250; and

b) criminal liability for unlawful gathering, storage, usage and distribution of personal data without the person's consent is subject to fines in amount USD 1,700 – 4,250, compulsory community service or imprisonment.

The State Register of Personal Databases has not yet been established, therefore, for the moment, legislative requirements regarding state registration of personal databases cannot be practically complied with. For the Bill to become law, it must be finally adopted by the Parliament (in the second or third reading), signed by the President and officially published.

Overview of Ukrainian Deregulation Measures

Irina Paliashvili

Yaroslav Shkvorets

Olena Zolotarevska

The Government of Ukraine – the Verkhovna Rada (the "Parliament") and the Cabinet of Ministers - has recently developed and enacted a number of long-awaited measures in the sphere of deregulation of business activity and improvement of the regulatory regime (customs, public procurement). A special dedicated authority – the Cabinet of Ministers Deregulation Assignee – was established in February 2011 to oversee deregulation.

As a result of these efforts, between 2010 and 2011 Ukraine's average Ease of Doing Business rank has improved by 2 points (from 147th to 145th place out of 183 economies). That rank in category Starting Business has improved by 18 points (from 136th to 118th place out of 183 economies).^[1]

Below is a brief overview of the key business deregulation measures pending or enacted within the past several months.

I. Enacted Deregulation Measures

- Cancellation of Licenses for Certain Types of Economic Activity:

The list of business activities subject to licensing was shortened by 24 positions, removing *inter alia*:

- cargo carriage services (except for dangerous cargoes) by air, river, sea, motor, and railway transport;
- pesticide and agricultural chemicals production (plant growth regulators only);
- design, production, use, operation, certification tests, subject-oriented research, expert examination, importation/exportation of crypt systems and crypt-based information protection systems; and
- design, production, and certification tests of holographic protection elements.

Relevant amendments were introduced to a number of Laws by the Law "On Amendments to Certain Legislative Acts of Ukraine Restricting State Regulation of Business Activities" No. 2608-VI dated 19 October 2011 and enacted on 16 November 2010.