RUSSIAN FEDERATION

Promoting and Protecting Intellectual Property in the Russian Federation
About ICC

ICC works to promote a balanced and sustainable system for the protection of intellectual property. It believes that IP protection encourages innovation and the development of knowledge-based industries, stimulates international trade, and creates a favorable climate for foreign direct investment and technology transfer.

About BASCAP

Counterfeiting and piracy have become a global epidemic, leading to a significant drain on businesses and the global economy, jeopardizing investments in creativity and innovation, undermining recognized brands and creating consumer health and safety risks. In response, the ICC launched BASCAP to connect and mobilize businesses across industries, sectors and national borders in the fight against counterfeiting and piracy; to amplify the voice and views of business to governments, public and media; and to increase both awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. Visit BASCAP on the web at: www.iccwbo.org/bascap

About ICC Russia

ICC Russia in the ICC National Committee representing member companies in the Russia Federation. ICC Russia works together with IP rights holders in Russia and internationally and has promoted Intellectual Property protection in Russia since 2005. To learn more about ICC Russia’ work program or to explore membership, visit ICC Russia on the web at: http://www.iccwbo.ru/

About Rusbrand

RusBrand, the Association of Branded Goods Manufacturers in Russia, is the largest association of FMCG manufacturers in Russia uniting 55 Russian and international leading companies. At present RusBrand members have over 150 entities operating in Russia. Their total investments into Russia exceed USD 18 billion. RusBrand members created more than 90 000 new jobs in Russia. RusBrand activities are aimed at establishing a constructive dialogue with all market stake holders as well as key state authorities. RusBrand priorities are located in the IPR protection field, promoting competitive media market development, contributing to constructive collaboration between branded goods manufacturers and retailers, supporting the legal and administrative reform, educating both public and decisionmakers on the positive value of brands.

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Executive Summary

To continue to grow, compete and deliver products and services to the marketplace, companies are increasingly investing in creativity, innovation and other forms of intellectual assets generally known as Intellectual Property or “IP”.

Recognizing the critical role that IP plays in driving, innovation, development and jobs, governments are increasingly investing in their national capabilities to innovate and create. They have increased their investment in university research, incubation centres and public-private R&D projects; and they are delivering better services to help companies develop and commercialize trademarks, copyrights and patents.

At the same time, many governments have recently undertaken to upgrade efforts to protect IP. This is because the intangible nature of intellectual property renders it vulnerable to theft and other infringements. The global proliferation of counterfeiting and piracy drains economies of revenue and jobs and puts downward pressure on innovation, international trade and investment. In response, governments have introduced new and stronger legislation, embraced the provisions of international treaties, stepped up law enforcement and invested in IPR protection through training, judicial systems and border control.

These steps recognize the value of intellectual property, its relation to technology transfer and foreign direct investment. They reflect an understanding of how IP empowers small and medium sized companies and they aim to ensure that consumers have access to a steady stream of innovative, legitimate and safe products and services.

Perhaps most importantly, these governments recognize that strong IP protection goes hand-in-hand with their policies to encourage investment in IP and innovation. In this regard, efforts to strengthen IP enforcement regimes are not costs, but rather investments that pay tangible dividends to economic development and society.

The value of IP

Chapter 1 explains the value of intellectual property and why it is important to the Russian Federation’s integration into the global economy.

- IP protection benefits the economy in terms of GDP, employment, tax revenues, development and competitiveness. For example, copyright-related industries alone contribute more than 6% to GDP and over 7% to employment in Russia.
- IP rights (IPR) promote foreign direct investment (FDI) and technology transfers. With Russia’s technology and services sectors rapidly gaining on manufacturing as the engine of FDI growth, robust IPR legislation and strong enforcement will be important for Russia to fully realize its FDI potential.
- IP protection promotes innovation, increases funding for R&D and helps firms realize more value from innovations. These principles are central to Russia’s *Concept of Long-Term Socio-Economic Development for 2020*, and a strong IPR regime will be critical to achieving its aims to support innovative business and increase demand for innovation throughout the economy.
- SMEs that rely on IP demonstrate as much as 20% higher growth, income and employment than those that do not. Russia’s immense SME sector – representing more than 25% of total employment and 21% of GDP – will increasingly depend on IP and government protection of these intangible assets.
- IP protection benefits consumers and society, providing consumers with innovative products and services in virtually every area of life – from clean energy to health care – and helping protect consumers from inferior and dangerous counterfeits.
What’s at risk?

Chapter 2 explores the problem of counterfeiting and piracy in the Russian Federation. It gathers evidence on the magnitude of counterfeiting and piracy and reports that the most recent study to estimate the total value of counterfeiting and physical piracy in Russia found that counterfeits accounted for a staggering 24% share of key retail goods sales, corresponding to 6% total retail turnover in Russia in 2009, or RUR 910 billion ($27.5 billion).

More conservative estimates of counterfeiting and physical piracy suggest a magnitude of between $3 and $6 billion. For example, the lowest official estimates of turnover of counterfeit products on the Russian market are over RUR 100 billion ($3 billion) a year. In many sectors up to one in three product sales are fake; for digital products, sales or access to unlicensed sources are even more common, reaching piracy levels of over 90%. An in-depth investigation in Pravda suggested that experts agree that a conservative estimate of sales of counterfeit goods in Russia exceed $6 billion a year, with some experts suggesting that the number should be multiplied several times. Moreover, conservative estimates suggest that for every $1 of counterfeit goods in a country, the government may lose up to 30% in lost sales. This suggests that the Russian government may be losing over $8 billion per year as a result of counterfeiting and physical piracy alone. Counting in tax losses due to online piracy, this figure would be much higher.

The time is right for action

Chapter 3 suggests that the time is right for Russia to continue strengthening its IPR systems in cooperation with established international channels and trading partners who stand ready to assist Russia in proceeding with necessary policy and legal reforms.

Most recently, improvements have been catalyzed by Russia’s accession to the World Trade Organization (WTO). In joining the WTO, Russia will be required to comply with all of the obligations of the WTO TRIPS Agreement, including compliance with the rules governing the enforcement of IP rights, civil and administrative procedures and remedies, provisional measures, customs measures and criminal procedures.

The need to comply with the provisions of WTO TRIPS presents a useful opportunity for Russia to undertake a wider upgrade of its overall IP rights enforcement regime.

Recommendations for a path forward

To reach the target of creating a robust IP protection and enforcement regime capable of generating and preserving the significant benefits that lie ahead in Russia’s future, Chapter 4 provides a comprehensive set of suggested recommendations intended to help Russia address certain remaining challenges. This set of recommendations includes a wide range of policies and actions ranging from legal reforms and policy actions to technical assistance and capacity building measures, channels for international cooperation and tools for strengthening enforcement practices. An indispensable requirement for meeting this target is the effective and immediate implementation of such concrete suggestions. The establishment of a new IP authority with the task of putting the recommendations in place is of utmost importance in this regard.
Summary of suggested recommendations

Legislative recommendations

• Address inadequacies in civil enforcement procedures
• Improve administrative enforcement procedures
• Improve action against Internet infringements
• Address deficiencies in criminal IP law and procedures
• Strengthen Customs enforcement competence with respect to parallel trade
• Strengthen Customs enforcement competence in the Customs Union (CU) of Russia, Kazakhstan and Belarus

Policy Recommendations

• Improve coordination among enforcement authorities in addressing counterfeiting and piracy, including among the policy, judiciary and Customs.
• Establish effective dialogue and cooperation between Russian authorities, IP rights holders and other stakeholders
• Expand IP-related administrative and technical capacity-building
• Increase awareness of counterfeiting and piracy and the associated economic and social harm among policy makers and the general public
Creativity and innovation are proven drivers for economic growth and competitiveness. Research has shown that economic growth is closely related to how well the economy encourages, stimulates and fosters creativity and innovation. A critical factor in maximizing the value of this creativity and innovation is a clear legal and regulatory system that recognizes the importance of the underlying intellectual property and establishes and protects the property rights of the creators, inventors and innovators.

The effectiveness of a country’s intellectual property rights (IPR) regime is a critical element for unlocking a nation’s full innovative capacity. An effective IPR regime releases the potential of inventors and creators, and empowers them to transform ideas into high-quality products and services that create jobs and stimulate economic growth. The protection of these intellectual assets is increasingly important in enabling countries to reach their economic development goals.

**IP benefits the economy**

There is a growing body of evidence describing the positive link between the strengthening of IPRs and economic development, technology transfer and increased rates of innovation. IPR attracts foreign direct investment (FDI) and promotes R&D and technology transfer in developing countries. IPR is also an important component of the overall health of an economy as it forms the basis for the development of many industries, ensuring growth in value-added jobs and foreign trade.

A wide range of economic studies, from NGOs, government and industry, have confirmed that sectors that rely on IPR protection are substantial contributors to the economy. For example, recent studies by the World Intellectual Property Organization (WIPO), show that copyright-related industries alone contribute more than 6% to GDP and over 7% to employment in Russia. These industries are also estimated to contribute more than 8% of the turnover of all industries in Russia (even exceeding the turnover of such industries as mining operations), as well as 7% of total foreign trade turnover. In addition, the market services industries, which include IP-intensive industries like general commercial services, science and science services, and IT services, saw its contribution to the overall Russian GDP increase from 10.9 % in 1995 to 17.8 % in 2004.

**IP attracts FDI**

FDI is important because it supports economic development through the transfer of technology and managerial skills and through the creation of employment opportunities. With 145 million consumers, a well-educated and capable labour force and a wealth of natural resources, Russia has an enormous potential for attracting FDI. According to the United Nations Conference on Trade and Development (UNCTAD) *2012 World Investment Report*, Russia’s FDI flows grew by 22% in 2011, reaching $53 billion, its third-highest level ever recorded. This increase was largely attributed to the Russian economy’s growing consumer base, affordable labour market and strong commodities sector, which attracts a range of multi-national investors such as Unilever, ExxonMobil and PepsiCo. In addition, Russia’s WTO accession is predicted to be a key driver of near-term FDI growth, with an especially positive impact expected on the services sector.

Several economic studies have pointed to the strong and positive correlation between intellectual property rights, FDI, trade and economic development. Although the effect of IPRs on FDI varies by levels of economic development and in different industries, research has found that IPRs tend to have an overall positive impact on inward and outward FDI, particularly for technology intensive industries such as computer services, finance, and pharmaceuticals.
The strength of a country’s IPR regime is one of the factors influencing decisions by firms to transfer technology or invest in a country. For example, the OECD has found that the strength of a country’s patent rights is positively correlated to inward FDI. Economists found that a 1% increase in a country’s patent protection correlates to a 2.8% increase in FDI, and a 1% improvement in trademark and copyright protection increases FDI by 3.8% and 6.8%, respectively.\(^8\)

Russia’s recent increases in FDI, and the potential for even greater improvements in FDI related to the accession to the WTO, can only be fully realized and sustained if effective IPR regimes are in place and enforced. For example, the services sector is expected to grow significantly, and the 2012 World Investment Report recognizes that the services sector may even replace the manufacturing sector as the engine of FDI growth in Russia. The intangible nature of much of the services industry renders it particularly vulnerable to IP theft. Robust IPR legislation and strong enforcement will therefore be an important component of Russia’s ability to fully realize its FDI potential.

**IP promotes innovation**

Innovation is a key ingredient of sustained economic growth, development and better jobs. Studies have estimated that innovation accounts for as much as 80% of economy-wide growth in productivity in high-income countries. Although less is known about innovation and its economic impact in low- and middle-income economies, available evidence suggests that innovating firms in those economies are also more productive than their non-innovating peers.\(^9\)

The Russian government recognized this connection between innovation and growth and development in its 2008 report, *The Concept of Long-Term Socio-Economic Development of the Russian Federation* up to the year 2020 (CLTD). The CLTD lists several high-tech industries where Russia has a significant competitive advantage or seeks to build one over the medium term.\(^10\) One of the main objectives of the CLTD is to support innovative business and to increase demand for innovation in the economy.\(^11\) The CLTD contains several target indicators, including increasing the share of enterprises with technological innovation to 45% by 2020 (up from 10% in 2007) and increasing the share of value added by the innovative sector to 17% of Russia’s economy by 2020 (up from 10.9% in 2007).\(^12\) While not a part of the Concept paper, it is clear that a strong IPR regime can help support Russia in achieving these ambitious goals. Economic analysis at both the macro and micro level of licensing activity, rates of patenting and technology transfer in countries that have strengthened their IPRs suggests a positive link between higher levels of innovation and stronger IPRs.\(^13\) In the same vein, studies have also found that the introduction of IPRs can have a positive impact on domestic innovation by stimulating the transfer of technologies that foster it.\(^14\)

**IP promotes R&D and technology transfer**

IPR promotes cultural expression and diversity, promotes the dissemination of new technologies, and promotes development. For example, the OECD has found that a 1% increase in the strength of patent protection, a basic and key form of IPR protection, in developing countries correlates to nearly a 1% increase in domestic R&D. A similar increase of trademark and copyright protection, two other critical parts of an effective IPR regime, correlates to a 1.4% and a 3.3% increase in domestic R&D, respectively.\(^15\)

Appropriate IPR protection is often a precondition for international investors to disclose technology to licensees in developing countries, especially in areas involving easily imitable technologies such as software and pharmaceuticals, and hence can affect chances of attracting equity investments or non-equity modes of involvement (e.g. licensing).\(^16\) IPR can also be a means of encouraging independent research activities by local companies, because businesses are more likely to invest resources in R&D and technological upgrading if their innovations are protected.\(^17\) In addition, effective IP protection also attracts venture-capital investment for R&D and for the commercialization of innovative products and services.
Firms can earn substantially more from innovations that are protected by IPR. On average the ‘patent premium’ for patented versus unpatented inventions is between 180% and 240%, depending on the industry. In other words, patents on average double the value of an invention. The more valuable a patent, the more R&D takes place. A 10% increase in the patent premium leads to a 6% increase in business R&D expenditure.\(^\text{18}\) IP ownership has therefore become more central to the strategies of innovating firms. Demand for patents has risen from 800,000 applications worldwide in the early 1980s to nearly 2 million in 2010 (1.98 million).\(^\text{19}\)

Statistics from Rospatent – the Russian Patent and Trademark Office – show a similar growth trend on patent filings in Russia. In 2011 there were 41,414 applications, representing an increase of almost 10% from 2006. The number of applications for utility model patents has seen an even more impressive growth. In 2011 there were more than 13,000 applications, a 36% increase since 2006. This growth is seen in both domestic and foreign applications, although domestic applicants continue to outnumber foreign in both patent and utility applications (64% and 95% respectively).\(^\text{20}\)

While these increases are significant, they still lag behind the global increase in applications and those registered in leading G20 economies such as Japan, United States, Korea, Germany, France and United Kingdom. This suggests that stronger IPR protection may be needed to convince both domestic and foreign innovators to register their inventions and creations in Russia as they are doing elsewhere.

**IP helps firms monetize their inventions and grow**

Firms use IPR to help develop, create value, conduct trade and benefit from their works and inventions. A firm’s ownership of IP rights helps to reassure investors that they should inject money into the company. The use of IP in fostering investment is not only important for established firms that are already reliant on patents, trademarks and copyrights for protecting their value, innovation and reputation, but even more so for new firms seeking to establish a secure stream of investment and innovation. Firms also can use their IP to penetrate new and profitable markets, to develop products, services and processes and to collaborate through licensing or establishing strategic alliances.

Firms that rely on IP generally succeed better than those that do not. Trademarks and other intangible IP assets can enhance a firm’s market value substantially. An innovative firm’s value in the market or in an acquisition does not just lie in its physical assets — cash, securities, plant, property, equipment, raw materials or finished goods — but also in the firm’s ‘intangible assets’ such the value of the firm’s intellectual property, including its brands. These intangible assets can represent a much bigger part of an innovative firm’s market value than its current and physical assets.

Russia has witnessed a phenomenal growth in the use of the Internet in the last decade. In 2000, less than 2% of the population was online; in 2011 that figure had increased to 49% or 70 million people. According the Russian Minister of Communications that figure may reach 90 million users in 2013. Russia now boasts the largest online population in Europe, and is sixth in the world. Only China, USA, Japan, India and Brazil have more Internet users.\(^\text{22}\) Russia also has the largest mobile market in Europe, approaching some 230 million subscribers.\(^\text{23}\)

The ever-increasing number of Internet users in Russia, coupled with widespread and rapid increase in smartphone usage, is a huge potential market for innovative digital industries, all of which rely on IP in some way – and will increasingly depend on IPR protections to ensure sustainability and growth.

For example, the Russian ICT sector alone contributed 4% of Russia’s GDP in 2010.\(^\text{24}\) According to the Russian Ministry of Communications, the country’s information technologies market grew 14 percent in 2011 and the Ministry of Economic Development predicts that the market will continue to grow by 16 percent in 2012, and by 18 percent in 2013 to reach $32 billion.\(^\text{25}\) There is also a substantial software industry in Russia. According to the latest RUSSOFT survey, software exports as a whole were valued at $3.3 billion in 2010 (up from $2.75 billion in 2009).\(^\text{26}\) In addition, this industry attracts foreign investments, with a number of foreign hi-tech corporations having R&D divisions in Russia.\(^\text{27}\)
IP protection helps small and medium enterprises

SMEs are important contributors to innovation and creativity. Studies have demonstrated how large companies are a major source of innovation, given that they may have greater funding than small firms to devote to research and development (R&D), greater ability to take the risks associated with innovative activity, better economies of scale, and thereby a lower marginal cost of innovation. However, a large body of evidence also shows that SMEs, especially young firms, contribute greatly and increasingly to the innovation system by introducing new products and adapting existing products to the needs of customers.

The Russian SME sector is immense. There are an estimated 3.2 million operating SMEs with an annual turnover of between €645 - 765 billion. The SME sector employs as many as 19 million people, representing more than 25% of Russia’s total employment, and makes up 21% of the GDP. The sector saw a 3.2% growth in 2010.

Significantly, SMEs often use IPR more extensively than large companies. Those SMEs that use IPR report faster growth, and higher income and employment than those that do not. For example, SMEs in the ICT sector in the EU that rely on IPR reported 10% more growth in turnover, market share and employment, respectively, than those that had not used IPRs.

This critical SME sector of the Russian economy will therefore increasingly rely on support from the Russia government to develop its intellectual property – and to guard against its theft.

IP benefits consumers and society

IPR supports the development of a continuous stream of innovative, competitive products and services that benefit consumers. IPR promotes consumer trust and more effective protection against counterfeit and pirated goods. IPR is helping to address many of society’s most important needs, from clean energy to health care to a truly ‘digital economy’.

Copyrights provide the basis for the continuous stream of new music and films, ever-improving business, games, software, books, magazines, newspapers and other published material, photography, and many other related activities. However, high piracy rates, inadequate legal provisions for addressing Internet piracy, poor enforcement procedures and ineffective management of IP rights inhibit creative industries from realizing their potential and lead to underinvestment in production of professional Russian creative content.

Patents boost many products and services that society relies on for health, energy, communication, transportation and many other human and commercial needs. Trademarks support the development of products and services that consumers want and depend on, from clothing and computers to foods and footwear, educational and entertainment products, services, scientific products and even sporting activities. Consumers benefit from IP not only through the stream of innovative products and inventions and creativity that would otherwise not be created by firms, but also through the rights that protect the identity of well-known goods and services. Trademarks act as signposts of quality and prevent other firms to pass off one brand of good as being the same as another.

Establishing and promoting an adequate IPR system can also have a significant impact on consumer health and safety, and on consumer protection. Counterfeit goods, including medicines, auto and airplane parts, electrical components, toys, food and beverages and many others, can be dangerous and potentially harm or kill unsuspecting consumers. These products may contain ineffective or dangerous and untested ingredients, and provide no assurance of safety or efficacy.

Effective IPR rules and strong enforcement of laws and regulations are therefore crucial to protect the health of consumers while ensuring that the products are genuine and comply with the required safety standards.
Counterfeiting and piracy remains a substantial problem facing the Russian economy. This illegal activity drains the Russian economy of legitimate products and facilitates an “underground economy” that deprives the government of revenues for vital public services, dislocates thousands of legitimate jobs, undermines investment, creates opportunities for money laundering, raises costs for law enforcement and exposes consumers to dangerous and ineffective products. Overall, IP theft can have serious negative implications affecting a country’s economic growth, citizen’s health and safety, public order and security. Counterfeiting and piracy also generate large profits for organized crime groups and distorts the internal market by encouraging illicit practices within businesses.\(^{34}\)

Since counterfeiting and piracy operate outside the law, estimating the exact level of these activities and the harm they bring is extremely challenging. Illegal businesses do not report any information on their activities to any government agency, and therefore any measures of the size of illegal businesses, such as total illegal sales or the income earned by these businesses, must be estimated by indirect methods.

However, in this chapter we have gathered evidence from a range of sources on the incidence and magnitude of the counterfeiting and piracy challenge facing the Russian economy. Our assessment shows that while the Russian authorities have made some progress in combating counterfeiting and physical piracy in recent years, much work remains to be done to bring IPR protections in Russia up to the international standards, especially in the online environment.

### The Russian Problem – an overview of counterfeiting and piracy

Russia has made progress in implementing IPR reforms. Just 20 years ago, Russia was one of the worst IPR infringers in the world, with studies finding counterfeit goods approximating 80% of total sales.\(^ {35}\)

While some progress has been made, IPR protection standards in Russia are generally recognized to be considerably below the levels of many developed and developing countries, and its music market remains one of the most badly performing markets in the world. Each year the U.S. Trade Representative (USTR) prepares a report on the global state of intellectual property rights, known as the Special 301 Report. The 2012 Special 301 Report maintained Russia on its “Priority Watch List,” for the 12th year in a row, noting that “while Russia made important progress in the past year to improve IPR protection and enforcement, significant concerns remain, particularly with respect to piracy over the Internet and enforcement generally.”\(^ {37}\)

#### How big is the challenge?

The most recent study to estimate the total value of counterfeiting and physical piracy in Russia found that counterfeits accounted for a staggering 24% share of key retail goods sales, corresponding to 6% total retail turnover in Russia in 2009, or RUR 910 Billion ($27.5 Billion).\(^ {38}\)

More conservative estimates of counterfeiting and physical piracy suggest a magnitude of between $3 and $6 billion. For example, the lowest official estimates of turnover of counterfeit products on the Russian market are over RUR 100 Billion ($3 Billion) a year. An in-depth investigation in Pravda suggested that experts agree that a conservative estimate of sales of counterfeit goods in Russia exceed $6 Billion a year, with some experts suggesting that the number should be multiplied several times.\(^ {39}\) Moreover, conservative estimates indicate that for every $1 of counterfeit goods in a country, the government may lose up to 30% in lost sales. This suggests that the Russian government may be losing over $8 billion per year as a result of counterfeiting and physical piracy alone.

Reports also suggest that a high percentage of Russia’s pirated goods and piracy operations are controlled by organized crime, and that such organised crime groups use the proceeds of counterfeiting and piracy to fund their other illicit activities including the trafficking of illegal drugs.\(^ {40}\)
An imported problem?

A sizeable proportion of the counterfeited and pirated goods in Russia are imported into the country from neighbouring countries. The main supply of counterfeit in Russia comes from South-East Asia as well as Bulgaria, Turkey, Poland and Ukraine. Notably, in some areas of the country bordering with China, over 95% of total trade is counterfeit. The influx of counterfeited goods into Russia supports an enormous black market (by some estimates having a market value of $49 Billion), floods the domestic legitimate market and facilitates other illicit activities, including smuggling.

Despite high levels of “imported” counterfeits, there are nonetheless several products where domestic counterfeit production is dominant. This includes the production of alcohol, mineral water, audio and video products, as well as counterfeit medicines and dietary supplements. Perhaps indicative of the pervasiveness of counterfeits in Russia, mechanics often refer to their use of ‘leviye’ — the Russian word for “left,” which in slang means “fake.”

Key sectors are particularly vulnerable

Since counterfeiting operates outside the law, estimating the level of counterfeiting and the harm it brings is extremely challenging. Illegal businesses do not report any information on their activities to any government agency, and therefore any measures of the size of illegal businesses, such as total illegal sales or the income earned by these businesses, must be estimated by indirect methods.

However, our assessment has identified a number of key sectors that appear particularly susceptible to counterfeiting and piracy as discussed in the following discussion of the scope of counterfeit and piracy in seven key product markets. Figures have been obtained from public sources, such as international and governmental reports, academic journals and newspapers. While this overview is based only on publically available evidence of the prevalence and frequency of counterfeit and piracy in Russia, it helps illustrate the magnitude and scale of the problem.

Counterfeit alcohol

12,000 people died in Russia in 2011 from counterfeit alcoholic drinks (down from 2005, when it stood at 45,000). Despite efforts by the Russian government to curb the problem, counterfeit alcohol accounts for between 23-37% of total market sales.

Police seizures of large quantities of counterfeit alcohol are recurrent. As recently as June 2012, Siberian police seized approximately 30,000 bottles of counterfeit vodka. While some of the counterfeit products consist of cheap vodkas masquerading as more expensive brands, a great deal of illicitly distilled vodka is labelled and sold as products such as aftershave, insecticide and hoof softener, in order to avoid tax. This has in turn significant effects on tax revenue for the Russian government. In 2000 losses in tax revenue due to smuggling of alcohol were estimated at RUR 20 Billion ($700 Million).

The findings below from a range of sources highlight the extent of the problem:

- The 2010 EU Customs report on Counterfeit and Piracy found that Russia was one of the top 5 countries of origin for infringing products, and, after China, was the lead country of provenance for counterfeit alcoholic beverages (24% of all counterfeit alcoholic beverages caught by EU customs arrived from Russia).
- Counterfeit wine makes up between 30-50% of all wine imports, with up to 70% of the cognac on Russian store shelves being counterfeit.
- The Russian black market accounts for about 1.2 billion litres of annual vodka consumption, with sales of counterfeit vodka estimated to be RUR 101 billion ($3.3 billion) in Russia. According to the Interior Ministry, North Ossetia and Kabardino-Balkaria are the main sources of illicit vodka in Russia.
**Fraudulent Food**

Fake food is another significant challenge facing the Russian economy. In June 2012, the Russian Customs Union Agro-Industrial Association found that counterfeit dairy production displaces 30% of Russian domestic production.55

A report published in the Food & Drink Europe website claimed that 36% of all foodstuffs on sale in Russia during the first half of 2003 were counterfeited,56 and in 2004, the Russian Agency for Health and Consumer Rights seized food products worth €9.6 million and issued 30,000 orders to destroy counterfeit goods after inspecting 132,000 food companies.57

Fakes affect everything from fish to baby food, and even bottled water has been counterfeited. Below is a range of different food products that have been impacted by counterfeits:

- Estimates put around three quarters of mineral water sold in Russia to be fake, with counterfeit bottles even controlling half of the more developed Moscow market.58
- Authorities estimate that one in every six tins of canned fish does not contain what the label specifies, for instance herring instead of salmon.
- Baby food products are also known to be suspect, with many pack labels missing dates of manufacture and nutritional information as well as failing to indicate which vegetable fats were used in production.59
- More than 40% of food sold in Moscow is either counterfeited or smuggled. Vegetable oil, butter, condensed milk, tea, coffee, mineral water, tinned beef stew, honey, and confectionery lead the list.60

**Counterfeit Pharmaceuticals**

Counterfeit drug production and availability is significant in Russia. In 2006, Russia’s Federal Service for Health Sphere Supervision (FSHSS) reported that an estimated 10% of all drugs on the Russian market were counterfeit. In 2008, the Deputy Chairman of the Committee on health care protection of the State Duma, Professor Alexander Chukhraev, estimated that between 10 to 12% of medicines sold in pharmacies were counterfeit, signalling that counterfeits are not only a problem in the informal markets but have penetrated the official health sector in Russia as well.54 Although these figures appear alarmingly high, other sources estimate that the real figure could be much higher.62

Russia is also a significant producer of fake drugs. A UN survey in 2005 ranked Russia as the fifth-largest producer of counterfeit pharmaceuticals in the world. About 70% of fake drugs in circulation in Russia are produced inside the country, and an estimated 70% of them are copies of foreign medications.63 Most of the fake drugs in Russia are high volume, low cost antibiotics, which turn an enormous profit when copied in bulk.64

During unscheduled inspections of pharmaceutical wholesalers and pharmacies, in the first half of 2006 RosZdravNadzor (the Russian Ministry of Health and Social Development) found 32 designated fake medicines, the largest proportion of which were antibiotics (38%).65 The pervasiveness of counterfeit antibiotics in Russia is particularly worrisome as it hastens the already alarming rate of drug resistant diseases. Nearly 450,000 new cases of multidrug-resistant tuberculosis are recorded each year. More than 25% of new cases of TB identified recently in Russia were of this kind.66
The examples below illustrate the depth and breadth of the trade in fake and poor-quality medicines:

- In February 2012 Moscow police officers seized a large quantity of counterfeit Arbidol, a popular flu remedy that was distributed through one of the city’s pharmacy chains. Regular starch was the main ingredient in the pills.\(^67\)
- In 2009, an investigation revealed that groups of organized Russian criminals were selling counterfeit Tamiflu to British citizens who were finding it difficult to obtain the drug through NHS due to extremely high demand caused by the swine flu epidemic.\(^68\)
- A 2003 report by the International Intellectual Property Institute compiled data from numerous sources and found reports that more than 1,000 hospital admissions resulted from counterfeit insulin in Russia.\(^69\) In that same year, the Coalition for Intellectual Property Rights (CIPR) conducted a survey of pharmaceutical manufacturers that found that counterfeit medicines account for 12% of pharmaceutical products sold in the market.\(^70\)
- According to the Federal Control Service, from 2002-2005, Russian authorities seized over 1,000 tons of fake pharmaceuticals.\(^71\) Russia’s underground market for prescription medications is characterized by unusually well-made fakes.\(^72\)
- In December 2006, Russia’s health ministry estimated that counterfeit pharmaceuticals worth $250-300 million were being sold in the country every year, including antibiotics, cardiovascular, and gastrointestinal medications.\(^73\)
- According to polls, 40% of Russians believed that they were taking either substandard or counterfeit medicines in 2008.\(^74\)

**Software Piracy**

Russia has one of the world’s highest software piracy rates and ranks third in the top 20 economies in commercial value of pirated PC software, over $3 Billion annually.\(^75\)

Although there have been some signs of progress, piracy rates in the country remain high, with pirated software accounting for 63% of software installed on personal computers in Russia.\(^77\) According to the Interior Ministry\(^78\), up to 60% of Microsoft products in use in Russia are pirated copies. Microsoft alone estimates losses of $1 billion annually in sales in Russia due to piracy.\(^79\)

### Top 3 Economies in Commercial Value of Pirated PC Software, 2011\(^76\)

<table>
<thead>
<tr>
<th></th>
<th>Pirated Value ($M)</th>
<th>Legal sales ($M)</th>
<th>Piracy rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>US</td>
<td>$9,773</td>
<td>$41,664</td>
<td>19%</td>
</tr>
<tr>
<td>China</td>
<td>$8,902</td>
<td>$2,659</td>
<td>77%</td>
</tr>
<tr>
<td>Russia</td>
<td>$3,227</td>
<td>$1,895</td>
<td>63%</td>
</tr>
</tbody>
</table>

### PC Software Piracy Rates in Russia and Commercial Value of Unlicensed Software\(^80\)

<table>
<thead>
<tr>
<th>Piracy Rates</th>
<th>Commercial Value of Unlicensed Software ($M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007 73%</td>
<td>2007 $4,123</td>
</tr>
<tr>
<td>2008 68%</td>
<td>2008 $4,215</td>
</tr>
<tr>
<td>2009 67%</td>
<td>2009 $2,613</td>
</tr>
<tr>
<td>2010 65%</td>
<td>2010 $2,842</td>
</tr>
<tr>
<td>2011 63%</td>
<td>2011 $3,227</td>
</tr>
</tbody>
</table>

Significant economic development gains could be achieved if the trend in lowering piracy rates continues. A 2008 International Data Corporation (IDC) report on the economic benefits of reducing software piracy\(^81\) found that a reduction of the PC software piracy rate in Russia by 10% over a three year period would deliver an additional 12,500 new jobs, $355 million in tax revenues, and $8.5 Billion in economic growth in Russia. In 2010, IDC found that roughly 9,000 new jobs in software sales, distribution and services in Russia were created as a direct result of lowered software piracy rates. This was out of nearly 50,000 jobs added to the Russian IT industry as a whole through regular market growth.\(^82\)
Digital/Internet Piracy

Copyright infringement on the Internet remains an overwhelming problem in Russia, although the authorities are beginning to acknowledge the scope of the problem and are starting to address it.

Russia acts as a hub for several websites that sell and host pirated content online. Some websites even pose as legitimate businesses to lure unsuspecting consumers who wish to obtain digital content lawfully. These piracy sites often have the look and feel of legitimate online stores such as iTunes or Amazon.com.

With regards to Internet piracy, the USTR 2012 Special 301 Report noted that although Russia has made important progress in 2011 to improve IPR protection and enforcement overall, significant concerns remain with respect to piracy over the Internet, in particular, and the problem of unlicensed services, websites hosting infringing material, and services that are intended to promote the infringement of copyright.

Several industry reports document the market collapse in Russia over the recent years and note that film and music piracy continues to be widespread in Russia, costing legitimate business billions of dollars annually:

- The IFPI (International Federation of the Phonographic Industry) noted that pirate music made in Russia accounted for 64% of the total music sales and 75% of CD sales. Russian CD manufacturing capacity was over 10 times greater than legitimate demand, resulting in the massive export of pirate discs from Russia to the rest of Europe. Losses to copyright holders are estimated at more than $1 Billion annually. The Russian music market has been in rapid decline over the past few years. In 2011, total recorded music sales were estimated by IFPI to amount to only US$76.6m (49.3m physical, 19.7m digital, 4.5 public performance sales) – less than half of what the estimated sales figures were for 2008. This is down drastically from 2004 levels of US$297.5m. Now that the mobile market dominates sales with an 85-90% share, digital piracy remains a critical concern.
- According to the MPA (Motion Picture Association), Russia had a movie piracy rate of 79% in 2006. And Russia has ranked as the second-biggest source of pirate music, film and software in the world after China — costing companies in 2005 nearly $1.8 Billion.

Fake Consumer Goods

Counterfeit designer clothes, accessories and other consumer goods are rife in Russia. According to the Department of Economic Security (DES) with the Russian Ministry of Internal Affairs, 37% of all clothing sales in the country are counterfeit clothing, and counterfeit cosmetics consist of between 15 and 30% of the total market. According to the Esper Group, Russian shoppers spent $15 Billion on fakes in 2009. The phenomenon of entire fake stores exists in Russia, with several supermarkets reporting counterfeit stores selling under their trade name, such as the luxury supermarket Aliye Parusa. Lower end chains, such as the discount house Pyatyorochka, are also widely faked.

Counterfeit Aircraft Parts

Counterfeits in Russia are not limited to luxury brands products and pirated DVDs. Both foreign and domestically made fakes are finding their way into product supply chains, with potentially disastrous effects. In 2010, Russian aviation officials were alarmed when, upon inspecting 60,000 aircraft parts, they found that nearly a third of them, 14,500, were counterfeit. According to the Russian Ministry of Transportation, most of the counterfeit parts enter Russia from former Soviet republics, with Ukraine, Lithuania and Latvia as the main transit points. However, many substandard fake parts were also made in Russia.

In a country that experienced 24 major air crashes in the first seven months of 2011 alone, the high occurrence of counterfeit aircraft parts is a threat to aviation safety. The cost of counterfeit parts was also highlighted in January 2012, when the Russian space agency chief Vladimir Popovkin said that foreign-made counterfeit or defective microchips were partly to blame for the failure of the $165-million Russian Phobos-Grunt spacecraft.
3. Time is right for Russia to further improve its IP regime

In order to realize the economic and societal value of its IP, Russia has in recent years undertaken improvements in its IPR enforcement regime in the context of its integration in the global economy.

Most recently, these improvements have been catalyzed by Russia’s accession process to the World Trade Organization (WTO). In joining the WTO, Russia will have committed to bring its trade laws and practices into compliance with WTO rules and other market-opening measures. In doing so, it will take a major step in integrating its trading system with the rest of the world. Those commitments include of course enforcing intellectual property rights (IPR) of foreign holders of such rights. This will require Russia to comply with all of the obligations of the WTO TRIPS Agreement, including compliance with the rules governing the enforcement of IP rights, inter alia, civil and administrative procedures and remedies, provisional measures, customs measures and criminal procedures.

Russia’s work with the EU under its Partnership and Cooperation Agreement has also driven improvement over the last decade and both countries maintain a regular IPR regulatory dialogue.

Since 1992, the Agreement on Trade Relations between the US and Russia includes strong IP rights protection and reaffirms commitments to the Paris Convention and the Universal Copyright Convention, obligating adherence to the Berne Convention.

Thus, national policy and international engagements have created the right momentum for Russia to further improve its IP enforcement regime. According to the US government’s “301 Report” while Russia still remains on the Priority List in 2012, important recent progress has been achieved such as the adoption of legislation aiming to establish a specialized IPR Court in 2013, and revision of its criminal code to improve fighting against rampant copyright piracy. This progress builds on previous efforts that had yielded good results, for example the 2009 EU IPR Enforcement Survey found that improvements of criminal law ensuring that copyright and trade marks infringements fall under the category of “serious gravity crimes” and development of guidelines for judges. The 2010 European External Action Service’s EU-Russia Common Spaces reported intensive IPR-related training and awareness raising activities among judges and prosecutors.

Overall, further improvements of IP legislation, particularly enforcement law, are encouraged. Greater awareness among public authorities and the public at large of the risks, which counterfeit and pirated goods pose to consumer safety, public order and health should also be a priority. All these challenges need also to be tackled in the context of the Customs Union established by Russia, Belarus and Kazakhstan.
Introduction

Russia’s international trading partners have called for continued progress to improve the country’s IPR regime. In order to facilitate needed reforms, BASCAP has put forward a set of specific legislative and policy recommendations, which could serve as a roadmap for the path forward. The recommendations presented below are drawn from no fewer than 28 independent and respected sources, ranging from UN agencies, foreign and Russian government agencies, business associations and academic institutions. The report also benefits from specific recommendations put forward by BASCAP member companies operating in Russia. Some of the key sources for the proposed recommendations include:

- **US 2012 Special 301 Report** – urges Russia to take additional steps to improve IPR protections, especially with respect to piracy over the Internet and enforcement generally.
- **Russia IIPA 2012 Report on Copyright Enforcement and Protection** – lists a range of legal reforms and enforcement priorities such as taking actions against Internet piracy, amending the Civil Code Part IV, and strengthening copyright liability under the Administrative code.
- **CIPR 2012 Policy Priorities report** – delineates legislative and enforcement priorities, Customs Union provisions, protection of trademarks and patents, and addressing online infringements.
- **EU IP Enforcement Protection in Russia** – points out that police may conduct successful raids but there is often little follow-up, with seized fakes making it back to the market. It highlights that courts fail to apply deterrent and timely sanctions, and that enforcement is impaired by corruption, insufficient resources, and substantial lack of enforcement at the borders.

Overview

- Priority should be given to designing a comprehensive national IP Strategy that identifies needed legal and policy reforms, delineates implementation and enforcement responsibilities and allocates sufficient resources to ensure effective enforcement.
- Priority should be given to the adoption and implementation of a significant number of policy and legislative reforms, such as those recommended below.
- Priority should be given to establishing a new high-level IP authority to coordinate and implement the implementation of the IP Strategy and the associated legislative and enforcement reforms.
- Priority should be given to the creation of a Russian Observatory on Counterfeiting and Piracy, similar to that established recently in the EU. The Observatory could serve as a platform to join forces and build coalitions between relevant government agencies and representatives from business. The tasks and activities of the Observatory would include responsibility for implementing legislative and policy recommendations, such as those suggested in this report; assisting Russian government agencies in their policy, legal and enforcement work; and assisting the government in developing a national awareness program and network for sharing best practices and data.
Legislative Recommendations

The following legislative recommendations address issues requiring further legislative reforms related to IPR enforcement.

1. Address inadequacies in civil enforcement procedures

The main objective of the Civil Code, Part IV, which was signed in 2006 and entered into force in 2008, was to adapt Russia’s IPR legal framework to new economic developments and bring it in compliance with international treaties and practices, in particular the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Civil Code made improvements, but left some reforms either incomplete or inadequate.

Some civil enforcement shortcomings include: 1) the failure to award preliminary injunctions, or where they are granted, limit the scope thereof (generally limited to the specific titles in litigation, rather than the conduct of the defendant), or to freeze assets and evidence; and 2) the absence of personal liability for the directors of infringing companies or enterprises. In addition, IP right holders encounter problems with regard to burdensome evidentiary requirements requested by Russian Courts including particularly rights ownership information, contrary to the provisions of the Berne Convention. In the case of copyright infringement in practice the courts routinely require a full chain of title starting with the artist to the local licensee of a producer.

IPR legislation lacks sufficient clarity on the process for destroying seized products, which prevents the effective implementation and enforcement of legal norms governing destruction. As a result confiscated counterfeit goods are not always destroyed in a proper way and may even reappear on the market. Although Part IV (Art.1252) provides for the destruction of equipment (including machinery), the rules are not clear regarding the procedure for doing so. In most cases, the courts limit their decisions to the seizure of the equipment and do not order its destruction.

Furthermore, as a general rule, the Russian Civil Code and federal laws do not grant civil judicial authorities in Russia authorization to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and their channels of distribution. As such, a remedy is not available either under the Civil Code or under other laws; it is not applied by courts and cannot be used by IPR owners.

In line with the TRIPS Agreement and Article 6-bis of the Paris Convention for Protection of Industrial Property, Part IV of the Civil Code provides for a broad scope of protection for well-known trademarks, imposing an “association” standard rather than a “confusion” standard, i.e., considers that a violation of a well-known trademark should be found regardless of the goods for which the junior mark is used. However, Part IV of the Civil Code does not prohibit the registration of marks for dissimilar goods and/or services that violate the rights of well-known marks, thereby allowing the Russian Patent and Trademark Office (Rospatent) to continue to register such marks.

Lack of pre-registration opposition procedures for trademarks has also been reported, thus providing fertile ground for those seeking to register marks in bad faith before the legitimate owner has done so. It can take years to cancel such registrations, and in the meantime legitimate owners or users are precluded from using the trademark while the validity is challenged. The introduction of opposition procedures would permit such rights to be asserted and considered prior to registration, which promotes the early, cost effective resolution of potential conflicts, a more reliable trademark register, and fair and effective competition in the marketplace.
The overprotection of domain names continues to pose challenges for trademark owners. Part IV prohibits the registration of trademarks that are identical to previously registered domain names. Rejection of a trademark application on this ground is clearly inconsistent with current IP practice norms, which is why such a provision is absent from the IP laws of other countries. At present, anyone can register another rights holder’s mark as a domain name without examination for prior rights, and with little recourse in jurisdictions where the brand owner may not yet have secured registration.

Moreover, Part IV of the Civil Code imposes state registration (also known as “recordal”) for all trademark licenses. It has been reported that this is a very burdensome, time consuming and potentially expensive process for both trademark licensees and trademark licensors, especially in the case of large licensing programs. Moreover, such a requirement is inconsistent with international standards, and most countries over the last years have entirely removed “recordal” requirements or made them optional.

Recommendations:
A. Enhance the deterrent effect of civil measures for counterfeiting and piracy under the Civil Code, Part IV.
B. Ensure courts issue sufficiently broad preliminary court injunctions, and provide means to secure the freezing of assets and evidence.
C. Improve the potential litigant’s ability to assess the financial position of a company before commencing litigation, and introduce the personal liability of company directors.
D. Reduce burdensome evidentiary requirements particularly for title ownership and issue a circular note to the Russian courts on the application of presumption on title.
E. Introduce mandatory clear procedural rules regarding the destruction process for seized counterfeit goods and for production equipment.
F. Introduce obligations for courts to order infringers to inform rights holders on the source of infringing goods or content (“right of information”).
G. Provide protection of well-known trademarks, including prohibiting registration of infringing marks for dissimilar goods and/or services.
H. Introduce legislative rules to establish the pre-registration for trademark opposition procedures.
I. Enact legislation and regulations to implement an effective domain name dispute resolution system consistent with international norms.
J. Remove mandatory trademark license recordal requirements in line with Russia’s obligations under the Singapore Trademark Agreement.

2. Improve administrative enforcement procedures

The Administrative Code (Articles, 2.1, 14.10 and 7.12) provides a range of fines on natural persons, the owners or managers of legal entities and on legal entities themselves as well as permitting the confiscation and destruction of counterfeit goods. Administrative cases are filed by the police or by agencies, but the levying of fines is done by courts of general jurisdiction (for natural persons) and arbitration courts (for legal entities). Imposing significant administrative fines on legal entities, for example, for the distribution of infringing digital and copyrighted content, would have a deterrent effect (and could be imposed in instances when criminal cases end for failing to meet the high evidentiary burdens).

Administrative cases are filed by the police or by the agencies but the levying of fines is done by courts of general jurisdiction (for natural persons) and arbitration courts (for legal entities). Unfortunately, current administrative procedures are inadequate because of the very low level of fines imposed by the courts and the inability to reach commercial enterprises that distribute infringing content.
3. Improve action against Internet infringements

There are numerous websites located and operating in Russia that illegally make content available on their websites. Some of these websites operate as pay-per-download, distributing content protected by copyright or related rights, without the authorization of the right holders. Furthermore, there are major concerns with other forms of digital piracy such as social networking platforms, which knowingly operate services based on providing access to infringing materials. Most notably VKontakte (the world’s 31st most visited site and 2nd most visited in Russia) attracts 50% of pirated traffic on the Internet in Russia and hosts an astonishing 77% of pirated files found in the country.

In addition, it appears that overall responsiveness of Internet Service Providers (ISPs) to takedown notices in Russia is not consistent. Some ISPs cooperate and take down pirate materials once identified, but many ISPs are not willing to cooperate absent a court order, even when there is clear evidence of piracy. This is why increased ISP cooperation – and a clear, balanced system of third party liability which clarifies the illegality of providing services that are intended to promote infringement – are essential.

Recommendations:

A. Amend the Civil Code, Part IV, to: 1) clarify that companies will face liability for operating services based on promoting access to infringing materials; 2) provide a balanced system of third-party liability provisions; and 3) to create effective incentives for ISPs to cooperate with right holders.
B. Amend the Civil Code, Part IV, to implement appropriate notice and take down procedures for websites hosting illegal material. It is a matter of the first importance, however, that any safe harbour based on takedown not apply to services that promote or induce infringement or that are otherwise knowingly involved in infringement.
C. Ensure that injunctions are available against ISPs and other services regardless of the monetary liability position.
D. Amend the Civil Code, Part IV, to provide an obligation of the ISPs to require, as part of their binding terms of service, that customers comply with IP laws.
E. Fully implement the WIPO digital treaties – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).
F. Review the collective management system by providing clear transparency and governance rules and ensuring effective enforcement of these rules.
4. Address deficiencies in criminal IP law and procedures

Infringements of copyrights, patent and trademark rights are covered by the Russian Federation Criminal Code of June 13, 1996 (Articles 146, 147 and 180 respectively).

While some industries have reported a decline in overall piracy rates resulting from civil and criminal enforcement efforts, insufficient commitment from authorities and a lack of proper follow-up of successful operations remain a significant problem. While isolate industries have reported a decrease in piracy attributable to IPR raids, this has not been the general experience of most rights holders, and the number of raids decreased significantly in 2011. In addition, even where the raids are conducted in a sustained and vigorous manner, investigation of cases, prosecutions, and criminal verdicts do not follow necessarily. Thus, the proportion of raids is very disproportionate to the number of criminal cases initiated and to criminal verdicts rendered. It is also noted that deterrent criminal penalties are rarely imposed.

Moreover, while criminal penalties for infringement have been strengthened in recent years, very few criminal cases reach court sentences. This is likely because of the high “substantial damage”/“large scale” threshold required under the Russian Criminal Code (Articles 180 and 146) for an IP offence to become criminal. According to Article 180 of the Russian Criminal Code, criminal sanctions against counterfeiters may be taken only if the infringement has been committed repeatedly or if a trademark owner has suffered “substantial damage”. However, the Criminal Code does not explain how and what criteria are to be used for such calculations.

In the same vein, for criminally punishable copyright infringements, the required “large scale” criterion is defined by Article 146 of the Criminal Code. However, the monetary threshold, was doubled in 2011. Moreover, the damage threshold application to sites offering millions of copyright infringing files is extremely complicated.

In addition, Russia’s current Criminal Code does not allow for corporate entities to be held criminally liable. Only a natural person (usually a corporation director) can be found criminally liable for infringement and only upon a showing that he/she had a direct intent to commit the infringement.

Regarding counterfeit and falsified medicines, it has been reported that most of the fake drugs in Russia are ‘high volume, low cost antibacterial’. The government in Russia has adopted a new set of rules defining the procedure for the destruction of medicines determined to be substandard or counterfeit. In addition, the competent authorities of the Russian Federation and the Council of Europe agreed to propose measures in order to implement and promote the Medicrime Convention. However, there is need to strengthen the legal framework in order to penalize the counterfeiting and falsification of pharmaceuticals.

**Recommendations:**

A. Intensify criminal investigations and criminal convictions, and impose deterrent levels of criminal penalties.
B. Revise and clarify which criteria are to be used for calculating the value of counterfeit goods in relation to the “substantial damage”/“large scale” thresholds.
C. Amend the Criminal Code to introduce criminal liability against legal entities, including for IPR crimes.
D. Amend the Criminal Code and Law on Circulation of Medicines to establish a criminal liability for counterfeit medicines.
5. Strengthen Customs enforcement competence with respect to parallel trade

Chapter 38 of the Russian Federation Customs Code prescribes the IP Customs enforcement procedure.\textsuperscript{122} According to this Chapter, once a trademark is entered into the Customs Register, information on authorized importers and the relevant protected trademark is sent out to local customs posts.\textsuperscript{123} When clearing the goods, Russian Customs use this Customs Register to check that every good bearing a registered trademark is imported by a licensed importer. If not, Customs will send notification of the suspicious shipment to the trademark owner, who can then decide whether or not to submit a formal application for the protection of its rights.\textsuperscript{124}

Following administrative proceedings, Customs authorities transfer the administrative case regarding the unauthorized shipment to the appropriate local court where the Customs unit involved acts as the plaintiff, the importer is the defendant, and the trademark owner can act as a third party.

The current Russian legislation enables trademark holders to prevent unauthorized importation of goods bearing their trademarks in Russia. Russia thus has a national exhaustion principle (Art. 1487 of the Civil Code)\textsuperscript{125} and the Customs enforcement monitoring procedure allows Customs to stop goods infringing IPR, regardless of whether counterfeited goods or goods in transit are imported without the consent of the trademark owner. Customs take action based on Article 1410 of the Russian Code of Administrative Offences\textsuperscript{126} to seize parallel imports and limit their checking of the good to the authorization granted by the trademark owners.

However, despite the effective system in place against importation of counterfeit goods and parallel imports, there was a shift in favour of parallel importers in Russian judicial practice in 2009. This shift originated with the decision of the Supreme Arbitrazh Court in the so-called \textit{Porsche case}\textsuperscript{127} where the Court ruled that parallel imports are not to be equated with counterfeits (which was the previous approach) and customs authorities should therefore refrain from initiating administrative actions against parallel imports of original (not clearly counterfeit) goods.\textsuperscript{128}

Since then, and in the wake of the Porsche case, some local courts in Russia have denied Customs authorization to seize parallel goods,\textsuperscript{129} while other courts recognize that Customs are competent for any kind of infringement. These inconsistent results of the judicial practice have created legal uncertainty regarding the Customs competence at borders. Due to this legal uncertainty, Customs might be reluctant to seize certain parallel goods and file court cases. Thus, a clarification in the law is needed in order to enhance the current Customs competence of trademark protection in Russia and secure a more uniform implementation of the law by courts.

It can be argued that the principle of national exhaustion of IP rights in Russia does not limit competition between branded products. In contrast, legalization of parallel imports (by allowing international exhaustion) will bring limited benefits to Russia, and will create negative effects on foreign direct investment, local production and development of domestic industries. Furthermore, in the short term, there would be additional negative effects for consumers associated with higher proliferation of counterfeit goods, and a decrease in the quality of products and after-sales service.

\textbf{Recommendations:}

A. Clarify Article 14.10 of the Russian Code of Administrative Offences in order to definitely provide competences for Customs to pursue their inspections and seizure of parallel goods assuming that it is properly enforced.

B. Confirm and maintain the regional exhaustion principle.

C. Classify the practice of parallel import and counterfeit goods as types of IP rights violations.

D. Issue clear guidelines on Customs competence to parallel trade to secure a uniform approach by the courts in implementing the law.
6. Strengthen Customs enforcement competence in the Customs Union (CU) of Russia, Kazakhstan and Belarus

As the Russian Federation is a Member State of the Customs Union (CU), enforcement of IPRs in Russia is now influenced by legislation agreed with Kazakhstan and Belarus at CU level. The CU legislation concerning IPR is quite similar to the current protection of IPRs in Russia and extends these provisions to Kazakhstan and Belarus. However, there remain some legal uncertainties with respect to enforcement of IPRs in the CU.

The Agreement on Unified Regulation on Principles of Protection and Enforcement of Intellectual Property, which came into force on January 1, 2012, establishes the principle of regional exhaustion (Art.13) at CU level. However, it seems that the regional exhaustion principle is not yet enforced by the CU Members and the exact time for the implementation of this principle remains uncertain.

In addition, it is unclear whether the Customs competence at CU level would cover all types of IPR rights violations, including parallel imports; or if the CU Custom Code, or internal customs implementing acts, would limit its scope to specific infringements only, thus excluding parallel imports from its application. In December 2010 Russia, Belarus and Kazakhstan signed the Agreement on Unified Principles of Regulation in the Spheres of Intellectual Property Rights Protection. The Agreement introduces the principle of regional exhaustion of rights under which the first sale of trademarked goods by its owner or with his consent exhausts any rights to the trademark within the whole customs region. As a result, parallel imports within the CU can no longer be opposed based on the rights to trademarks. However, current legislation on exhaustion of rights to trademark and parallel import differs considerably between CU members. In order for the principle of regional exhaustion to be uniformly applied and enforced by all parties, additional legislative work is needed.

Members of the CU have also signed an agreement establishing the Unified Customs Union Trademarks Register. The agreement establishes a procedure for registering trademarks as well as a framework for the customs authorities of each of the CU parties to cooperate with each other, and with rights holders, on border enforcement. However, conditions to register a trademark within this Register need to be clarified. According to the CU rules, such registration is only possible if the trademark owner has sufficient proof that his rights “may be” infringed according to legislation of the three CU Member States. In principle, it is unclear how to interpret the definition of “may be” as a requirement for registration. Moreover, although the CU Trademark Register has been established, it is not yet functional.

**Recommendations:**

A. Ensure that the regional exhaustion principle based on the Customs Union territory is enforced and confirm it on the national level.

B. Provide that parallel goods comply with the tax laws and other national requirements set established under the laws of each Customs Union Member State.

C. Include parallel trade amongst the infringements sanctioned by the Customs Code of the Customs Union.

D. Clarify the requirements of registration in the CU Trademark register. Introduce the rule that all the trademarks already registered in the three national Customs Trademark registers should be automatically accepted for registration in the Customs Union, without the need to demonstrate any risk of infringement.

E. Promote the use and enforcement of the CU Trademark Register within the Customs Union.
Policy Recommendations

The following policy recommendations encourage broader measures, actions and initiatives to support the more specific implementation and enforcement of IP legislation as recommended above.

The policy recommendations are primarily aimed at putting in place an overarching IPR strategy and empowering an authority to oversee enforcement of the strategy and associated legislation. In order to increase effectiveness, the recommendations suggest better oversight and coordination between government agencies and encourage cooperation with business and IP rights holders.

As mentioned above, a useful starting point would be the establishment of a comprehensive national IP strategy and implementing action plan covering the full range of legal and policy reforms, technical assistance and capacity building measures, channels for international cooperation and tools for strengthening enforcement practices.

In addition, the effective implementation of the IP Strategy could benefit considerably from the establishment of a new high-level inter-ministerial IP authority, or, alternatively, the assignment of responsibility to an existing high-level IP body. This authority would have the mandate to oversee implementation and enforcement. Such an authority/body would have a broad responsibility to oversee the coordination of relevant agencies, develop and implement joint strategic enforcement plans and report to the Russian government on specific performance indicators.

1. Improve coordination among enforcement authorities in addressing counterfeiting and piracy, including among the policy, judiciary and Customs

An important aspect of enforcement is the cooperation and coordination between law enforcement authorities. In Russia, several governmental bodies are responsible for the regulation and enforcement of IPRs. While there is already cooperation between these bodies, the level of cooperation needs to be improved. The establishment of sound cooperation and coordination structures is particularly important in the area of piracy over the Internet and enforcement generally. It is also essential in the area of border measures at Customs Union (CU) level, as Russian customs authorities must now cooperate with the Customs authorities of Kazakhstan and Belarus in order to implement the rules established by the Custom Union’s Custom Code [to effectively combat counterfeiting and piracy].
Recommendations:

A. Establish a new high-level IP authority or assign responsibility to an existing inter-ministerial IP Council to coordinate the implementation of the IP Strategy. This would establish the authority to implement recommendations, ensure enforcement and provide coordination among relevant agencies.

B. Establish a uniform methodology and guidelines by the Investigative Committee of the Ministry of Internal Affairs (MVD) and the General Prosecutor’s Office on investigation and prosecution of IPR violations to ensure that prosecutors can properly investigate administrative and criminal actions, and to ensure a uniform approach to these cases nationwide.

C. Elaborate a road map on unified Customs Union practices for the Russian, Kazakh and Belarusian Customs authorities in order to secure a uniform approach with respect to the implementation of the rules and procedures established in the Custom Union’s Custom Code. Ensure cross-border coordination of legislation and law enforcement, including the use of common databases.

D. Encourage Customs and police to participate more fully in developing and using existing technical tools to collect and share information. Share information with Customs authorities including information to better identify and target shipments suspected of containing IPR infringing goods.

E. Improve Customs’ risk assessment tools, for example, given the differences in prices between authentic and counterfeit products, a system should be set up to flag imports of certain products that fall below a certain declared value.

F. Foster cooperation and coordination among enforcement authorities through measures such as investigative training programs, seminars for judges, workshops and conferences for law enforcement officials.

G. Upgrade technical infrastructure and develop on-line networks to allow IPR enforcement authorities rapidly exchange information on enforcement issues, including real-time alerts on suspect products, manufacturing sites, distribution routes and key sale points.

H. Cooperate with the World Customs Organization to utilize the IPM system. 116

I. Research and make information available on technical tools and systems for prevention and investigation purposes (including tracking and tracing systems which help to distinguish genuine from counterfeit products).

J. Develop databases to collect, store and analyze the scope and impact of IPR infringements, national case law on such infringements, and systems to enhance access of public authorities and private stakeholders to information.

K. Issue documents for the implementation of IP rights such as handbooks and manuals and make them available to the law enforcement authorities.
2. Establish effective dialogue and cooperation between Russian authorities, IP rights holders and other stakeholders

Effective cooperation between private IP rights holders and public authorities is a key element in combating counterfeiting and piracy. While industry has the primary responsibility for protecting its intellectual property, government plays a critical role in ensuring there is an effective IPR protection regime in place, including responsibilities and incentives for all parties involved, and enforcing the relevant laws and regulations. Rights holders can assist government in investigations and enforcements actions through their technical expertise to distinguish counterfeits from original products and familiarity with the supply chain involved in manufacturing, distributing and selling their products. They also can support government capacity building and training initiatives, data collection and development of standards and sharing of best practices and overall coordination.

**Recommendations:**

A. Integrate rights-holders into all working groups of the relevant ministries to assist in developing policy and legislation affecting relevant industry sectors.

B. Integrate rights holders into a working group of police and prosecution investigators to assist in developing investigative guidelines and methodology.

C. Integrate industry experts into the judicial process to improve and speed criminal investigations and issue guidelines enabling the admissibility of the private expert testimony.

D. The Investigative Committee of the Ministry of Internal Affairs (MVD) and the General Prosecutor’s Office should appoint a government liaison with IP right holders to more effectively bring criminal investigations and trials to successful conclusions.

E. Promote the establishment and maintenance of formal or informal mechanisms such as advisory groups that would facilitate engagement between the Russian authorities and rights holders and other relevant stakeholders including organizers of trade fairs, transport and logistics companies, retailers and payment service providers.

F. Cooperate with private stakeholders to build an electronic information exchange and an early warning system on counterfeit and pirated products.

G. Enhance pre-seizure information sharing with rights holders on products and packaging to aid Customs in determining whether goods are infringing.

H. Enhance information sharing with rights holders on technological protection measures and circumvention devices seized, and provide samples to rights holders of circumvention devices seized in order to allow rights holders to alter the technological measures to render the circumvention devices ineffective. Encourage and facilitate dialogue between rights holders and other stakeholders to exploit the potential of collaborative approaches and to place more emphasis on joining forces to combat IPR infringements. The focus on common interests should allow voluntary arrangements to be fostered that would supplement the legislative framework.

I. Create a Russian “Observatory on Counterfeiting and Piracy”, composed of relevant government, industry and other stakeholders. It could serve as platform to build coalitions between national authorities and rights holders. Its activities could include putting effective policy recommendations in place and assisting the government with enforcement work outlined above.

3. Expand IP-related administrative and technical capacity-building

A country’s effectiveness in protecting IP rights is in significant measure dependent upon its capacity to enforce them. Therefore, in addition to prescriptions for better legislation and stronger enforcement, methods for improving knowledge, enhancing training, and developing skill capacities and competences should be put in place.
Recommendations:

A. Staff and resource a sub-unit within MVD’s Department K\textsuperscript{118} to deal exclusively with IPR Internet cases; ensure officers are trained to combat copyright crimes, especially for the maintenance of evidence.
B. Clarify and strengthen Department K’s authority and responsibility to act in cases of online infringements, including all types of copyright infringement.
C. Increase the number of experts in the Investigations Committee of MVD in investigating, examining and prosecuting IP violations.
D. Create an MVD Policy Department specifically devoted to IP protection.
E. Establish dedicated and trained cyber-crime law enforcement units.
F. Appoint special IPR investigators, prosecutors and police officers at both the federal and regional levels throughout Russia to address IP infringement.
G. Expand cooperation with international organizations and participate in their training seminars: WCO, Interpol, Europol and UNICRI.
H. Foster cooperation between law enforcement officials in the US, EU and other WTO states to address online infringements and Internet IP crimes.
I. Create specialized IP courts and prosecution offices throughout Russia according to the New Federal Law signed on December 8, 2011.

4. Increase awareness of counterfeiting and piracy and the associated economic and social harm among policy makers and the general public

In Russia, as in many countries, research has shown that consumers participate regularly in purchasing counterfeit and pirated goods. And, many government leaders and decision makers continue to view counterfeiting and piracy as a “victimless crime” and give it very low priority for policy actions.

In a representative survey of Russian consumers commissioned by BASCAP, only 4% of respondents said they “never” purchase counterfeits and 31% said they purchase them “regularly”. While Russian’s are aware of the dangers counterfeit goods can pose to their health and safety, especially alcoholic beverages, medicine, food and auto parts, the research showed that counterfeit products in these categories are bought and used quite regularly.

In addition, only 16% of Russian consumers believe government is really fighting counterfeiting and piracy. They believe the fight against counterfeits and pirated goods needs to start at the top and that consumers are powerless to affect any meaningful change by themselves. Consumers therefore see no reason to change their purchasing habits until they are told to do so by government or law enforcement and are able to see a genuine stimulus (punishment) for doing so.

This research clearly shows the need to increase public and political awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. It is important for consumers, rights holders and government officials to be aware of the counterfeiting problem, to understand the economic and social effects, and to know what concerned parties can do to combat counterfeiting and piracy activities.

Recommendations:

A. Build on BASCAP’s existing research among Russian consumers and BASCAP’s globally tested awareness campaign (Fakes Cost More-I Buy Real),\textsuperscript{119} to create a national campaign to strengthen public awareness of the value of IP, the detrimental effects of IPR infringements, and the harms and costs of counterfeiting and piracy.
B. Work with industry, in Russia and globally, to develop a program for effectively delivering the national campaign across all the country, with special attention to children and young adults.
Conclusion

Combating counterfeiting and piracy must become a public policy priority. This effort must start with the Russian government sending a clear message to the criminal networks and those involved in counterfeiting and piracy that this activity will no longer be tolerated – and that increased enforcement of stronger IP laws will result in increased punishments. These actions will help convince legitimate business owners and consumers that the government is serious about protecting IP rights, and encourage them to support these efforts. Public officials, international governmental organizations, industry and even consumers need to work together more closely to develop more creative and effective methods to fight this economic and societal problem.

The benefits of a more advanced intellectual property regime to Russia’s economy are undeniable. As summarized throughout this paper, there is a close correlation between the effectiveness of IPR protection and a country’s economic performance. IPR systems significantly affect every country’s growth, FDI, employment capacities, innovation and overall competitiveness, and enable productivity and efficiency gains. Putting in place a solid IPR protection and enforcement regime is thus critically important for a country to reach its economic potential. The ICC through its BASCAP initiative as well as ICC Russia stands ready to do its part to help the Government of the Russian Federation achieve these important goals.

Now is the time to increase the commitment and resources to stopping the illegal trade in counterfeiting and piracy.
Promoting and Protecting Intellectual Property in the Russian Federation

Notes


34 Countries judged by the USTR as having “serious intellectual property rights deficiencies” that require increased USTR attention are put on the “Priority Watch List”. Since 2000, Russia has held a recurring spot on the “Priority Watch List.”


As estimated by black market database Havocscope: http://www.havocscope.com/russia/

"Industry reports indicate an increase in the practice of shipping of counterfeit products separately from labels and packaging in order to evade enforcement efforts. For example, infringers in Russia reportedly import unbranded products, package these products with unauthorized packaging materials bearing the rights holders' trademarks, and subsequently export the products to various countries. See "2012 Special 301 Report", Office of the United States Trade Representative. Available at http://www.usit.gov/sites/default/files/2012%Special%301%Report_0.pdf

"Estimated one-third of consumer goods in Russia are counterfeits; aviation also hit", ADNAS. http://www.adnas.com/company-blog/estimated-one-third-consumer-goods-russia-are-counterfeits-aviation-also-hit


"Country of provenance is the country known where the goods were coming from when the detention was made whereas the country of origin is in principle the country where the goods are produced.

"Counterfeit wine makes up to 30 percent, or 75 million liters, of all wine imports into Russia each year", Counterfeit Wine Problems in Russia, November 12, 2010. http://en.english.ndtv.com/ndtv_europe/2010-10-12/370454560960.html


"Andrei Danilenko, Customs Union Agro-Industrial Association Board Chairman, Expert meeting on Russia's economic development following accession to the WTO. http://government.ru/eng/docs/19183/


"Food Navigator.com, 13 May 2005.


See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:2 1997A1128:EN:HTML. The EU-Russia Partnership and Cooperation Agreement confirm the importance that the Parties attach to ensure adequate and effective protection and enforcement of intellectual, industrial and commercial property affecting trading conditions were to occur, urgent consultations shall be undertaken, at the request of either Party, with a view to reaching mutually satisfactory solutions”. The Agreement identifies a number of international IPR obligations of key importance for Russia and the EU.

See: http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/dialogues/# russia

See: http://tcc.export.gov/TradeAgreements/All Trade Agreements/ exo 05377.asp.


See: http://www.ipea.ru/rbc/2012/2012PEC310RUSSIA.PDF.

See: http://www.ipea.ru/rbc/2012/2012PEC310RUSSIA.PDF.


“The basis for the decision in the “Porsche case” of the Supreme Arbitrazh Court of the RF was the formulation of the sanctions in Art. 14.10 “confiscation of objects containing unlawful reproductions of the trademark.” The court decided that original goods manufactured by a trademark owner do not contain any “unlawful reproductions,” and therefore the measures provided for by Art. 14.10 of the Code on Administrative Offenses were not applicable in this case. See: “Part 1: Trademark Protection in the New Customs Union Between Russia, Kazakhstan and Belarus, May 2010”. p. 33. http://ccwbo.org/WorkArea/DownloadAsset.aspx?id=2147490235.


See: http://www.usitc.gov/sites/default/files/Russia_0.pdf.


See: http://ipromowco.com/publications/.

Such as: Coalition for Intellectual Property Rights (CIPR) and Rosbrand. The department with responsibility for combating technological crimes and Internet fraud, but not, explicitly, Internet copyright piracy.

The International Chamber of Commerce

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization’s origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves “the merchants of peace”.

ICC has three main activities: rules-setting, dispute resolution and policy. Because its member companies and associations are themselves engaged in international business, ICC has unrivaled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world’s leading arbitral institution. Another service is the World Chambers Federation, ICC’s worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC enjoys a close working relationship with the United Nations and other intergovernmental organizations, including the World Trade Organization, the G20 and the G8.

ICC was founded in 1919. Today it groups hundreds of thousands of member companies and associations from over 120 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

For information on how to join ICC, visit the ICC website (iccwbo.org) or contact the ICC Membership Department in Paris.