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Russia Retaliates Against Sanctions by Curtailing Foreign Owners' IP rights

The Russian government has responded to western sanctions with new legislation designed to undermine the intellectual property (IP) rights of foreign entities.

Compulsory Licensing

Russia has moved to allow royalty free compulsory licensing. It appears that this applies to patents, utility models, and industrial designs, although the exact scope remains to be seen when the new provision starts to be applied.

The change in law allows the IP rights of rightsholders who are associated with foreign states who commit “unfriendly acts” against Russia to be used without their consent. The new provision states that the amount of compensation rightsholders will receive is 0 per cent of the actual revenue of the person using the IP without consent.

Countries that have committed “unfriendly acts” against Russia are held to include the UK, USA, EU, Australia, and Japan. Being associated with one of these countries includes having citizenship of one of these countries, having a place of registration there, or

one of these countries being the predominant place of an entity's economic activity or profit.

It has been suggested by the Russian government that the measure was implemented to counteract supply shortages but it is not clear the extent to which unauthorized use of foreign owned IP will be permitted.

Exemption of Goods from IP protection

In addition to this and broader in scope, Russia has also passed legislation that will allow certain goods to be exempted from IP protection. The title of this new law suggests that the legislative amendments were made to improve the mechanisms that “ensure sustainable economic development” in light of foreign sanctions against Russia.

Again, the exact scope and application of this new law is currently unclear but it is expected to cover all types of IP. It also unclear whether the foreign owned IP rights in the relevant goods will be entirely voided or whether some limited form of protection will continue in certain scenarios.

Long-term Effects

These legislative changes signify an intent to undermine

foreign-owned IP rights in Russia. However, the true extent of the curtailment of IP rights remains to be seen. Naturally, in the short term, the effects on foreign IP owners will vary depending on the extent and importance of their IP rights in Russia. Concerningly, the legislative changes could open the door to parallel imports.

However, fears about IP protection in Russia are not new. For example, last year Russia was included in the US's Priority Watch List in the Special 301 Report on IP Protection. The nine countries included on the list were said to present “significant concerns” regarding insufficient IP protection or enforcement or had undertaken actions that otherwise limit market access for those relying on IP.

This retaliatory move by Russia could have long-term ramifications that outlast the present sanctions. Should the sanctions eventually be removed, the lack of respect for IP rights and their enforcement could lead to the reduction or ceasing of foreign investment in Russia. This would have knock-on effects on research and development in the country, which could cut across a range of sectors. Even if these new legislative provisions are repealed, it could take a long time to rehabilitate its reputation and convince foreign rightsholders that it respects and enforces IP rights.

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