



January 1992

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### Recommended Citation

Laura A. Pitta, *Intellectual Property Laws in the Former Soviet Republics: A Time of Transition*, 8 SANTA CLARA HIGH TECH. L.J. 499 (1992).

Available at: <http://digitalcommons.law.scu.edu/chtlj/vol8/iss2/8>

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# INTELLECTUAL PROPERTY LAWS IN THE FORMER SOVIET REPUBLICS: A TIME OF TRANSITION

Laura A. Pitta†

One year ago, the world was marveling at the tremendous strides in the Soviet Union towards a free-market economy. President Mikhail Gorbachev was in his glory leading the Soviet people towards a new and better life under the banner of *perestroika*.<sup>1</sup> As part of that reform, sweeping changes occurred in the nation's fundamental laws regarding ownership of property. One such set of laws covered rights in intellectual property. The laws were very Westernized in that individuals including corporations could own rights in intellectual property, rather than the previous exclusive ownership by the Soviet State. This was an important step in the eyes of prospective foreign investors, as the ability to make a return on one's investment was now possible.

Then suddenly, the Soviet Union began to crumble. Westerners watched in horror as political support of Gorbachev diminished, and the mighty Soviet Union shattered into independent states. One by one in the late summer of 1991, the Soviet republics declared their independence.<sup>2</sup> The threat of anarchy and destabilized governments with control over the ex-Soviet Union's technological resources was unnerving to Western on-lookers.

Now that the dust has had time to settle, the independent states are emerging and taking their place in the world order.<sup>3</sup> The

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1. *Perestroika* is the Russian word for "reconstruction." Under the Gorbachev regime, the word came to refer to President Mikhail Gorbachev's program of economic restructuring. Briefly, this program introduced a capitalistic market economy to the Soviet economic system.

2. Justin Burke, *Gorbachev Plea: Keep Union*, USA TODAY, Aug. 28, 1991, at 1A.

3. Today there are fifteen independent republics which formerly comprised the Soviet Union. They are: Azerbaijan, Armenia, Georgia, Byelorussia, Kazakhstan, Kirghizia, Latvia, Lithuania, Moldavia, Russia, Tajikistan, Turkmenia, Uzbekistan, Ukraine and Estonia.

Latvia, Estonia and Lithuania are generally not categorized with the former soviet

State of Russia appears to be the most dominant, having the greatest amount of technological, industrial and financial resources, however, other former Soviet republics are not far behind.

From the perspective of intellectual property law, the new republics are anxious to install attractive laws. Most of the republics are desperate for an influx of capital investment and hard currency. Laws which are conducive to foreign investment are a priority. As intellectual property law provides for conservation and protection of an owner's technology and the proceeds from exploitation of that technology, it is a necessary device for foreign investors, and, thus, a highly desirable addition to each of the republic's repertoire of laws.

Before the demise of the Soviet Union, the Soviet Parliament adopted a new set of laws for the protection of intellectual property.<sup>4</sup> The laws were revolutionary in that they were based on a Western style system of reward for novel, non-obvious inventions with industrial applicability.<sup>5</sup> They were "a melange of the best patent systems in the world including the United States, France and West Germany, along with the goals and ideals of the Soviet Union."<sup>6</sup> The new republics have adopted these laws as a temporary fix to their intellectual property law void, and are preparing permanent versions as quickly as possible.

The purpose of this note is to explain some of the recent events occurring in intellectual property law in the former Soviet republics. I will briefly explore some of the impetus behind a speedy adoption of intellectual property laws, as well as the substance of those laws temporarily in place. A short conclusion looking to the future of intellectual property laws in the new republics will follow.

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states, as they wish no association with the former USSR. Thus, the other twelve republics tend to act in harmony, while Estonia, Latvia and Lithuania act independently of their former brethren. Telephone Interview with Alice Zalik, Attorney Advisor, Office of Legislation and International Affairs, U.S. Patent and Trademark Office (April 23, 1992) [hereinafter Zalik].

4. The Laws on Inventive Activity were adopted by the Soviet Parliament on May 31, 1991. *Parliament: Foreign Investment, Recall Law; Reworked Law on Inventions Adopted on Second Reading; Incentives for Inventions and Their Use Increased; a Patents Court Will Come Later On*, Current Digest of the Soviet Press, July 3, 1991, available in LEXIS, Nexis Library, INTL File.

The provisions are substantially the same as those appearing in the draft laws printed in *Izvestiya*, June 14, 1991 at 4. For a thorough analysis of those laws, see Laura A. Pitta, Comment, *Strengthening the Legal Basis of Perestroika: the U.S.S.R. Draft Laws on Inventive Activity*, 7 SANTA CLARA COMPUTER AND HIGH TECH. L.J. 321 (1991).

5. *Id.* at 327.

6. *Id.* at 324.

## MOST-FAVORED NATION TRADING STATUS

One way in which to boost the ailing economies of the new republics is by achieving most-favored-nation (MFN) trading status with the United States. MFN status allows a nation to ship goods to the United States at the lowest tariff imposed for a given good.

At present, the MFN status is really more symbolic than real with regard to affecting trade volume between the United States and the former Soviet republics. The MFN status is important in two respects which are tangential to the trading effects. First, it signifies the republics' willingness to join the world community. Second, it could help the republics obtain much needed foreign banking credits.<sup>7</sup> The status also makes loans and insurance available to American companies wishing to establish business ventures in those nations.<sup>8</sup>

MFN status is controlled by the 1974 Jackson-Vanik legislation which focuses on the emigration policies of the exporting country.<sup>9</sup> Intellectual property protection is also a factor in the decision of MFN status.

The newly emerged republics have eliminated most, if not all, of the objections which the United States had regarding emigration policy.<sup>10</sup> The republics must now overcome the intellectual property hurdles to achieve the status. The Trade Agreement negotiated between the United States and the Soviet Union and signed by their respective heads of state has been offered to each of the new republics.<sup>11</sup> The agreement grants MFN status, allows U.S. companies to freely operate commercial representations in each of the republics and permits companies to conduct market studies, and requires copyright and patent protection for inventions, computer programs, sound recordings and trade secrets.<sup>12</sup>

7. Karen Riley, *Soviets, U.S. Seek Trade Accord*, WASH. TIMES, Feb 8, 1990, at C1.

8. Anne Veigle, *Most-Favored-Nation Status Granted to Armenia by U.S.*, WASH. TIMES, April 4, 1992, at B12.

9. Jackson-Vanik Amendment of 1974 § 402(a), 19 U.S.C. § 2432 (1990).

10. In fact, legislators are now worried about the Soviet "brain-drain." According to an opinion poll, 51% of Moscow scientists were ready to leave to go abroad on a temporary contract; 6% were ready to leave the country forever. *Draft Programme to Stop the Brain Drain Adopted at Moscow Conference*, BBC Summary of World Broadcasts, Feb. 20, 1992, available in LEXIS, Nexis Library, INTL File.

11. The Agreement was signed by President Bush and President Gorbachev on June 1, 1990. Agreement on Trade Relations: Side Letter on Intellectual Property, June 1, 1990, United States-USSR.

12. *Armenia is First Soviet Republic to Sign Trade Accord with U.S.*, Agence France Presse, April 3, 1992, available in LEXIS, Nexis Library, INTL File.

Armenia is the first independent republic from the former Soviet Union to sign a trade agreement with the United States on April 2, 1992. The Agreement is an exact model of the

## FOREIGN INVESTMENT

Additionally, intellectual property laws which allow an inventor to reap the benefits of the invention can only make foreign investment more attractive. Foreign investors are willing to invest money in enterprises in the republics if they can fund development of new technology there, and then reap the rewards through licensing when a commercially viable product is found. This is important to the growth of research and development in the former Soviet republics. Foreign investors may also be willing to invest money in the republics if they can import new technology and put it into production in the new republics. This would be a great boost to the republics' economies, as production requires new facilities and the creation of jobs.

## THE INTELLECTUAL PROPERTY LAWS

Until legislation becomes effective, the former Soviet laws on patents, trademarks and industrial designs will still be valid in most of the republics.<sup>13</sup> Draft laws on intellectual property protection which are to substitute for the earlier Soviet laws are under consideration by the Supreme Soviet of the Russian Federation and are likely to become law shortly. Separate bills on patent law, protection of trademarks and service marks, integrated circuits, and computer programs and databases are also pending.<sup>14</sup>

Russia's patent agency, "ROSPATENT," has replaced the USSR's "GOSPATENT" to carry on the administration and policy making with regard to patents within the the Russian Federation.<sup>15</sup>

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MFN treaty that Congress approved in November of 1991 for the former Soviet Union. The United States is also actively negotiating with Russia, Byelorussia, Moldavia, Ukraine, Kazakhstan and Uzbekistan. The negotiations are part of the overall Bush administration effort to give economic assistance to the region. Veigle, *supra* note 8.

13. *Bills to Protect Patents, Software, Trademarks, and Chips Moves Forward*, Int'l Bus. Daily (BNA), Apr. 17, 1992, available in LEXIS, Nexis Library, INTL File [hereinafter *Bills*]. Six of the republics have signed an agreement to that effect: Armenia, Russia, Byelorussia, Ukraine, Moldavia and Tajikistan. The approval of the parliament of Kazakhstan is expected.

14. *The Russian Patent Law as made the First Step*, SovData Dialine: BizEkon News, Feb. 17, 1992, available in LEXIS, Nexis Library, INTL File.

15. *Id.*

Additionally, the Intellectual Property Agency of Russia, IPRAR, has been set up to substitute for the USSR Copyright Agency, VAAP. The new director, Mikhail Fedotov, announced that new copyright legislation would be drafted to reflect "new structure and new priorities." The new agency also plans to exert some influence on the current privatisation process by defining the intellectual value of objects of privatisation. One of IPRAR's priorities will be combating "movie and video piracy that has long been flourishing in our country." *IPRAR Instead of SCA*, SovData Dialine: Soviet Press Digest, Apr. 2, 1992, available

The Russian republic recognizes all patents issued under the USSR laws. The republic will also recognize the priority of patents filed under the USSR system and the new system.<sup>16</sup>

The Russian Republic's new patent laws are similar to those of the European Patent Convention (EPC),<sup>17</sup> however there are two significant distinctions: first, the laws provide protection for a new use of a known arrangement, process, substance or species of micro-organism; second, computer programs and algorithms are exempted from protection.<sup>18</sup> This may reflect the influence by the United States during the drafting process before the break up of the Soviet Union.<sup>19</sup>

The Russian republic is in negotiations with the former republics to create an interstate patent protection system with an interstate patent office.<sup>20</sup> Russia's patent office "ROSPATENT" would logically become the seat of the interstate patent federation, being the successor to the USSR's patent bureaucracy and infrastructure. The system would come into effect when at least three republics ratify an agreement with those terms. The trend, however, is for each of the republics to establish its own intellectual property offices and laws.<sup>21</sup>

#### FUTURE FOR AN INTERSTATE PATENT SYSTEM?

The United States negotiating team from the U.S. Patent and Trademark Office is encouraging the former Soviet republics to establish a uniform interstate system to efficiently make use of their limited resources.<sup>22</sup> Running a patent office requires a substantial bureaucracy and expenditure. Also, most of the republics are struggling to install laws regarding basic free-market concepts, such as property ownership and contract law. They have no historical experience or knowledge with these fundamental pillars of the free market.<sup>23</sup> Intellectual property law is naturally a lesser priority. If

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in LEXIS, Nexis Library, INTL File. See also, *Yeltsin Decree sets up Russian Intellectual Property Agency*, BBC, Feb. 27, 1992, available in LEXIS, Nexis Library, INTL File.

16. *Bills*, *supra* note 13.

17. Convention on the Grant of European Patents, Oct. 5, 1973, 13 I.L.M. 270.

18. Iosif E. Mamiofa, *News Section: National Reports: Russian Federation*, 14 EUR. INTEL. PROP. REV. [EIPR] D-9 (Jan. 1992).

19. In 1990, the USSR presented a draft of intellectual property laws to the United States for its comments and suggestions, and more importantly for consideration as part of the package to obtain MFN trading status with the United States. Pitta, *supra* note 4, at 324.

20. *Bills*, *supra* note 13.

21. *Id.*

22. Zalik, *supra* note 3.

23. Basically, the former Soviet republics never experienced the industrial revolution in

the republics join together to form an interstate patent system, they could pool their knowledge and energy, and learn together. Each republic could economize, have the benefits of intellectual property protection, and also provide patentees with the convenience of having to file in only one office for protection in all of the republics.<sup>24</sup>

The independent republics of Latvia, Estonia and Lithuania are being similarly encouraged. Since the three republics wish no association with the former Soviet states, they are attempting to form a loose federation on their own.<sup>25</sup> A uniform, united patent system for all three states would prove to be expedient. Each of these three states also has an eye towards joining the European Patent Convention.<sup>26</sup> If they formulate their patent system to harmonize with the EPC, entry will be that much easier.<sup>27</sup> Latvia has already taken steps to pass legislation regarding intellectual property.<sup>28</sup> Latvia will provide interim legal protection for inventions, industrial designs and trademarks until more complete intellectual property laws come into force.<sup>29</sup> The interim regulations permit the registering of new patents and allow the transfer of patents originally issued by the former USSR Patent Office.<sup>30</sup> Latvia's stated purpose for swiftly enacting this interim legislation is that it is interested in offering protection for intellectual property as a way to help attract foreign investment.<sup>31</sup>

#### CONCLUDING REMARKS

The former Soviet republics are in a state of tumult. They are

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the Western sense. Free-enterprise had not developed extensively at the time of the Revolution in 1917. Additionally, after seventy years, most individuals who may have been able to teach principles of the free market are gone.

24. Zalik, *supra* note 3.

25. *Id.*

26. *Id.*

27. One major road-block to the event of Lithuania, Estonia and Latvia becoming signatories to the EPC is the non-convertibility of their currencies. The EPC requires fees which must be paid in hard currency. Until their currency becomes convertible or they have a surplus of hard currency, Lithuania, Estonia and Latvia are likely to remain in the "ruble Ghetto." Zalik, *supra* note 3.

28. *Latvia adopts interim regulations to protect patents, industrial designs, trademarks*, Russia and Commonwealth Bus. Law Rep. (Buraff Publications), March 6, 1992, available in LEXIS, Nexis Library, INTL File.

29. *Id.*

30. *Id.*

31. Perhaps Latvia is looking to become the seat of power for a loose federation composed of Latvia, Lithuania and Estonia. By developing intellectual property laws first, Latvia will already have some of the necessary infrastructure in place. Latvia may be looking to become the leader of the three states, just as Russia has emerged as the dominant force in the former Soviet republics.

anxious to join their Western and Asian cousins in the world marketplace. The problem is that while the rest of the world has developed, the Soviet states remained economically stagnant. Additionally, they never gained the experience and resources that come with an industrial revolution. The Soviet states went from a simple agriculturally-based economy closely linked to feudalism, directly into communism. Both systems were highly paternalistic, and had little room for the creativity required of free enterprise. They must now scramble to catch up with those nations which have experienced the industrial revolution and had up to one hundred years of growth. The danger is that, in forging ahead too quickly, serious mistakes affecting the viability of those very states can be made. The benefit is that if the former Soviet republics can develop their industrial base, they may shoot ahead of all the other industrialized nations. Having no modern industrial base, they must invest in all new materials. This could create a technically modern industry able to compete with Japan and Germany. Clearly, there are difficult times ahead for the former Soviet republics, but there is also promise for new economic base that will impact the world.

In the realm of intellectual property law, rich rewards are available for those nations with coherent functioning systems, specifically, influx of investment and the development of technology. The wisest choice for these burgeoning nations to make is to sacrifice the small amount of prestige associated with having a national patent system, and instead join forces with the other newly emerged republics to form an effective system for the protection of intellectual property. Not only is this approach expedient with regard to limited resources, but it may also forge the way for a future Eastern European market. At a minimum, such a harmonization of laws could open the way for the republics to link into the powerful European Economic Community. Such ideas sound fantastic given the present sorry economic state of the republics. However, stranger things have happened in the twentieth century.<sup>32</sup> The goal right now is for the republics to ground themselves in the basic principles of the free-market economy. Intellectual property is one facet which must be developed.

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32. For example, after World War II, who would have ever dreamed that psychologically and physically devastated Japan and Germany would become the dominant leaders in world industrial markets by the end of the century?

