

2000

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Recommended Citation

David E. Miller, Combating Copyright Infringement in Russia: A Comprehensive Approach for Western Plaintiffs, 33 *Vanderbilt Law Review* 1203 (2021)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol33/iss5/2>

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Combating Copyright Infringement in Russia: A Comprehensive Approach for Western Plaintiffs

David E. Miller*

ABSTRACT

This Article addresses several measures that U.S. and European firms can undertake to combat copyright infringing activities in Russia. First, the Article attempts to dispel the notion that Russian law and the Russian government are inadequate to deal with copyright and piracy problems. In fact, recent surveys suggest that foreign plaintiffs have achieved some success in arbitrazh courts. Furthermore, Russian authorities have begun to take steps to ensure that these decisions will be enforced.

Second, the Author suggests that the United States and European nations can apply pressure on the Russian Federation to ensure compliance with copyright laws in the context of bilateral treaties to which Russia is a party. Both the United States and the European Union have current treaties with Russia that provide avenues for communication of these concerns.

Finally, the Author argues that if Russia were admitted into the World Trade Organization, procedures within that organization could be employed to influence Russian intellectual property policies and their enforcement. If Russia were a party to the WTO, other member states could attempt to enforce Trade-Related Aspects of Intellectual Property Rights (TRIPS) standards, thereby improving foreign copyright interests.

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I. INTRODUCTION

United States and European firms lose millions of dollars each year as a result of the illegal reproduction and sale of copyrighted goods in Russia.¹ This piracy significantly limits the sale of legal reproductions of motion pictures, sound recordings and musical compositions, business and entertainment computer software, and books.² This Article describes a comprehensive, three-pronged approach that United States and European plaintiffs can and should employ to combat piracy in Russia: (1) litigation in Russia itself; (2) lobbying for intergovernmental pressure within the framework of bilateral agreements between Russia and both the United States and the European Union; and (3) lobbying for Russia's admission to the World Trade Organization. These three steps will help to reduce, if not to eliminate, piracy in Russia over time.

1. The International Intellectual Property Alliance estimates that U.S. companies alone lost \$963.9 million in 1998 as a result of the illegal reproduction and sale of copyrighted goods in Russia. INT'L INTELLECTUAL PROP. ALLIANCE, 2000 SPECIAL 301 REPORT: RUSSIA 139 (2000), available at http://www.iipa.com/2000pdf/RUSSIA_2000.PDF (last visited Oct. 26, 2000). These figures should not be taken at face value. They are based on estimates of the number of illegal copies that were sold and the profits that companies assert they would have made if all of the copies had been legal and sold at official prices. It is clear, however, that many Russians could not afford these copies if they were sold at those prices. Furthermore, some products would simply be unavailable in Russia if they were not sold by pirates. Boris Kargalitsky, *Costs and Benefits of Intellectual Piracy*, MOSCOW TIMES, June 6, 1997, LEXIS, News Library, Mostms File.

2. INT'L INTELLECTUAL PROP. ALLIANCE, *supra* note 1, at 139.

II. LITIGATION IN RUSSIA

Foreign firms often assume that Russia “has no law”—that is, its written laws are poorly drawn and that its courts are inefficient, incompetent, or simply corrupt.³ In fact, however, the Russian government took impressive steps toward the development of a new, comprehensive, and enforceable system of copyright laws in 1992 and 1993, when it adopted both the “Law on the Legal Protection of Computer Programs and Databases”⁴ and the “Law on Copyright and Neighboring Rights.”⁵ These measures replaced all prior Soviet and Russian copyright laws.⁶ Russia subsequently joined both the Berne Convention⁷ and the Geneva Phonograms Convention⁸ in 1995. These international agreements trump domestic law in Russia.⁹ Finally, Russia made copyright infringers criminally liable for their illegal actions in 1997.¹⁰

3. Glenn P. Hendrix, *Business Litigation and Arbitration in Russia*, in A LEGAL GUIDE TO DOING BUSINESS IN RUSSIA AND THE FORMER REPUBLICS OF THE U.S.S.R. 135, 176-180 (Aviva Yakren ed., 2000). Unfortunately, Western scholars who are unfamiliar with Russian courts continue to propagate these myths about them. *E.g.*, William J. Kovatch, Jr., *Joining the Club: Assessing Russia's Application for Accession to the World Trade Organization*, 71 TEMP. L. REV. 995, 1036-37 (1998); Susan Tiefenbrun, *Piracy of Intellectual Property in China and the Former Soviet Union and its Effects Upon International Trade: A Comparison*, 46 BUFF. L. REV. 1, 68 (1998).

4. Law of the Russian Federation “On the Legal Protection of Computer Programs and Databases,” ROSSIYSKAYA GAZETA [ROSS. GAZETA], Oct. 20, 1992, at 5, translated in 19 REV. CENT. & E. EUR. L. 57 (1993) [hereinafter Computer Programs Law]. See also Monica B. Vermeer, Note, *A New Era in Russian Copyright Law: Protecting Computer Software in the Post-Soviet Russian Federation*, 5 TRANSNAT'L L. & CONTEMP. PROBS. 147 (1995) (analyzing the legal and economic impact of Russia's computer software copyright laws).

5. Law of the Russian Federation on Copyright and Neighboring Rights, ROSS. GAZETA, Aug. 3, 1993, translated in 20 REV. CENT. & E. EUR. L. 85 [hereinafter Copyright Law].

6. Igor Pozhitkov, *Copyright and Neighboring Rights Protection in the Russian Federation*, 20 REV. CENT. & E. EUR. L. 53, 55 (1994).

7. Berne Convention for the Protection of Literary and Artistic Works, July 24, 1971, 102 Stat. 2853, 1161 U.N.T.S. 31 [hereinafter Berne Convention].

8. Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Oct. 29, 1971, 25 U.S.T. 309, 866 U.N.T.S. 67.

9. Article 3 (“International Treaties”) of the Copyright Law provides: “If rules, other than those of the present Law, are established by an international treaty to which the Russian Federation is a party, the rules of the international treaty shall be applied.” Copyright Law, *supra* note 5, art. 3. See also KONSTITUTSIYA RF [Constitution of the Russian Federation] (1993) art. 15, para. 4, translated in RUSSIAN LEGAL TEXTS: THE FOUNDATIONS OF A RULE-OF-LAW STATE AND A MARKET ECONOMY 1, 7 (William E. Butler & Jane E. Henderson eds., 1998).

10. Article 146 (“Violation of Author's and Neighboring Rights”) of the Criminal Code of the Russian Federation provides:

- (1) The illegal use of objects of author's right or neighboring rights, and likewise the appropriation of authorship, if these acts have caused large-

While foreign plaintiffs may pursue both civil and criminal cases against copyright pirates within the Russian court system, the available data suggest that foreign plaintiffs with copyright claims should file only civil litigation. Criminal copyright cases must be brought before a court of general jurisdiction, while an *arbitrazh* court can hear civil copyright claims.¹¹ The power to investigate criminal copyright complaints was transferred from the prosecutor's office to the police in 1995 and then moved back to the prosecutor's office in 1996.¹² It appears that prosecutors currently lack the resources to energetically pursue copyright cases.¹³ In 1999, 276 criminal cases were brought against

scale damage—shall be punishable by a fine in an amount of from two hundred up to four hundred minimum amounts of payment for labour, or in an amount of earnings, or other revenue of the convicted person for a term of from two up to four months, or by obligatory tasks for a term of from one hundred twenty up to one hundred eighty hours, or by deprivation of freedom for a term of up to two years.

(2) The same acts, committed repeatedly, or by a group of persons by prior collusion, or by an organised group—shall be punishable by a fine in an amount of from four hundred to eight hundred minimum amounts of payment for labour, or in an amount of earnings, or other revenue of the convicted person for a term of from four up to eight months, or by arrest for a term of from four up to six months, or by deprivation of freedom for a term of up to five years.

UGOLOVNIY KODEKS RF [Criminal Code of the Russian Federation], Jan. 1, 1997, art. 146, *translated in* CRIMINAL CODE OF THE RUSSIAN FEDERATION 84 (William E. Butler trans., 1997). In a recent interview, an official from the U.S. Embassy in Moscow who monitors developments in Russian intellectual property law reported that this law may be amended by the end of 2000. The amendments under consideration would define the term "large-scale damage" in precise monetary terms, and the fines for piracy would significantly increase.

11. The *arbitrazh* courts are the successors to a system of Soviet institutions that resolved contract and related economic disputes between state-owned enterprises. Despite their name, they are not arbitration tribunals. Western scholars' opinions of the *arbitrazh* courts have improved greatly over the past several years. *E.g.*, Hendrix, *supra* note 3, at 148-49; Glenn P. Hendrix, *The Experience of Foreign Litigants in Russia's Commercial Courts*, in *ASSESSING THE VALUE OF LAW IN THE ECONOMIC TRANSITION FROM SOCIALISM* (forthcoming 2000) (manuscript on file with author) [hereinafter Hendrix, *The Experience of Foreign Litigants*]; Kathryn Hendley et al., *A Regional Analysis of Transactional Strategies of Russian Enterprises*, 44 MCGILL L.J. 433, 455-56 (1999); Neil F. O'Donnell & Kirill Y. Ratnikov, *Dispute Resolution in the Commercial Law Tribunals of the Russian Federation: Law and Practice*, 22 N.C. J. INT'L L. & COM. REG. 795, 845-47, 872-73 (1997). The proposed changes to Article 146 of the Criminal Code in note 10, *supra*, would also be likely to make copyright infringement a higher priority for Russian prosecutors.

12. INT'L INTELLECTUAL PROP. ALLIANCE, *supra* note 1, at 146.

13. *Id.* This may be changing, at least for some types of products. See Vladimir Merkushev, *Microsoft Awaits Right Time for Russia Push*, RUSSIA J., Dec. 21-27, 1999, at 12 (Olga Dergunova, Microsoft's general director in Russia, reports that "[t]he police are initiating some 10 raids every month—seizing compact disks and equipment."); Simon Saradzhyan, *Illegal CDs Found at Rocket Factory*, MOSCOW TIMES, Jan. 15, 2000, at 4 (noting that two recent police raids netted 650,000 pirated CDs of popular music, as well as two million CD

alleged infringers of motion pictures, sound recordings, and business software.¹⁴ Only eighty-two defendants, however, were convicted, and all but one paid minimal fines and served no time in jail or prison.¹⁵ In other words, only 29.7% of all criminal cases led to convictions, and sanctions were generally *de minimis*.¹⁶

As Table 1 indicates, plaintiffs are much more likely to achieve favorable outcomes in the *arbitrazh* courts than in the courts of general jurisdiction. In the Moscow City Arbitrazh court, for example, 51.6% of all intellectual property cases decided in 1998 resulted in a finding that the respondent was guilty of violating Russia's intellectual property laws:

TABLE 1:

INTELLECTUAL PROPERTY CASES FILED IN
NINE REGIONAL ARBITRAZH COURTS¹⁷

Court	IP Cases Filed in 1998	IP Cases Won in 1998
Moscow City	124	64
Moscow Oblast	8	3
Leningrad Oblast	28	13
Novosibirsk	3	1
Ekatarinburg	8	7
Saratov	0	0
Voronezh	0	0
Yaroslavl	1	0
Altai Krai	0	0

Furthermore, the available data suggest that foreign plaintiffs also receive favorable rulings in at least half of the cases that they file before *arbitrazh* courts.¹⁸ It thus appears that foreign

brochures). The proposed changes to Article 146 of the Criminal Code mentioned in note 10, *supra*, would also be likely to make copyright infringement a higher priority for Russian prosecutors.

14. INT'L INTELLECTUAL PROP. ALLIANCE, *supra* note 1, at 143.

15. *Id.*

16. *Id.*

17. I am indebted to Kathryn Hendley, Associate Professor of Law and Political Science, University of Wisconsin-Madison, for providing me with these data. These figures were originally sent by individual *arbitrazh* courts to the High Arbitrazh Court on statistical reporting forms. Unfortunately, the forms do not require the individual courts to break down intellectual property claims by their three classifications: copyright, trademark, and patent.

18. Hendrix, *The Experience of Foreign Litigants*, *supra* note 11, at 13 tbl. I (noting that foreign plaintiffs won 53% of their cases in *arbitrazh* courts in 1997);

plaintiffs have a good chance of receiving favorable judgments from *arbitrazh* courts in copyright litigation.

The *arbitrazh* courts are devoted exclusively to commercial disputes and are charged with the "protection of violated or disputed rights and of the lawful interests" of legal entities and registered entrepreneurs "in the sphere of business and of the other kinds of . . . economic activity."¹⁹ In particular, the *arbitrazh* courts have jurisdiction over all economic disputes involving foreign companies.²⁰ Legal entities—including foreign companies—need not be registered or incorporated in Russia in order to bring suit in an *arbitrazh* court for copyright infringement.²¹ Furthermore, the Berne Convention prevents these courts from requiring copyright registration as a precursor to filing such a suit.²² In short, a foreign plaintiff who seeks to sue an alleged infringer for making illegal copies in Russia faces no particular jurisdictional or other procedural hurdle, other than the usual need to identify the respondent with some specificity.²³

Strictly speaking, foreign plaintiffs may appear *pro se* before *arbitrazh* courts, just like their domestic counterparts.²⁴ Most, if not all, will want to employ appropriate counsel; there are at least twenty-five attorneys in Russia who specialize in intellectual

Mark Whitehouse, *Take 'em to Court*, MOSCOW TIMES, Feb. 10, 1998, LEXIS, News Library, Mostms File (observing that in 1997, foreign companies won more than two-thirds of the suits they filed in the arbitration court system).

19. ARBITRAZHNYI PROTSESSUAL'NIY KODEKS RF [ARBITRAZH PROCEDURAL CODE OF THE RUSSIAN FEDERATION] art. 2 (May 5, 1995) [hereinafter ARBITRAZH PROCEDURAL CODE].

20. *Id.* art. 22(6); *id.* art. 210(1).

21. *Id.* art. 22(6).

22. Berne Convention, *supra* note 7, art. 5(2) ("The enjoyment and the exercise of these rights shall not be subject to any formality . . ."). See also SAM RICKETSON, *THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS: 1886-1986* §§ 5.81-5.85 (1987) (explaining the word "formality"). It appears that Russian law will govern the issues of both ownership and infringement under the Berne Convention, so extensive choice-of-law litigation should not be needed. Berne Convention, *supra* note 7, art. 5(1) ("Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.")

23. Such identification is generally necessary whenever one party seeks to sue another for illegal behavior in almost any legal system. Some investigation is the *sine qua non* of all successful litigation and is most likely to be successful when a Western corporation has franchisees or dealers located in Russia. These representatives are also in the best position to identify copyright pirates and to represent the company's interests in judicial proceedings. Andrei A. Baev, *Recent Changes in Russian Intellectual Property Law and Their Effect Upon the Protection of Intellectual Property Rights in Russia*, 19 SUFFOLK TRANSNAT'L L. REV. 361, 387 (1996).

24. Kathryn Hendley et al., *Observations on the Use of Law by Russian Enterprises*, 13 POST-SOVIET AFF. 19, 23 (1997).

property matters.²⁵ To initiate a case before an *arbitrazh* court, the plaintiff must submit a comprehensive statement of claim, including all relevant law and facts.²⁶ The plaintiff chooses the venue; however, the case must be filed in the jurisdiction in which one or more defendants are located.²⁷ Cases must be resolved within two months after a complaint has been filed,²⁸ and delays are rare.²⁹ Filing fees are set according to a sliding scale that currently ranges from 5 percent to .05 percent of damages claimed, depending upon the amount sought.³⁰ Interim relief may be sought "at any stage of the arbitration process" if the absence of such relief might "interfere with or render impossible the execution of the judicial act."³¹ *Arbitrazh* courts are required to consider and act upon any request for interim relief, such as seizure of equipment used to make illicit copies, within one day.³² Furthermore, a respondent's failure to comply with an interim order can lead to the recovery of additional damages for losses incurred as a result thereof.³³

Prior to trial, an *arbitrazh* judge reviews the documents submitted by both parties and informs them if any other evidence should be provided.³⁴ Discovery takes place between the parties; a party may ask the court to secure any necessary documentation.³⁵ A decision by the court to refuse such a request is subject to appeal.³⁶ *Arbitrazh* courts may also compel production. Persons (including non-parties) who refuse to comply with an order to produce documentation are subject to fines by these courts.³⁷ Generally speaking, the judge, rather than the parties or their counsel, controls the trial, and documentary

25. *Martindale-Hubbell Lawyer Locator*, at <http://www.martindalehubbell.com/locator/home.html> (last visited Oct. 26, 2000). See also 3 MARTINDALE-HUBBELL INTERNATIONAL LAW DIRECTORY, at PA 444N (2000).

26. ARBITRAZH PROCEDURAL CODE, *supra* note 19, art. 102.

27. *Id.* arts. 25-26.

28. *Id.* art. 114.

29. Ninety-five percent of all cases in 1995-1997 were resolved within two months. Kathryn Hendley, *Temporal and Regional Patterns of Commercial Litigation in Post-Soviet Russia*, 39 POST-SOVIET GEOGRAPHY & ECON. 379, 384 (1998).

30. Hendrix, *supra* note 3, at 160. See also ARBITRAZH PROCEDURAL CODE, *supra* note 19, art. 92.

31. ARBITRAZH PROCEDURAL CODE, *supra* note 19, art. 75(1). This provision has proven quite useful to some foreign businesses. See generally Whitehouse, *supra* note 18 (discussing the Russian court's power to take "protective measures").

32. ARBITRAZH PROCEDURAL CODE, *supra* note 19, art. 75(2).

33. *Id.* art. 76(4).

34. *Id.* art. 53(2).

35. *Id.* art. 71(1)-(3).

36. *Id.* art. 71(4).

37. *Id.* art. 54(2)-(4).

evidence is taken much more seriously than oral testimony.³⁸ *Arbitrazh* courts, however, do ensure an adversarial process. Parties (or their counsel) have a guaranteed right to present evidence, cross-examine witnesses, object to the other party's evidence, make statements, and present arguments on all relevant issues.³⁹ The court announces its decision at the conclusion of the trial, and may also produce a written opinion at that time.⁴⁰ A written decision must be issued within three days in complex cases.⁴¹ Parties have the right to appeal within thirty days, and failure to appeal means that a judgment enters into force.⁴² As a general rule, court costs are split between the parties in proportions that directly reflect the extent to which the plaintiff has prevailed on its claim.⁴³ Each side pays its own attorney's fees.⁴⁴

An *arbitrazh* court's decision is subject to three stages of appellate review. First, the case is reviewed *de novo* by a panel of three judges from the same court that originally heard the case.⁴⁵ The original judge may not serve on this panel.⁴⁶ Any ruling on appeal takes effect immediately.⁴⁷ The second stage of review takes place before a separate panel of three judges,⁴⁸ who are generally academics, practicing attorneys, or government officials.⁴⁹ While the law limits these judges to reviewing cases for errors of law,⁵⁰ many of them admit that they also overturn cases based on factual errors.⁵¹ Recent research indicates that foreign plaintiffs win more frequently than domestic plaintiffs at this stage of appellate review.⁵² The Presidium of the Supreme Arbitrazh Court has the right to review decisions by either the *arbitrazh* appellate court or the circuit court upon petition by the Chairman of the Supreme Arbitrazh Court, the Prosecutor General of the Russian Federation, or their respective deputies.⁵³ Parties may formally ask these officials to file a petition for

38. Hendrix, *supra* note 3, at 162.

39. ARBITRAZH PROCEDURAL CODE, *supra* note 19, art. 33(1).

40. *Id.* art. 126; *id.* art. 134(1).

41. *Id.* art. 134(1).

42. *Id.* art. 147.

43. *Id.* art. 94.

44. Hendrix, *supra* note 3, at 167.

45. ARBITRAZH PROCEDURAL CODE, *supra* note 19, arts. 14, 145-160.

46. *Id.* art. 18(2).

47. *Id.* art. 159(3).

48. *Id.* arts. 161-79.

49. Hendrix, *supra* note 3, at 170.

50. ARBITRAZH PROCEDURAL CODE, *supra* note 19, art. 176.

51. Kathryn Hendley, *Remaking an Institution: The Transition in Russia from State Arbitrazh to Arbitrazh Courts*, 46 AM. J. COMP. L. 93, 122 (1998).

52. Hendrix, *The Experience of Foreign Litigants*, *supra* note 11, at 21-22 tbl. IV.

53. Hendrix, *supra* note 3, at 171.

reconsideration; however, the Supreme Arbitrazh Court will review decisions only when they concern "extraordinary" matters of broad legal significance.⁵⁴

Enforcement has long been the Achilles' heel of the *arbitrazh* court system.⁵⁵ Enforcement was originally the responsibility of a poorly paid group of employees who lacked the training and resources necessary to collect money damages, seize property, or otherwise enforce *arbitrazh* court decisions.⁵⁶ A new system of armed bailiffs now exists as a matter of written law, but it is not yet fully staffed or operational.⁵⁷ The burgeoning caseload of the *arbitrazh* courts,⁵⁸ however, suggests that they are generally viewed as efficient, competent, and honest by both foreign and domestic parties. German Gref, Russia's Minister of Trade and Economic Development, recently indicated that the current administration intends to devote particular attention to protecting intellectual property rights.⁵⁹ In addition, there is mounting evidence that Russian authorities are prepared to enforce existing copyright legislation.⁶⁰ In short, U.S. or European companies confronted with ongoing copyright infringement can and should

54. *Id.* at 171-72 (citing Valentin Maslennikov, *Judge Discusses New Laws on Arbitration Court Procedures*, ROSS. GAZETA, Feb. 22, 1995 (publishing an interview with V.F. Yakovlev, Chairman of the Supreme Arbitrazh Court)).

55. See Hendley, *supra* note 51, at 109-18.

56. See *id.* at 113-14.

57. Federal Law No. 118-FZ of July 21, 1997 on the Officers of Justice, LEXIS, Country & Region (excluding U.S.) Library, Rflaw File; Federal Law on an Execution Proceeding, SOBRANIE ZAKONODATEL'STVA [COLLECTION OF LEGISLATION OF THE RUSSIAN FEDERATION], 1997, No. 30, Item 3591, translated in RUSSIAN LEGAL TEXTS: THE FOUNDATIONS OF A RULE-OF-LAW STATE AND A MARKET ECONOMY, *supra* note 9, at 252. Mikhail Rozenberg, who has practiced law in Russia for twenty years, claims that the latter law has created "an effective system of enforcement of court decisions" Mikhail Rozenberg, *Arbitration and Other Means of Resolving Disputes in Russia*, 10 MEALEY'S INT'L ARB. REP. 20 (1999), WL 10 MINTARBR 20.

58. See Hendley, *supra* note 29, at 381 tbl. 1.

59. Catherine Belton, *Foreign Business Upbeat on Putin*, MOSCOW TIMES, Feb. 24, 2000, § 1904. Among other benefits, improved enforcement is likely to raise tax revenues. According to one estimate, Russia loses almost \$500 million annually in uncollected taxes on pirated goods. Tim Kuik, *Piracy in Russia: An Epidemic*, 20 WHITTIER L. REV. 831, 831 (1999).

60. *E.g.*, Remarks by RF Justice Ministry Officials on Intellectual Property Rights at a Breakfast of the American Chamber of Commerce in Russia (Official Kremlin International News Broadcast, Feb. 22, 2000), LEXIS, News Library, Sovnws File (containing the remarks of Alexander Korchagin, Director of the Russian Agency for Patents and Trademarks—which is also responsible for copyrights—discussing the government's commitment to improving legislation, coordinating actions between the relevant government ministries and committees, and training personnel at those ministries and committees). See also Andrew McChesney, *Cabinet Promises to Fight Piracy*, MOSCOW TIMES, June 28, 2000, at 1-2; Peter Henderson, *Counterfeit Products Burn Russia's Budget*, RUSSIA J., July 3, 2000, at 15 (noting Deputy Prime Minister Ilya Klebanov's confirmation of the importance of intellectual property protection to the Russian president, federal administrative bodies, and the federal government).

pursue litigation before the *arbitrazh* courts. As the following sections suggest, such companies also should pursue two other means of improving enforcement of these courts' decisions.

III. BILATERAL AGREEMENTS: LOBBYING FOR INTERGOVERNMENTAL PRESSURE

Both the United States and the European Union maintain bilateral treaties with the Russian Federation.⁶¹ Politically sophisticated copyright industries can and should lobby their respective governments to put pressure on the Russian Federation for better enforcement of copyright laws within the framework of these bilateral treaties.⁶² Multinational corporations may even be able to coordinate their efforts in this regard.⁶³ Such lobbying is particularly likely to be effective if these corporations have judgments against Russian defendants that the Russian courts have failed to enforce.

A. U.S. Companies and the 1990 Trade Agreement

The 1990 Agreement on Trade Relations (Trade Agreement) is potentially very useful to United States copyright industries. In

61. Agreement on Trade Relations, June 1, 1990, U.S.-U.S.S.R., 29 I.L.M. 949 [hereinafter Trade Agreement]; Agreement on Partnership and Cooperation, Nov. 28, 1997, Eur. Communities-Russ., 1997 O.J. (L 327) 3, available at http://www.europa.eu.int/eur-lex/en/lif/dat/1997/en_297A1128_01.html (last visited Oct. 26, 2000) [hereinafter Partnership Agreement]. The Trade Agreement entered into force on June 18, 1992 and the Partnership Agreement entered into force on December 1, 1997. Christopher Boffey, Note, *Avtorskoye Pravo [Author's Law]: The Reform of Russian Copyright Law Toward an International Standard*, 18 MD. J. INT'L L. & TRADE 77, 92 (1994); European Commission, *The EU's Relations with Russia—An Overview*, at http://europa.eu.int/comm/external_relations/russia/intro/index.html (last visited Oct. 26, 2000). The Trade Agreement did not enter into force for two years as the result of lobbying by the Motion Picture Association of America. Lana C. Fleishman, Note, *The Empire Strikes Back: The Influence of the United States Motion Picture Industry on Russian Copyright Law*, 26 CORNELL INT'L L.J. 189, 190 (1993).

62. As one scholar has recently noted, this type of public-private partnership is increasingly used to pursue "varying, but complementary goals." Gregory Shaffer, *The Law-In-Action of International Trade Litigation in the United States and Europe: The Melding of the Public and the Private 4* (Mar. 26, 2000) (unpublished manuscript, on file with author). In the United States, these relationships create a symbiotic relationship, in which the Office of the United States Trade Representative (USTR) relies on private industry for information and then aggressively pursues industry complaints. *Id.* at 10-11. States and private industry are interested in combating piracy for different reasons; the former see piracy as harmful to the system of international trade, while the latter sees piracy as harmful to their own profits.

63. *Id.* at 72-76.

particular, Article VIII of the Trade Agreement provides that the parties have agreed to:

- (a) ensure in accordance with the provisions of internal legislation, protection and implementation of intellectual property rights, including copyright on literary, scientific and artistic works including computer programs and data bases . . .
- (b) ensure that their international commitments in the field of intellectual property rights are honored . . .
- (c) encourage appropriate arrangements between institutions within the United States and [Russia] to provide protection for intellectual property rights.⁶⁴

In other words, the Trade Agreement obliges Russia to enforce its domestic copyright laws⁶⁵ and to honor its international copyright commitments.⁶⁶ In addition, the Trade Agreement provides for prompt consultations “through appropriate channels” at the request of either party to discuss the interpretation and implementation of these laws and commitments.⁶⁷

The Trade Agreement also provides for periodic consultations within the framework of the Joint US-USSR Commercial Commission,⁶⁸ as well as a special working group on intellectual property matters.⁶⁹ As a result, there are a variety of opportunities for U.S. officials to discuss the enforcement of *arbitrazh* copyright decisions with their Russian counterparts.

Generally speaking, industry associations in both the United States and Europe ensure that the government makes use of these opportunities by bringing together a variety of corporations, exchanging information with the United States Trade Representative (USTR), “educating” the interagency 301 Committee, and lobbying Congress for trade sanctions.⁷⁰ For example, the International Intellectual Property Alliance (IIPA) has urged the U.S. government to keep Russia on the Priority Watch List in 2000.⁷¹ The USTR first placed Russia on the “Priority

64. Trade Agreement, *supra* note 61, art. VIII(1)(a)-(c).

65. See *supra* notes 4-5.

66. See *supra* notes 7-8.

67. Trade Agreement, *supra* note 61, art. XIV(2).

68. *Id.* art. XIV(1).

69. *Id.* art. VIII(5). In a recent interview, an official from the U.S. Embassy in Moscow who monitors Russian developments with regard to intellectual property reported that the working group meets once per year.

70. Shaffer, *supra* note 62, at 15-21.

71. INT'L INTELLECTUAL PROP. ALLIANCE, *supra* note 1, at 138. The IIPA's members are the Association of American Publishers, the Interactive Digital Software Association, the American Film Makers Association, the Motion Picture Association of America, the Business Software Alliance, the National Music Publishers' Association, and the Recording Industry Association of America. Int'l Intellectual Prop. Alliance, *IIPA Members*, at http://www.iipa.com/html/iipa_members.html (last visited Oct. 26, 2000). The IIPA also has asked the U.S.

Watch List" in 1997 because it believed that Russia was not fulfilling its obligations under the Trade Agreement.⁷² This action, which was taken under Section 301 of the United States Trade Act of 1974, meant that Russia could be subjected at any time to unilateral trade sanctions by the United States for its failure to adequately protect and enforce U.S. parties' intellectual property rights.⁷³ As one intellectual property lobbyist has noted, the Section 301 process has generally been "a huge success" for copyright industries in the United States.⁷⁴ If this corporate lobbying continues, President Putin will be under significant intergovernmental pressure to improve enforcement of domestic courts' copyright decisions.

B. *European Companies and the EC-Russia Partnership Agreement*

Two provisions of the Partnership Agreement are of particular interest to European copyright industries. Article 54 states:

Pursuant to the provisions of this Article and Annex 10, the Parties confirm the importance they attach to ensure adequate and effective protection and enforcement of intellectual, industrial and commercial property rights [I]mplementation of the provisions of this Article and Annex 10 shall be regularly reviewed by the Parties in accordance with [the Article establishing the "Cooperation Council"]. If problems in the area 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.⁷⁵

Annex 10 provides that:

Russia shall continue to improve the protection of intellectual, industrial and commercial property rights in order to provide, by the end of the fifth year after the entry into force of the Agreement,

government to remove some of the special tariff preferences currently granted to Russia in accordance with the U.S. General System of Preferences. INT'L INTELLECTUAL PROP. ALLIANCE, *supra* note 1, at 146.

72. Tiefenbrun, *supra* note 3, at 64. Twelve of the fifteen countries that formerly constituted the Soviet Union are currently on the "Priority Watch List." Peter B. Necarsulmer, *Protecting Intellectual Property Rights*, MOSCOW TIMES, June 27, 2000, at 8.

73. Trade Act of 1974 § 301, 19 U.S.C. § 2411 (1994), *amended by* Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 1301, 102 Stat. 1107 (1988). This is known as a "Special 301" procedure. "Special 301" refers to a 1988 amendment to the Trade Act that requires the USTR to identify those foreign countries that deny either (1) adequate and effective intellectual property protection to U.S. persons, or (2) fair and equitable market access to U.S. persons who rely upon such protection, thus triggering Section 301. 19 U.S.C. § 2242(a).

74. Shaffer, *supra* note 62, at 32 (citing an unnamed intellectual property lobbyist).

75. Partnership Agreement, *supra* note 61, art. 54(1)-(3).

for a level of protection similar to that existing in the Community, including effective methods of enforcing such rights⁷⁶

In short, the Partnership Agreement obligates the Russian Federation to harmonize its protection and enforcement of copyrights with the relevant provisions of European Union law by January 1, 2002, and provides mechanisms for reviewing Russia's progress towards this goal.⁷⁷ In addition, Article 98 ensures European plaintiffs full access to the Russian court system, thus providing an additional guarantee that such plaintiffs can pursue litigation as suggested in the first substantive part of this paper.⁷⁸

European Union copyright law currently consists of five directives, which concern computer programs,⁷⁹ rental and lending rights,⁸⁰ satellite broadcasts and cable retransmissions,⁸¹ copyright duration,⁸² and databases.⁸³ Annex 10 of the Partnership Agreement requires Russia to enact parallel protections within its own law where it has not already done so.⁸⁴ Russian authorities recognize this requirement and are making

76. *Id.* annex 10, para. 1.

77. The European Union assists Russia in these efforts through the TACIS (Technical Assistance to the Commonwealth of Independent States) Program. The only limit on Russia's obligations under the Partnership Agreement is found in Article 19 thereof, which mirrors the limitation on free trade found in Article 36 of the EEC Treaty. The Partnership Agreement provides: "The Agreement shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of . . . the protection of intellectual, industrial and commercial property Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties." Partnership Agreement, *supra* note 61, art. 19.

78. Article 98 provides in pertinent part:

Within the scope of this Agreement, each Party undertakes to ensure that natural and legal persons of the other Party have access free of discrimination in relation to its own nationals to the competent courts and administrative organs of the Parties to defend their individual rights and their property rights, including those concerning intellectual, industrial and commercial property.

Id. art. 98(1).

79. Council Directive 91/250/EEC, 1991 O.J. (L 122) 43.

80. Council Directive 92/100/EEC, 1992 O.J. (L 346) 61.

81. Council Directive 93/83/EEC, 1993 O.J. (L 248) 15.

82. Council Directive 93/98/EEC, 1993 O.J. (L 290) 9.

83. Directive 96/9/EC of the European Parliament and of the Council 11 Mar. 1996 on the Legal Protection of Databases, 1996 O.J. (L 77) 20.

84. See *supra* note 76 and accompanying text. Michiel Elst suggests that Russian law already largely converges with the first four of these directives. Michiel Elst, *The Interaction of European Community and Russian Copyright Law: A Matter of Partnership and Cooperation*, 22 REV. C. & E. EUR. L. 267, 285-329 (1996).

significant progress toward fulfilling their obligations in this regard.⁸⁵

In addition, the Partnership Agreement ensures that there are a variety of ways in which the European Union can pursue improved enforcement of Russia's copyright laws. The Partnership Agreement between the European Union and Russia provides for a variety of regular meetings between relevant parties, including meetings twice a year between the President of the Council of the European Union and the President of the Commission of the European Communities on one side and the President of Russia on the other,⁸⁶ biannual meetings between senior officials of the European Union and their Russian counterparts,⁸⁷ and meetings of experts.⁸⁸ The Agreement also establishes a "Cooperation Council," which must meet annually to review implementation of the Agreement.⁸⁹ Finally, Commission and Council representatives can refer any dispute with Russia to the Cooperation Council, which is obliged to settle such disputes by means of either a binding recommendation or referral to a non-binding three-member panel.⁹⁰

European copyright industries have two lobbying options; they can either pursue a formal, intergovernmental procedure, known as the Article 133 process, or file private petitions with the European Union under the relatively new Trade Barrier Regulation.⁹¹ The Article 133 process enables European copyright industries to lobby a central committee in Brussels for unilateral trade sanctions.⁹² The Trade Barrier Regulation, on the other hand, permits such businesses to petition the European Commission directly for formal sanctions or other retaliatory actions.⁹³ Copyright industries may choose to use one or both of these mechanisms in consultation with the European Commission.⁹⁴

In short, like their U.S. counterparts, European copyright industries can and should lobby the relevant public institutions to pressure Russia for significant improvements in enforcing domestic courts' copyright law decisions.

85. See generally *Remarks by RF Justice Ministry Officials on Intellectual Property Rights at a Breakfast of the American Chamber of Commerce in Russia* (Official Kremlin International News Broadcast, Feb. 22, 2000), *supra* note 60.

86. Partnership Agreement, *supra* note 61, art. 7.

87. *Id.* art. 8.

88. *Id.*

89. *Id.* arts. 90-94.

90. *Id.* art. 101.

91. Two copyright-related complaints already have been filed pursuant to the Trade Barrier Regulation. Shaffer, *supra* note 62, 53 n.177.

92. *Id.* at 42-48.

93. *Id.* at 49.

94. *Id.*

IV. COPYRIGHT INDUSTRIES AND THE WORLD TRADE ORGANIZATION: THE CASE FOR ADMITTING RUSSIA

The General Agreement on Tariffs and Trade⁹⁵ was originally adopted in 1947 as a temporary measure,⁹⁶ and was part of a broader effort to create a system of financial and economic institutions which would ensure global economic development after World War II.⁹⁷ GATT was gradually transformed from a short-term agreement concerning reciprocal liberalization of tariffs into a complex system of more than 200 multilateral trade agreements⁹⁸ as well as an international trade forum for its 114 signatories.⁹⁹ While there is little disagreement about the relative success of GATT during the five decades that followed the War,¹⁰⁰ there is also no doubt that it had become increasingly counterproductive by the mid-1980s. Efforts to improve GATT culminated in the Uruguay Round (1987-1993), which resulted in adoption of the Agreement Establishing the World Trade Organization (WTO Agreement).¹⁰¹ The WTO Agreement includes several annexes, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)¹⁰² and the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).¹⁰³ Member states are required to adhere to all annexes to the WTO Agreement.¹⁰⁴

95. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT].

96. *Id.* art. XXIX(2)-(3).

97. Other institutions created at the time for this purpose included the World Bank and the International Monetary Fund. Kevin C. Kennedy, *The GATT-WTO System at Fifty*, 16 WIS. INT'L L. J. 421, 422 (1998). GATT was designed to promote open trade by requiring states to make four commitments: (1) to treat all trade partners equally as "most-favored nation[s]"; (2) to observe the principle of "national treatment" by treating all imports in the same manner as equivalent domestic products with regard to national tax and other laws; (3) "to reduce tariffs on imports"; and (4) to eliminate "quotas on imports." *Id.* at 425.

98. Ernst-Ulrich Petersmann, *The Dispute Settlement System of the World Trade Organization and the Evolution of the GATT Dispute Settlement System Since 1948*, 31 COMMON MARKET L.R. 1157, 1159-60 (1994).

99. Kennedy, *supra* note 97, at 423-24.

100. See Petersmann, *supra* note 98, at 1159.

101. Agreement Establishing the World Trade Organization, Apr. 15, 1994, 108 Stat. 4809, 33 I.L.M. 1144 [hereinafter WTO Agreement].

102. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, 108 Stat. 4809, 33 I.L.M. 1197 [hereinafter TRIPS].

103. Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1994, 108 Stat. 4809, 33 I.L.M. 1226 [hereinafter DSU].

104. WTO Agreement, *supra* note 101, art. II(2).

TRIPS is widely viewed as one of the most important results of the Uruguay Round.¹⁰⁵ Unlike GATT, which generally required states to refrain from certain acts, TRIPS obligates all WTO members to take positive actions when necessary to ensure certain minimum levels of intellectual property protection¹⁰⁶ and enforcement.¹⁰⁷ This is the first time that rules on domestic enforcement have been incorporated into an international intellectual property treaty.¹⁰⁸ TRIPS also requires that WTO members change their laws as needed to ensure compliance with key provisions of several prior international treaties, two of which concern copyrights.¹⁰⁹

As mentioned above, TRIPS provides for dispute settlement within the World Trade Organization.¹¹⁰ This is the sole means of resolving disputes regarding the proper interpretation or implementation of TRIPS once international consultations have failed.¹¹¹ The DSU is generally viewed as a vast improvement over the 1947 GATT dispute settlement mechanism, largely because it replaces diplomacy with the adjudication of legal rights.¹¹² In particular, the DSU establishes a single, rules-based system for resolving disputes, which includes a right to appellate review.¹¹³ Briefly, complainants alleging violations of TRIPS, and a failure to resolve such violations through bilateral consultations, may request that a panel be established to review

105. Daniel Gervais describes the agreement as "undoubtedly the most significant milestone in the development of intellectual property in this century." DANIEL GERVAIS, *THE TRIPS AGREEMENT: DRAFTING HISTORY AND ANALYSIS* § 1.01 (1998).

106. TRIPS, *supra* note 102, arts. 9-40. For the mandatory standards of copyright protection, see *id.* arts. 9-14.

107. *Id.* arts. 41-61. As a result of TRIPS, all WTO members are required to provide effective enforcement, fair and equitable procedures, and certain specific civil and administrative remedies in intellectual property disputes. *Id.* arts. 41-49. For mandatory civil and criminal remedies, as well as border measures, see *id.* arts. 50-61.

108. Adrian Otten & Hannu Wager, *Compliance with TRIPS: The Emerging World View*, 29 VAND. J. TRANSNAT'L L. 391, 403 (1996).

109. TRIPS, *supra* note 102, arts. 3, 9(1), 10, 14. In particular, TRIPS requires all WTO members to protect intellectual property rights in accordance with the Berne Convention, *supra* note 7, and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, Oct. 26, 1961, 496 U.N.T.S. 43.

110. TRIPS, *supra* note 102, art. 64(1).

111. DSU, *supra* note 103, art. 23.

112. Judith H. Bello, *Some Practical Observations About WTO Settlement of Intellectual Property Disputes*, 37 VA. J. INT'L L. 357, 357-358 (1997). See also Kovatch, *supra* note 3, at 1005-06; Terence P. Stewart & Mara M. Burr, *The WTO Panel Process: An Evaluation of the First Three Years*, 32 INT'L LAW. 709, 710 (1998).

113. DSU, *supra* note 103, arts. 17-19.

their claims.¹¹⁴ The complaint must be framed appropriately.¹¹⁵ Assuming that the complaint is appropriate, the panel must address the claim within nine months.¹¹⁶ Panel reports are then binding upon the parties.¹¹⁷ Failure to alter national laws in the manner suggested by the panel may lead to a judgment requiring compensation by the offending state or the suspension of trade concessions between the complainant and such state.¹¹⁸ Appeals proceedings must be completed within sixty days of appeal, and are limited to issues of law raised in the panel report.¹¹⁹

The DSU has been utilized already to resolve several TRIPS disputes.¹²⁰ Early analyses which stressed the difficulties of resolving TRIPS disputes within the new system of dispute resolution have proven incorrect.¹²¹ While discussion of past panel decisions is beyond the scope of this brief overview of TRIPS, it appears that the DSU creates an adversarial litigation process that emphasizes fair procedures, coherence and integrity in its decisions, and institutional sensitivity. In short, it is a process that the participating states view as legitimate.¹²² As one observer notes, "[t]aken together, the enforcement and dispute-settlement provisions of the TRIPS Agreement put teeth into the pre-existing intellectual property conventions"¹²³

114. *Id.* art. 6.

115. *Id.* art. 7.

116. *Id.* art. 20.

117. *Id.* art. 21(1).

118. *Id.* art. 22.

119. *Id.* art. 17(5)-(6).

120. GATT SECRETARIAT, OVERVIEW OF THE STATE-OF-PLAY OF WTO DISPUTES (Sept. 28, 2000), available at http://www.wto.org/english/tratop_e/dispu_e/stplay_e.doc (last visited Oct. 26, 2000).

121. *E.g.*, Neil W. Netanel, *The Next Round: The Impact of the WIPO Copyright Treaty on TRIPS Dispute Settlement*, 37 VA. J. INT'L L. 441, 445-446 (1997); J.H. Reichman & David Lange, *Bargaining Around the TRIPS Agreement: The Case for Ongoing Public-Private Initiatives to Facilitate Worldwide Intellectual Property Transactions*, 9 DUKE J. COMP. & INT'L L. 11 (1998) (arguing that TRIPS will cause private companies to negotiate directly with public institutions in foreign countries that do not adequately protect intellectual property, rather than lobby their own governments to pursue complaints within the WTO).

122. Robert Howse, *Adjudicative Legitimacy and Treaty Interpretation in International Trade Law: The Early Years of WTO Jurisprudence, in THE EU, THE WTO AND THE NAFTA: TOWARDS A COMMON LAW OF INTERNATIONAL TRADE* 35 (J.H.H. Weiler ed., Collected Courses of the Academy of European Law vol. 9, 1998). In the past five years, more than 180 formal claims have been filed. Where those claims were not settled, the European Union complied with panel judgments by modifying domestic regulations and practices in all but two cases. In those two cases, the EU Bananas Case and the EU Meat Hormones Case, the states accepted the resulting sanctions. *See also* Shaffer, *supra* note 62, at 2 n.4; Andrew W. Shoyer & Heather G. Forton, Comments, *Performance of the System II: Panel Adjudication*, 32 INT'L LAW. 737, 739 (1998).

123. J.H. Reichman, *Enforcing the Enforcement Procedures of the TRIPS Agreement*, 37 VA. J. INT'L L. 335, 339 (1997).

Under the terms of the WTO Agreement, any state that was not a member of GATT may accede to the WTO.¹²⁴ Russia first sought admission to the WTO in 1993, but has only been granted observer status to date.¹²⁵ Russia would like to be admitted to the WTO, since “[m]embership would create jobs, attract foreign investment, secure access to western markets on excellent trade terms and help to revive the output of domestic goods.”¹²⁶ Both the United States and the European Union have expressed their commitment to having Russia join the WTO.¹²⁷ In order for Russia to join the WTO, it will have to pass through four overlapping stages: (1) preliminary disclosure of information to WTO officials by memorandum; (2) bilateral accession negotiations; (3) finalizing negotiations and analysis of Russia’s trade regime; and (4) presentation of a draft “Protocol of Accession” and other negotiation documents to either the General Council or the Ministerial Conference of the WTO.¹²⁸ Upon approval by the Ministerial Conference “by a two-thirds majority vote of WTO members, the applicant may sign the protocol and accede to the WTO.”¹²⁹ Russia and the WTO are currently in the midst of bilateral negotiations and analyzing Russia’s trade regime.¹³⁰

Russia will not be permitted to join the WTO if it fails to protect copyrights and other intellectual property rights in accordance with TRIPS. Some Western parties have argued that Russia is not eligible to join the WTO because its laws do not meet the minimum standards required by TRIPS. In particular, these parties insist that Russia must extend retroactive protection to all “pre-1995 U.S sound recordings and pre-1973 U.S.

124. WTO Agreement, *supra* note 101, art. XII(1).

125. Christian L. Broadbent & Amanda M. McMillian, *Russia and the World Trade Organization: Will TRIPS be a Stumbling Block to Accession?*, 8 DUKE J. COMP. & INT’L L. 519, 533 (1998).

126. Bradford W.C. Pirie, *Russia’s Economic Future: A Step Towards Economic Recovery or Merely a Detour Towards Economic Absorption?*, 4 J. INT’L L. & PRAC. 571, 579 (1995).

127. President Clinton and then-President Yeltsin originally targeted 1998 as the year in which Russia would be admitted to the WTO. Stephanie Baker-Said, *Russia’s Bid for WTO in ‘98 Looks Slim*, MOSCOW TIMES, Apr. 16, 1997, LEXIS, News Library, Mostms File. See also *Common Strategy of the European Union of 4 June 1999 on Russia*, 1999 O.J. (L 157) 1, available at http://europa.eu.int/eur-lex/en/lif/dat/1999/en_499X0414.html (last visited Oct. 26, 2000).

128. Broadbent & McMillian, *supra* note 125, at 521-523. The Ministerial Conference includes a representative from each WTO member state, and meets at least once every two years. WTO Agreement, *supra* note 101, art. IV(1). A two-thirds majority of the Conference is required to approve such an accession. *Id.* art. XII(2).

129. Broadbent & McMillian, *supra* note 125, at 523.

130. Daniel M. Price et al., *The Importance of Russia’s Accession to the World Trade Organization*, RUSSIA BUS. WATCH, Spring 2000, at 5.

works,"¹³¹ and that Russia needs to provide power for civil *ex parte* searches.¹³² While these objections appear to be legitimate, they are also clearly resolvable.¹³³ Stronger arguments against admitting Russia to the WTO emphasize problems with Russia's enforcement of existing written laws.¹³⁴ One careful review of this matter has concluded, however, that "[u]nder a loose interpretive standard, Russia could possibly slip past significant problems with enforcing TRIPS."¹³⁵

Much has been made of the fact that Russia's copyright regime may not be compatible with TRIPS.¹³⁶ It appears, however, that a tactical choice remains: should Russia's legal shortcomings prevent it from entering the WTO, or would it be better to overlook those failings, admit Russia to the WTO, and then seek enforcement of TRIPS standards?¹³⁷ If Russia is admitted to the WTO, then public-private cooperation can bring TRIPS-based disputes before WTO panels.¹³⁸ In the case of U.S. copyright industries, that litigation could be initiated by petitioning the USTR.¹³⁹ In Europe, copyright industries can lobby a variety of public institutions to pursue TRIPS disputes within the WTO.¹⁴⁰ It is clear that the combined support of the United States and the European Union would suffice to bring Russia into the WTO, where it could then be forced to ratchet up enforcement of its own intellectual property laws in accordance with TRIPS. Copyright industries would therefore be well advised to support, rather than block, Russian accession to the WTO.

131. INT'L INTELLECTUAL PROP. ALLIANCE, *supra* note 1, at 147. *See also* Boffey, *supra* note 61, at 110.

132. INT'L INTELLECTUAL PROP. ALLIANCE, *supra* note 1, at 149.

133. In fact, all of the relevant amendments to Russian law have been drafted and are, or soon will be, making their way through the Russian legislative process. *Remarks by RF Justice Ministry Officials on Intellectual Property Rights at a Breakfast of the American Chamber of Commerce in Russia* (Official Kremlin International News Broadcast, Feb. 22, 2000), *supra* note 60.

134. Kovatch, *supra* note 3, at 1036. *See also* Broadbent & McMillian, *supra* note 125, at 543.

135. Broadbent & McMillian, *supra* note 125, at 544.

136. *See supra* text accompanying notes 131-33.

137. *See supra* text accompanying notes 110-23.

138. *See supra* note 62.

139. *See supra* text accompanying notes 70-74.

140. *See supra* text accompanying notes 91-94.

V. CONCLUSION

In order to improve copyright protection in Russia, Western copyright owners need to pursue a comprehensive, three-pronged approach to fighting piracy in Russia. First, they need to abandon their misconceptions of the Russian justice system and pursue litigation against pirates in Russian *arbitrazh* courts. Contrary to popular belief, these courts are quite capable of handling copyright issues and have shown little if any bias against foreign plaintiffs. These courts, however, are often unable to ensure satisfactory enforcement of their own judgments. In response, Western copyright industries should lobby the Office of the United States Trade Representative and the relevant public institutions in Europe for unilateral trade sanctions. At the very least, this intergovernmental pressure will serve as a consistent reminder to the Putin government that weak enforcement of copyright judgments is a sore point in relations between Russia and the Western world; at best, fear of unilateral trade sanctions may lead to significant improvements in the enforcement of *arbitrazh* court judgments.

Finally, Western copyright industries should abandon any efforts to keep Russia out of the WTO. Instead, they should lobby their governments to make Russia a full member of the WTO as soon as possible. This will enable these industries to lobby their public officials to bring effective complaints within the WTO's dispute settlement process against Russia for any subsequent failure to enforce copyright judgments in accordance with TRIPS. In sum, Western copyright industries must abandon their misconceptions regarding the Russian justice system, redouble their lobbying efforts for bilateral trade sanctions, and reverse their opposition to making Russia a full member of the WTO if they want to reduce copyright piracy in Russia.