7. INTELLECTUAL PROPERTY LAW IN RUSSIA: DEVELOPMENT, PROBLEMS AND PERSPECTIVES

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ABSTRACT

The article examines the new provisions of the Russian legislation on intellectual property in relation to the adoption of Part IV dealing with 'Rights to the Results of Intellectual Activities and Means of Individualization' of the Civil Code of the Russian Federation. It concerns the lists of objects of intellectual property protected in Russia, the kinds and contents of intellectual rights upon such objects, as well as the issues of application of rules of private international law in the sphere of intellectual property. It is suggested that there is a need to distinguish intellectual property as intangible objects which can be divided into two groups – the results of intellectual activity and means of individualization, and intellectual property rights. Not all of them are always under legal protection. It depends on the civil legislation of a particular country, which usually stipulates the exhaustive list of appropriate objects of intellectual property. It is also argued that an intellectual property statute in the sphere of private international law be introduced in Russia to cover authorship, the definition and kinds of objects of intellectual property, requirement for registration, the kinds, contents and effective terms of intellectual rights, legal means and order of implementation and protection of intellectual rights, as well as stipulate the use of *lex voluntatis, lex loci actus* and *lex loci protectionis* in the determination of applicable law to transnational intellectual legal relationships.

Keywords: *intellectual property law, results of intellectual activity, means of individualization, intellectual rights, exclusive rights, private international law*

1. THE CIVIL CODE OF THE RUSSIAN FEDERATION AS THE RESULT OF CODIFICATION OF CIVIL LEGISLATION ON INTELLECTUAL PROPERTY IN THE RUSSIAN FEDERATION

In recent years, significant changes in the legal regulation of intellectual property (IP) have occurred in Russia. On 1 January 2008, Part IV which deals with the 'Rights to the Results of Intellectual Activities and Means of Individualization' of the Civil Code of the Russian Federation[1] entered into force. It brought together a variety of previous Russian laws on IP, such as:

(1) Civil Code of RSFSR of 11 June 1964 (sections IV-VI);[2]

(2) Law of Russia of 9 July 1993 № 5351-I 'On Copyright and Related Rights';[3]

(3) Law of Russia of 6 August 1993 № 5605-I 'On Breeding Achievements';[4]

(4) Law of Russia of 23 September 1992 № 3523-I 'On Legal Protection of Computer Programs and Databases';[5]

(5) Patent Law of Russia of 23 September 1992 № 3517-I;[6]

(6) Law of Russia of 23 September 1992 № 3520-I 'On Trademarks, Service Marks and Indications of Origin of Goods';[7]

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[1] The Civil Code of the Russian Federation. Part IV. Federal Law of 18 December 2006 № 230-FZ, 52 *Sobraniye Zakonodatelstva Rossiyskoy Federatsii* [Collection of Law of the Russian Federation] (2006). English version available at <http://www.wipo.int/edocs/lexdocs/laws/en/ru/ru083en.pdf> accessed 18 June 2016.

[2] The Civil Code of RSFSR of 11 June 1964 (abolished), 24 *Vedomosti Verkhovnogo Soveta RSFSR* [Bulletin of the Supreme Council of RSFSR] (1964).

[3] Law of Russia of 9 July 1993 № 5351-I 'On Copyright and Related Rights' (abolished), 32 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1993).

[4] Law of Russia of 6 August 1993 № 5605-I 'On Breeding Achievements' (abolished), 36 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1993).

[5] Law of Russia of 23 September 1992 № 3523-I 'On Legal Protection of Computer Programs and Databases'(abolished), 42 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1992).

[6] Patent Law of Russia of 23 September 1992 № 3517-I (abolished), 42 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1992).

(7) Law of 23 September 1992 № 3526-I 'On Legal Protection of Topologies of Integrated Circuits',[8] etc.

Before the adoption of Part IV of the Civil Code of the Russian Federation, all of the above laws were unrelated and incompatible with each other and other laws. As a result, a substantial part of civil legislation was artificially isolated from the rest of its components, including the fundamental and general rules of civil law. Thus, the codification of the legislation was considered the best way to duly integrate IP law into civil law and harmonize the relevant rules, as well as to greatly simplify their use and enhance their credibility and stability.

The present Part IV of the Civil Code is a good example of such codification. Moreover, it is the full version of the systematization of IP law. It lays down the general provisions relating to all forms of IP and excludes further need for specific laws on certain types of IP. Additionally, it also ensures uniformity of legal regulation in the area concerned, eliminates many unnecessary differences in similar cases, unifies the terminology, and provides for the correlation and possible application of general rules of civil law, i.e. on the subjects of transactions, obligations, contracts, etc., as well as the principles of civil law, which may fill legal gaps in the regulation of civil relations. Finally, it simplifies the search and enforcement of appropriate rules on IP by courts, physical and legal entities.

The codification implies the division of all the rules concerned into general and special parts. In particular, the present Part IV includes 9 chapters with more than 300 articles:

(1) Chapter 69 'General Provisions';

(2) Chapter 70 'Copyright Law';

(3) Chapter 71 'The Rights Allied to Copyright';

(4) Chapter 72 'The Patent Law';

(5) Chapter 73 'The Right to a Breeding Achievement';

(6) Chapter 74 'The Right to Topology of an Integrated Circuit';

(7) Chapter 75 'The Right to a Production Secret (Know-How)';

(8) Chapter 76 'Rights to the Means of Individualization of Legal Entities, Goods, Works, Services and Enterprises';

(9) Chapter 77 'The Right of Using the Results of Intellectual Activity within a Unified Technology'.

There is no doubt that the legal regulation of IP is primarily performed in the sphere of civil law with the participation of authors and other owners of IP rights. Civil law, in this case, defines the legal status of such persons, the grounds and the procedure for exercising the rights to results of intellectual activity and means of individualization, regulates contractual and other obligations, as well as other property and personal non-property relations based on equality, autonomy of will and property independence (Article 2 (1) of the Civil Code of the Russian Federation). That is why the codification of Russian law on IP was done within civil law.

2. THE OBJECTS OF INTELLECTUAL PROPERTY PROTECTED IN RUSSIA

According to Article 1225 of the Civil Code of the Russian Federation, all IP objects protected by law are divided into the following two groups:

1) The results of intellectual activity: scientific, literary and artistic works, computer programs, databases, performances, phonograms, transmissions of broadcasting or cable organizations, inventions, utility models, industrial designs, breeding achievements, topologies of integrated circuits, know-how; and

2) The means of individualization of legal entities, goods, works, services and enterprises, which are equated to the results of intellectual activity: company names, trademarks and service marks, indications of the origin of goods, and commercial names.

Most of them are clearly defined in the Civil Code of the Russian Federation that lays down which results of intellectual activity qualify as particular types of IP. It also stipulates the requirements for legal protection.

For example, Article 1350 (1) of the Civil Code of the Russian Federation provides that, 'a technical solution in any area is protected as an invention if it relates to a product (including a device, substance, strain of microorganisms, plant or animal cell culture) or a method (the process of carrying out actions in respect of a material object by material means), in particular, to the application of a product or method for a particular

[7] Law of Russia of 23 September 1992 № 3520-I 'On Trademarks, Service Marks and Indications of Origin of Goods'(abolished), 42 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1992).

[8] Law of 23 September 1992 № 3526-I 'On Legal Protection of Topologies of Integrated Circuits' (abolished), 42 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1992).

purpose. An invention is provided with legal protection if it is novel, has an inventive step and is industrially exploitable'.

The only exception is a scientific, literary or artistic work. In spite of its common understanding, there is no legal definition of a result of intellectual activity in the Civil Code of the Russian Federation as well as in international law. It is possible to find some concepts in Soviet and then Russian civil jurisprudence, but, as can be seen below, they are different and do not reflect a uniform understanding of such an important category of IP law. In particular, a work may be defined as:

(1) a complex of ideas and images that have objective expression in the finished work (M. Gordon);[9]

(2) a set of ideas, thoughts and images, which are considered a result of the creative activity of an author and expressed in a particular form easily understood with human feelings and allowing the ability to play (V. Serebrovskii);[10]

(3) an individual and unique creative reflection of objective reality (O. Ioffe);[11]

(4) a result of spiritual creativity of an author expressed in a certain form (Y. Gavrilov);[12]

(5) a set of elements (ideas, images, storylines), which through the form and contents are embodied in a new, independent, alien imitation as a result of creative activity (S. Chernysheva),[13] etc.

It is thought that the notion of a work through 'a system of scientific, literary and artistic ideal categories (ideas, concepts, thoughts, images, etc.), expressed by language, visual, audio, media and other objective (material) means' is clear for an understanding of the matter of the work but is too general. Thus, it sometimes becomes difficult in practice to distinguish between a work protected by law from another set of ideal categories (e.g., a slogan, idea, theory, concept, slide, sentence, name of a character, information, etc.).

As the Supreme Court of the Russian Federation has stated, the present list of objects of IP in the Civil Code is exhaustive.[14] This means that no other results of intellectual activity and means of individualization are protected in Russia.

It is clear that there may be such other objects, for instance, a domain name, which is broadly used in practice and not specifically regulated by a multilateral treaty yet. It should be noted that initially, while preparing the first draft of the law in the State Duma of the Federal Assembly of the Russian Federation, a domain name was determined as a separate object of IP and defined as 'symbolic name designed to identify the information resources and to address queries in Internet and registered in the register of domain names in accordance with the generally accepted procedures and practices'.[15] Subsequently, these provisions were excluded, as a result of which, the present Civil Code of the Russian Federation does not refer to domain names as the results of intellectual activity and means of individualization and, consequently, they do not receive legal protection.

Presently, a domain name is considered a way to use a particular protected means of individualization (a company name, trademark or service mark, the indication of the origin of goods, commercial name) on the Internet. For example, according to Article 1484 (2) of the Civil Code of the Russian Federation, 'the exclusive right to a trademark may be exercised to individualize the goods, works or services for which the trademark has been registered, for instance, by placing the trademark … on the Internet, including in a domain name or in other address methods'.

A similar understanding of the substance of a domain name was earlier confirmed by the Supreme Arbitration Court of the Russian Federation in *Eastman Kodak Company v. A. Grundul* in 2001. It was stated that a domain name on the Internet is deemed to be 'the only association of computers connected to each other by phone or other means of communication. The primary function of a domain name in this case is to convert IP addresses (Internet protocol), expressed in the form of specific numbers in the domain name in order to facilitate the search and identification of the owner of information resources. Modern commercial practice has shown that when choosing Internet domain names,

[9] Gordon M, *Soviet Copyright Law* (Moscow, 1955) (in Russian), p.59.

[10] Serebrovskii V, *Issues of Soviet Copyright Law* (Moscow, 1956) (in Russian), p.32.

[11] Ioffe O, *The Framework of Copyright Law* (Moscow, 1969) (in Russian), p.15.

[12] Gavrilov Y, *Copyright Law* (Moscow, 1988) (in Russian), p.3.

[13] Chernysheva S, *Copyright Law of Russia: Basic Provisions* (Moscow, 2001) (in Russian), p.21.

[14] See: Paragraph 9 of the Resolution of the Plenum of the Supreme Court of the Russian Federation and the Plenum of the Supreme Arbitration Court of 26 March 2009 № 5/29 <https://rg.ru/2009/04/22/gk-sud-dok.html> accessed 18 June 2016.

[15] Draft of Federal Law 'The Civil Code of the Russian Federation. Part IV' № 323423-4 <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=323423-4&02> accessed 18 June 2016.

owners of information resources select the most simple and logical names (a word, a group of letters, etc.), which are usually associated by consumers directly with a specific participant of economic turnover or its activities. Domain names are actually transformed into a means of performing the function of a trade mark, which allows distinguishing goods and services of one natural or legal person from the goods and services of others'.[16]

In addition, it should be noted that the list of results of intellectual activity and means of individualization stipulated in Article 1225 (1) of the Civil Code does not completely correspond to the objects of IP stated in some rules of international law. In particular, the Convention Establishing WIPO of 14 July 1967,[17] defines the term 'intellectual property' as including 'the rights relating to: literary, artistic and scientific works; performances of performing artists, phonograms, and broadcasts; inventions in all fields of human endeavor; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields'. Article 10bis of the Paris Convention for the Protection of Industrial Property of 20 March 1883 refers to the protection against unfair competition, which is defined as 'any act of competition contrary to honest practices in industrial or commercial matters'.[18] The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15 April 1994 also contains provisions on the control of anti-competitive practices in contractual licenses, which, nevertheless, are not directly included in IP.

Thus, unlike the Convention Establishing WIPO of 14 July 1967 and other international instruments ratified by the Russian Federation, the present Civil Code does not provide protection against unfair competition as an object of IP. However, this does not mean that Russia violates its international obligations. Indeed, the protection of competition is enforced in Russian law, but under the Russian competition legislation, which is based on the Constitution of the Russian Federation,[19] the Civil Code of the Russian Federation and consists of, firstly, the Federal Law of 26 July 2006 № 135-FZ 'On Protection of Competition'.[20] It determines the organizational and legal basis for protection of competition including prevention and restriction of both monopolistic activity and unfair competition. The latter is defined as 'any actions of economic entities (groups of persons) aimed at getting benefits while exercising business activity, contradicting with the legislation of the Russian Federation, business traditions, requirements of respectability, rationality and equity and which inflicted or can inflict losses to the other economic entities-competitors or harmed or can harm their business reputation'.

Following the Russian legal tradition, the Federal Law № 135-FZ provides protection against unfair competition with administrative, rather than civil legal tools. The protection against unfair competition can be hardly referred to either as results of intellectual activity or means of individualization of legal entities, goods, works, services and enterprises. This is probably the reason why it is not included in the list of IP objects not only in the Civil Code of the Russian Federation, but also in the TRIPS, as was emphasized above.

3. INTELLECTUAL PROPERTY AND INTELLECTUAL RIGHTS

The present international law usually defines IP as 'the rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields'.[21] Such understanding

[16] Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation of 16 January 2001 № 1192/00<http://www.allpravo.ru/jurisprudence/doc2096p/instrum2097> accessed 18 June 2016.

[17] The Convention Establishing WIPO of 14 July 1967 <http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=28383> accessed 18 June 2016.

[18] See: Article 10bis of Paris Convention for the Protection of Industrial Property of 20 March 1883 <http://www.wipo.int/treaties/en/ text.jsp?file_id=288515> accessed 18 June 2016.

[19] The Constitution of the Russian Federation: adopted 12 December 1993, 31 *Sobraniye Zakonodatelstva Rossiyskoy Federatsii* [Collection of Law of the Russian Federation] (2014). English version available at <http://www.constitution.ru/en/10003000-01.htm> accessed 18 June 2016.

[20] Federal Law of 26 July 2006 № 135-FZ 'On Protection of Competition', 31 *Sobraniye Zakonodatelstva Rossiyskoy Federatsii* [Collection of Law of the Russian Federation] (2006). English version available at <http://www.bu.edu/bucflp/files/2012/01/Federal-Law-No.-135-FZ-of-2006-on-the-Protection-of-Competition.pdf> accessed 18 June 2016.

[21] It should be noted that there are a lot of books in which, unfortunately, intellectual property (IP) and intellectual property rights (IPR) are considered the same. See, for example: Cornish W, Llewelyn D and Aplin T, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (Sweet and Maxwell, 2013), p.4. However, in some other books intellectual property is thought to be well defined as a set of intangible products of creative activity, rather than any intellectual property rights. See, for example: Abbott F, Cottier Th. Gurry F, *International Intellectual Property in an Integrated World Economy* (Wolters Kluwer, 2015), p. 8.

is provided, for example, in the Convention Establishing WIPO of 14 July 1967. Thus, it considers both objects of IP, e.g. literary, artistic and scientific works, performances of performing artists, phonograms, broadcasts, inventions, etc., and intellectual rights, e.g. copyright and related rights, patent rights, etc., as equivalent, which leaves room for doubt.

Unlike international law, the Civil Code clearly makes a distinction between IP and intellectual rights arising therefrom. Such understanding is based on some strong arguments in Russian civil law, which may refine the definition of IP embodied in the Convention Establishing WIPO of 14 July 1967.

Firstly, literary, artistic and scientific works, performances, inventions and other results of intellectual activity in their nature are a set of ideal categories. They are non-material objects, which can be simultaneously used by an unlimited group of subjects in different places. Therefore, it is obvious that they may just be created, but not granted, divided, restricted, transferred, etc. Rights and obligations upon such objects can be conferred by law, which are called intellectual rights.

Secondly, unlike the objects concerned, intellectual rights are granted by law. They determine the limits of use of the objects of IP and provide simultaneously a number of legal possibilities to an author and other natural and legal persons. That is why they may be divided among different individuals and legal entities and then be transferred to third parties.

Thirdly, various intellectual rights can belong to the same object of IP. For example, according to Article 1226 of the Civil Code, they include 'an exclusive right, as well as personal (moral) rights and other rights, but in cases directly specified by the present Code'. In particular, Article 1255 (2) of the Civil Code stipulates that 'the author of a work has the following rights: the exclusive right to the work; the right of authorship; the right to a name; the right to promulgation, the right to inviolability of the work'.

Of course, among all the intellectual rights, an exclusive right is the most important. It is granted upon any object of IP. It is absolute and provides a monopoly (privilege) for an owner to appropriately use the result of intellectual activity or means of individualization. It is stated in Article 1229 (1) of the Civil Code that 'other persons shall not use the relevant result or means without the right holder's consent, except for the cases envisaged by the present Code. If usage takes place without the right holder's consent, the use of the result of intellectual activity or means of individualization (including the use thereof by the methods envisaged by the present Code) is deemed illegal and it shall trigger the liability established by the present Code and other laws, except for cases when the use of the result of intellectual activity or means of individualization by persons other than the right holder without his consent is permitted by the present Code'.

Fourthly, since an intellectual right is a legal category, it may contain elements to be determined by law. These are the contents, effective period, territory of action, the order of occurrence, implementation and protection, etc. of the intellectual right. In particular, it is stated that an exclusive right includes the power to:

(1) use the result of intellectual activity or means of individualization in the owner's sole discretion in any manner not inconsistent with law; and

(2) dispose of such a right, i.e., to authorize one person and thus prevent others from using the result of intellectual activity or means of individualization. The absence of prohibition is not considered consent (permission). The main legal forms of such disposal are contracts of alienation of the exclusive right and license contracts.

Therefore, objects of IP (literary, artistic and scientific works, performances of performing artists, phonograms, broadcasts, inventions, etc.) and intellectual rights (copyright and related rights, patent rights, etc.) are deemed to fall into different categories. The first one reflects the ideal matter, which cannot be granted, divided, restricted, transferred, etc. The second one refers to legal rights, which by virtue of law provide various legal possibilities and may be divided among different individuals and legal entities, then be transferred to third parties and thus be applied in transactions and other legal actions.

The necessity of distinguishing between IP and intellectual rights was upheld by the Supreme Court and the Supreme Arbitration Court of the Russian Federation. The courts have stated that 'in accordance with the provisions of Part IV of the Civil Code of the Russian Federation the term "intellectual property" covers only the results of intellectual activity and equated means of individualization of legal entities, goods, works, services and businesses, but not right on them (Article 1225 of the Code). … By virtue of Article 1226 of the Civil Code intellectual property rights upon those objects are recognized and they include the exclusive right, and in the cases provided the Code, also personal non-property rights and other rights'.[22]

[22] See: Paragraph 9 of the Resolution of the Plenum of the Supreme Court of the Russian Federation and the Plenum of the Supreme Arbitration Court of 26 March 2009 № 5/29 <https://rg.ru/2009/04/22/gk-sud-dok.html> accessed 18 June 2016.

An analogy can be drawn with property law. As is well known, it distinguishes an object of property (money, securities, buildings, plots of land, etc.) from property rights upon them, which entitle one to possess, use and dispose of appropriate objects. Why should such an approach not be used in IP law as well?

4. INTELLECTUAL PROPERTY IN PRIVATE INTERNATIONAL LAW

Intellectual rights are initially effective within the territory of a particular state, which usually grants such rights to its citizens upon objects made on its territory, except in cases stipulated by international treaties. This means that the exclusive right an object of IP is limited to the territory of the Russian Federation. It also means that intellectual rights arising under applicable foreign law are usually not recognized in the Russian Federation.

For example, according to Article 1256 (1) of the Civil Code, the exclusive right to scientific, literary and artistic works extends to:

(1) works promulgated in the territory of the Russian Federation or not promulgated but located in any objective form in the territory of the Russian Federation, and recognized to be held by their authors (their successors) irrespective of the citizenship thereof;

(2) works promulgated outside the territory of the Russian Federation or not promulgated but located in any objective form outside of the territory of the Russian Federation, and recognized to be held by authors being citizens of the Russian Federation (their successors); and

(3) the works promulgated outside the territory of the Russian Federation or not promulgated but located in any objective form outside the territory of the Russian Federation, and it is recognized in the territory of the Russian Federation to be held by authors (their successors) being citizens of other states or stateless persons in accordance with international treaties of the Russian Federation.

It is clear that the legal regulation of IP with a foreign element is in the sphere of both public and private international law. At present, appropriate rules exist in Section VI 'International Private Law' of Part III of the Civil Code of the Russian Federation. In particular, Article 1186 (1) of the Code provides that, 'the law applicable to civil legal relations involving the participation of foreign citizens or foreign legal entities or civil legal relations complicated by another foreign element, in particular, in cases when an object of civil rights is located abroad shall be determined on the basis of international treaties of the Russian Federation, the present Code, other laws and usage recognized in the Russian Federation'.

Section VI of the Civil Code includes three chapters:

(1) Chapter 66 'General Provisions';
(2) Chapter 67 'The Law Governing Determination of the Legal Status of Persons';
(3) Chapter 68 'The Law Governing Proprietary and Personal Non-Proprietary Relations'.

However, no appropriate rules in private international law in the sphere IP exist. The only exception is the determination of the law governing a contract, including contracts such as an agreement on alienation of the exclusive right, a license contract, and a commercial concession contract.

During the conclusion of those contracts or later on, the parties thereto may select, by agreement between them, the law that shall govern their rights and duties under the contract.[23] In the absence of an agreement between the parties, the law of the country with which the contract is more closely related shall be applied. Usually it is the law of the country where at the time of conclusion of the contract, the place of residence or principal place of activity of the party which carries out the performance is located, performance that is crucial for the contents of the contract[24]. It shall be:

(1) the law of the country in which the user of a commercial concession contract is allowed to use the complex of the exclusive rights belonging to the owner, or, if such use is permitted in the territories of several countries at the same time, – the law of the country where the place of residence or principal place of activity of the owner is located;[25]

(2) the law of the country where the exclusive right, passed to the acquirer according to the contract for the alienation of the exclusive right, is effective, and if it is valid in the territories of several countries at the same time, – the law of the country where the place of residence or principal place of

[23] See: Article 1210 (1) of the Civil Code of the Russian Federation.
[24] See: Article 1211 (1) of the Civil Code of the Russian Federation.
[25] See: Article 1211 (6) of the Civil Code of the Russian Federation.

the owner of the exclusive right is located;[26]

3) the law of the country where the licensee in a license contract is permitted to use the result of intellectual activity or means of individualization, but if such use is permitted in the territories of several countries at the same time, – the law of the country where the place of residence or principal place of activity of the licensor is located.[27]

It is argued that Part III 'Private International Law' of the Civil Code contains rules defining the law governing not only contractual, but other intellectual relations concerning the non-contractual use of different objects of IP. Such law, national or foreign, may be called an intellectual property statute (similarly to a personal statute, statute *in rem*, contractual statute, the statute of inheritance, etc.). It would be useful to determine the sphere of applicability of such law, which should distinguish it from other kinds of law governing personal, property, contractual and other civil relations with a foreign element. The issues to be dealt with by an IP statute are as follows:

(1) authorship;
(2) the definition and kinds of objects of intellectual property;
(3) requirement for registration;
(4) the kinds, contents and effective terms of intellectual rights; and
(5) legal means and order of implementation and protection of intellectual rights, etc.

Among the several rules of private international law, *lex voluntatis, lex loci protectionis* and *lex loci actus* are considered the most proper in the sphere of IP. The first should be applied to contractual relations, whereas the second – to non-contractual ones. Similar provisions can be found in current legislation. For example, Article 5(2) of the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886[28] stipulates that 'the enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed'.

Lex loci actus is most suitable for the determination of authorship, as is provided, for example, in Article 1256 (3) of the Civil Code: 'When in accordance with international treaties of the Russian Federation protection is provided to a work on the territory of the Russian Federation, the author of the work or another initial right holder shall be determined by the law of the state on whose territory the legal fact serving as grounds for the acquisition of copyright took place'.

5. CONCLUSION

The current Part IV of the Civil Code of the Russian Federation is the full version of the codification of IP law in Russia, which provides for the general provisions relating to all forms of IP and excludes further need for specific laws on certain types of intellectual property. It stipulates the exhaustive list of objects (results of intellectual activity and means of individualization) protected by law, which, on the one hand, introduced new kinds of IP unknown to the previous Soviet law and, on the other, excluded some objects included in international law. Unlike some rules of international law, it recognizes the difference between IP and IP rights.

It also does not address all the issues of applying rules of international private law in the sphere of intellectual property. The scope of the IP statute is deemed to include authorship, the definition and kinds of objects of intellectual property, requirement for registration, the kinds, contents and effective terms of intellectual rights, legal means and order of implementation and protection of intellectual rights, which should be defined with the use of *lex voluntatis, lex loci actus* and *lex loci protectionis* in the determination of law applicable to transnational intellectual legal relationships.

BIBLIOGRAPHY

Abbott F, Cottier Th. Gurry F, *International Intellectual Property in an Integrated World Economy* (Wolters Kluwer, 2015).

Chernysheva S, *Copyright Law of Russia: Basic Provisions* (Moscow, 2001).

Cornish W, Llewelyn D and Aplin T, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (Sweet and Maxwell, 2013).

Gavrilov Y, *Copyright Law* (Moscow, 1988).

Gordon M, *Soviet Copyright Law* (Moscow, 1955).

[26] See: Article 1211 (7) of the Civil Code of the Russian Federation.

[27] See: Article 1211 (8) of the Civil Code of the Russian Federation.

[28] Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 <https://treaties.un.org/doc/Publication/UNTS/Volume%20828/volume-828-I-11850-English.pdf> accessed 18 June 2016.

Ioffe O, *The Framework of Copyright Law* (Moscow, 1969).

Serebrovskii V, *Issues of Soviet Copyright Law* (Moscow, 1956).

Sergeev A (ed), *Civil Law* (Moscow, 2008, vol. 1).

Sergeev A (ed), *Civil Law* (Moscow, 2001, vol. 3).

Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 <https://treaties.un.org/doc/Publication/UNTS/Volume%20828/volume-828-I-11850-English.pdf> accessed 18 June 2016.

Paris Convention for the Protection of Industrial Property of 20 March 1883 <http://www.wipo.int/treaties/en/text.jsp?file_id=288515> accessed 18 June 2016.

The Convention Establishing WIPO of 14 July 1967 <http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283833> accessed 18 June 2016.

The Constitution of the Russian Federation: adopted 12 December 1993, 31 *Sobraniye Zakonodatelstva Rossiyskoy Federatsii* [Collection of Law of the Russian Federation] (2014). English version available at <http://www.constitution.ru/en/10003000-01.htm> accessed 18 June 2016.

The Civil Code of the Russian Federation. Part IV. Federal Law of 18 December 2006 № 230-FZ, 52 *Sobraniye Zakonodatelstva Rossiyskoy Federatsii* [Collection of Law of the Russian Federation] (2006). English version available at <http://www.wipo.int/edocs/lexdocs/laws/en/ru/ru083en.pdf> accessed 18 June 2016.

The Civil Code of RSFSR of 11 June 1964 (abolished), 24 *Vedomosti Verkhovnogo Soveta RSFSR* [Bulletin of the Supreme Council of RSFSR] (1964).

Law of Russia of 9 July 1993 № 5351-I 'On Copyright and Related Rights' (abolished), 32 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1993).

Law of Russia of 6 August 1993 № 5605-I 'On Breeding Achievements' (abolished), 36 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1993).

Law of Russia of 23 September 1992 № 3523-I 'On Legal Protection of Computer Programs and Databases' (abolished), 42 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1992).

Patent Law of Russia of 23 September 1992 № 3517-I (abolished), 42 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1992).

Law of Russia of 23 September 1992 № 3520-I 'On Trademarks, Service Marks and Indications of Origin of Goods' (abolished), 42 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1992).

Law of 23 September 1992 № 3526-I 'On Legal Protection of Topologies of Integrated Circuits' (abolished), 42 *Vedomosti Syezda narodnykh deputatov i Verkhovnogo Soveta RF* [Bulletin of the Congress of People's Deputies and the Supreme Council of the Russian Federation] (1992).

Draft of Federal Law 'The Civil Code of the Russian Federation. Part IV' № 323423-4, available at <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=323423-4&02> accessed 18 June 2016.

Resolution of the Plenum of the Supreme Court of the Russian Federation and the Plenum of the Supreme Arbitration Court of 26 March 2009 № 5/29 <https://rg.ru/2009/04/22/gk-sud-dok.html> accessed 18 June 2016.

Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation of 16 January 2001 № 1192/00 <http://www.allpravo.ru/jurisprudence/doc2096p/instrum2097> accessed 18 June 2016.