



## Changes in intellectual law effective since 1 January, 2008

A special focus on Part 4 of RF Civil Code is accounted for by the fact that since 1 January 2008, all laws currently regulating the sphere of intellectual property will cease to be effective. The laws to become ineffective include RF Patent Law, RF Law "On Trademarks, Service Marks and Appellations of Origin", RF Law "On Author's Rights and Related Rights", and many other related laws and legal regulatory acts. The Civil Code will take the power of regulation over intellectual property in full. The idea of laws absorption by the code creates an extremely unpleasant precedent contradicting both the Civil Code itself and the legal doctrine, in general. The Code has basic provisions further disclosed in laws approved in relation thereto. Nowhere in the world is the intellectual property included into the Civil Code: this sphere is regulated by independent laws. The only exception to the rule may be countries where special laws are joined in a uniform code. However, this code is not called the Civil Code, but the Intellectual Property Code.

Let us consider some novelties and terminology of the new Part 4 of RF Civil Code. First of all, the definition of the notion of "intellectual property" is to be analyzed. According to the authors of Part 4, this term means not the total of entitlements, but the products of intellectual activity. In connection with this, a new term "intellectual rights" has been introduced which means the total of exclusive (property), personal non-property and open list of some other rights *поА* (the article only mentions the right of resale and right of access).

An important change is the opportunity to conclude a contract on irrevocable assignment of all author's exclusive rights, according to which the author may forfeit all his/her author's exclusive rights forever. Earlier, the law required the authorship agreement to specify the method and limits of exclusive rights transfer. The other condition was that, unless the agreement directly specifies the transfer of exclusive rights, it was supposed that the author gave the user the opportunity to use his/her rights as non-exclusive ones, the property rights being limited.

It is noteworthy, that the size of copyright royalty or the procedure of calculation thereof, i.e. the value of the agreement, is the major provision of the agreement. This means that in case if the agreement lacks the said provision, the former is automatically considered uncompleted. Consequently, the use of products under such agreement will be considered illegal, and the author will have a chance to claim indemnity for the copyright violation.

Special requirements are set to the form of agreement. In case of a failure to conclude a written agreement the agreement is considered void unless the Code allows concluding other than written agreements.

Now compensation for moral damage is possible only in case of violation of personal non-property rights of the author; consequently, if exclusive or other property rights are violated, the author will not be able to claim such compensation.

The Code prohibits introducing changes, reductions or additions to the author's product as well as attaching illustrations, foreword, afterword, comments or any other interpretations to it without the author's consent. This is called the right for inviolability of the product. Earlier, the personal non-property right for protection of the author's reputation was applied only in case of introduction of changes which could denigrate the honour and dignity of the author.

Another novelty of the Code is the article permitting free creation of a product in genre of literary, musical or other parody of caricature genre on the basis of other (original) legally published work product. Such free use of the work product does not require consent of the author or other holder of exclusive right for original work product and without payment of compensation to him/her.

As it was earlier, the exclusive right for works for hire, i.e. the product created by the employee (author) when performing his/her duties, belongs to the employer. However, the Code introduces a new provision giving an opportunity to "return" author's exclusive rights to the author. If the employer within three years from the date of receipt of a work of hire fails to begin using said work of hire, assign the exclusive right for it to other person or notify the author about keeping the work of hire in secret, the exclusive right for said work of hire belongs to the author. The employee is entitled to claim the copyright royalty both in case of use of the work of hire or keeping it in secret. The procedure for calculation of such royalty has not, however, been established yet.

Since the effective date of Part 4 of RF Civil Code, "information" (interpreted as any data) as an object of legal protection was excluded from the list of protected results of intellectual activity. For the purpose of elimination of terminological collisions, the Federal Law "On Enactment of Part 4 of RF Civil Code" excluded "information" from the list of civil rights in article 128 of RF Civil Code. Nowadays, the protected result of intellectual activity is the secret of production (know-how). According to the Code, the secret of production (know-how) is any data (production, technical, economic, administrative and other), including data about the



results of intellectual activity in scientific and technical sphere, as well as data about methods of performing professional activities having actual or potential commercial value by reason of their being unknown to third persons, to which third persons have no free legal access, and which are officially considered as a commercial secret by the holder of such data.

Part 4 of RF Civil Code, following legislation in the sphere of legal protection of intellectual property, is actually introducing another kind of result – a uniform technology, though it is not specified as an independent result of intellectual activity in article 1225 of RF Civil Code. Judging by the overall contents of Code articles, a uniform technology is a complex object, a result of intellectual activity, including various combinations of inventions, utility models, industrial designs, PC programs or other results of intellectual activity subject to legal protection, and which may serve a technological basis for particular activities in the civil or military spheres.

Part 4 of RF Civil Code offers many novelties, including terminology, but at the same time pertains to the traditionally used categories approved by the law enforcement practices. The importance of the Code with regard to the unification of rules regulating agreement relations and elimination of certain gaps and collisions of existing legislation is quite notable and is both a theoretical and practical document.