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Belarus

About Belarus Hi-Tech Park*  

By: Volha Samasuik

Belarus is an Eastern European country with renowned scientific and technological potential. Its 50-year-old IT industry combined with 55 universities across the country and 20,000 IT-graduates annually, produces a good amount of high-class engineers and other professionals. Additionally, convenient geographic location and competitive service rates make this industry rather attractive for both Eastern and Western clients.

In order to support economic development and promote the IT industry, the Belarusian government has adopted relevant custom-made legislation. The leading document is the Presidential Decree “On the Hi-Tech Park” of September 22, 2005, which aimed to increase competitive power in the nation’s high technology sector, develop modern technologies and expand their exports, as well as to attract both Belarusian and foreign technologies to the sector.¹

As a result, the Belarusian Hi-Tech Park (HTP) represents a territory where its residents particularly enjoy the business environment. Additionally, the legal conditions of resident status are valid in the whole country, not only within HTP physical location. The Park itself is located in Minsk, the capital of Belarus. There are 120 acres allocated for HTP companies’ offices as well as for residential area and educational facilities.

The main advantage of HTP residency involves tax privileges. Particularly, its residents are exempt from a broad amount of taxes and dues, including:

- Corporate income tax;
- Individual income tax for HTP residents’ employees is fixed at 9% (while the general flat rate for Belarusian individual tax payers is 12%);
- Value added tax (VAT);
- Customs dues and VAT when HTP residents import equipment to be used for their operations;
- State taxes and dues to non-budgetary funds.

Admission to the HTP is application-based and rather straightforward. To become an HTP resident, a candidate must provide the HTP Administration with the following documents for approval:

1. Application;
2. Copies of Articles of Association (Bylaws) and Certificate of Registration as a legal entity; and
3. Business project.²

In fact, there are just two feasible requirements for candidates. First, a company should operate in either of the following areas: performing analysis; developing design and software for information systems; carrying out activities for data processing; conducting fundamental and applied research; exploratory development in the field of natural and engineering sciences; and planning to implement the results of such research and development.

Second, a company should be registered with the state as a Belarusian legal entity. Though there is no restriction on the type of business entities to utilize or on the company ownership structure. For instance, a company with 100% foreign capital can apply for HTP residency. In total, 140 IT companies have been admitted to the HTP since 2006.

As for its business climate, Belarus has simplified registration formalities and implemented a one-stop shop for starting a new business. According to the World Bank report, “Doing Business 2014: Understanding Regulations for

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¹ Decree of the President of the Republic of Belarus “ON THE HI-TECH PARK”, September 22, 2005.

² How to Apply? BELARUS HIGH-TECH PARK, at http://www.park.by/topic-how_to_apply/.
Small and Medium-Sized Enterprises,” Belarus ranks 63rd among 189 economies on the Ease of Doing Business and 7th on Starting a Business parameter.  

The Belarusian HTP is considered a successful development project with high revenue indicators. Currently, 90% of the software produced by its residents is exported. The clients are located in more than fifty countries. The main consumers are from Europe (48%), the United States and Canada (39%), and Russia and the CIS (12%). Giant companies such as Peugeot, Mitsubishi, British Petroleum, Gazprom, Reuters, British Telecom, London Stock Exchange, the World Bank, and Coca-Cola have also been among them.

Germany

Reshaping German Copyright Law?

By: Stephen C. George, J.D., LL.M.

Damages to copyright holders have taken a prominent role in the German governing coalition’s plans for shaping Germany’s future. The document calls for increased responsibility for internet service providers, greater enforcement of laws against businesses whose primary business model is largely based on copyright infractions, fostering of greater awareness in the general public of the difference between legal and illegal media offerings on the internet, and increased efficiency in resolving copyright disputes. All of this should be accomplished while still maintaining an outlook for the fair and simple portability of legally purchased media by consumers.

This call for copyright reform in Germany rides on the coattails of a German High Court decision that already removed liability protections for hosting services whose concrete business model encourages the infringement of copyrights. The ruling also placed greater responsibility on hosting services to examine content for copyright violations, particularly when the hosting service has been made aware of specific content violations.

The German government may, however, face obstacles in increasing third-party civil liability for hosting services because of conflicting EU law. The European E-Commerce Directive of 2000 provides a “mere conduit” of protection for service providers against liability for information stored or transmitted across servers. Articles 12, 13, and 14 of the E-Commerce Directive largely shield service providers from liability unless they have actual knowledge of illegal activity. Furthermore, Article 15 of the Directive excludes the possibility of a general duty on service providers to monitor information for illegal activity.

The ruling coalition in Germany has rightly identified copyright law as an area in need of important reforms, but European Union Law may, for better or worse, stand in the way of the coalition’s plans to increase the responsibilities of third-party service providers in preventing infringements. Germany may be one of the countries to watch as the so-called Copyright Wars between content creators, content owners, and content users continue.

3 DOING BUSINESS: MEASURING BUSINESS REGULATIONS, at http://www.doingbusiness.org/rankings

France

Perfume Still Not Protected by French Copyright

By: Marie-Andrée Weiss

The French Civil Supreme Court, the Cour de Cassation, reaffirmed on December 10, 2013 that the protection of French copyright (droit d’auteur) does not extend to perfumes.

On January 22, 2009, the Cour de Cassation had already refused to grant perfume the protection of copyright, stating that “the fragrance of a perfume, which originates from the simple implementation of know-how, does not constitute the creation of a form of expression that can benefit from the protection of works of the mind by copyright.”

The court was more explicit in December 2013. The reason perfume is not protected by the droit d’auteur is because the law “protects creations in their tangible form, so far as they are identified with sufficient precision to allow their communication; the fragrance of a perfume, which, outside of its development process, which is not in itself a work of the mind, does not have itself a form with [the] characteristic [of a work of a mind] and therefore cannot be protected by copyright.”

The plaintiff, Lancôme, had argued unsuccessfully that because article L. 112-1 of the French Intellectual Property Code (FIPC) protects "all works of the mind, whatever their kind, form of expression, merit or purpose," the fragrance of a perfume is therefore protectable under French law. This article codifies the theory of art unity (unité de l’art) under which even mundane objects can be protected by copyright, as long, however, as they have been created by an “author.” Lancôme had also argued that perfumes show “the creative input of its author” and is thus original, and therefore protectable.

If perfume is still not protectable by copyright in France, at least bottles of perfume are protected by article L511-3 of the FIPC, as long as their design is “new.”

European Union

Svensson v. Retriever Sverige AB

By: Anna Rostovtsev

In February 2014, the Court of Justice of the European Union (CJEU) delivered a decision concerning how hyperlinking and framing should be treated under EU copyright law. The CJEU ruled that providing a clickable link to a freely accessible copyrighted work does not constitute an “act of communication to the public” and thus does constitute copyright infringement.

The Applicants were journalists who had published news articles made freely available on the website of the Göteborgs Posten newspaper. A Swedish Company, Retriever Sverige, operates a website that provides internet hyperlinks to articles published on other websites. Retriever Sverige did not request authorization to include hyperlinks to the articles published on the Göteborgs Posten website.

The applicants brought action against Retriever Sverige before the Stockholm District Court to obtain compensation on the grounds that Retriever Sverige made unauthorized use of their articles by making them available to users. The District Court rejected the application.

The applicants then appealed to the Svea Court of Appeal. The applicants claimed that Retriever Sverige had infringed on their exclusive right to make their works available to the public. Retriever Sverige argued that the act of providing internet hyperlinks to the public does not constitute making works available to the public and that directing internet users to works hosted on outside websites does not constitute transmission of the actual works.

The Svea Court of Appeal stayed the proceedings and brought the matter before the Court of Justice.
for a preliminary ruling to determine whether the act of hyperlinking constitutes an act of communication to the public within the meaning of Article 3(1) of Directive [2001/29].

In its decision, the CJEU found that the provision of hyperlinks to freely accessible copyright protected works does constitute an “act of communication,” but that there is no infringement if the communication is not to a “new public,” i.e. a public not considered by the rights holder when he initially communicates it to the public by posting it online. The CJEU noted that there were circumstances where publishing a link could amount to infringement, for example, if a hyperlink permits users to bypass restrictions intended to limit access to a copyrighted work. In situations where a link “constitutes an intervention without which those users would not be able to access the works transmitted, all those users must be deemed to be a new public.” The CJEU noted that the same analysis would apply to embedded links.

Further, the Court ruled that Article 3(1) cannot be interpreted as permitting a Member State from giving wider protection to copyright holders by including activities of communication to the public that are not listed in the provision. To read the Svensson case visit:

COMMITTEE ANNOUNCEMENTS

IP-Related Panels at the 2014 Spring Meeting, The Waldorf Astoria, April 1-5

WEDNESDAY, APRIL 2, 2014

2:00 am – 3:15 am
Venue: Morgan Suite
Topic: “Global Trade in Counterfeit Parts: Issues and Solutions”

THURSDAY, APRIL 3, 2014

10:45 AM – 12:00 PM
Venue: Norse Suite
Topic: “Patent Prosecution for Pharmaceuticals in Developing Countries: Access to Affordable Drugs versus the Cost of Innovation.”

2:00 pm – 3:15 pm
Venue: Starlight Terrace South

2:00 pm – 3:15 pm
Venue: Metropolitan Suite
Topic: “Resolving International IP-Related Disputes: What is the Role for Investment Treaty Arbitration”

World Intellectual Property Organization (WIPO) Workshops and Seminars:


WIPO Workshop for Mediators in Intellectual Property Disputes (ARB/MED/14), May 22 to May 23, 2014 Geneva, Switzerland. This Workshop “is an intensive two-day training course in the techniques of mediation, based on lectures and simulated mediation exercises in the intellectual property field.” For details see: http://www.wipo.int/meetings/en/details.jsp?meeting_id=32344

“PATENTSCOPE Training Course” (WIPO/TR/PAT/GE/14), June 3 to June 5, 2014 Geneva, Switzerland. For details, see: http://www.wipo.int/meetings/en/details.jsp?meeting_id=32383

About the International Intellectual Property Committee

The International Intellectual Property Committee of the American Bar Association Section of International Law (ABA-SIL) deals with intellectual property problems arising out of differences in the laws of various countries; issues concerning the negotiation and implementation of international agreements affecting intellectual property rights; the rights of United States citizens to obtain intellectual property protection in other countries and the rights of foreign authors, inventors and producers to obtain intellectual property protection in the United States.

To join or learn more about the ABA Section of International Law visit: http://www.abanet.org/intlaw/membership/home.html. If you have any difficulties, please contact the International Section office at 202-662-1660.

Reminder

The materials and information included in this newsletter do not reflect endorsement by the American Bar Association, the Section of International Law, or the International Intellectual Property Committee.

Newsletter Announcement: Next Issue

Next Issue to be Released July 1, 2014

We welcome voluntary contributions of case reviews, book reviews, proposed or pending relevant legislation, news items, useful links and relevant information concerning upcoming events of possible interest to members of the international intellectual property committee for inclusion in future issues of this newsletter; contributions may be sent by email to uchee@uark.edu.

Submissions must be received by June 1, 2014

For questions, suggestions or problems, contact Prof. Uche Ewelukwa, uchee@uark.edu

Thank you again for your interest and participation!

Trevor Townsend, JD Candidate, University of Arkansas, provided editorial assistance.

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