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1.1 and 1.2 – In addition to incurring criminal liability for the infringement of copyright and related rights (Article 146 of the Criminal Code of the Russian Federation), the Criminal Code of the Russian Federation provides for criminal liability for the infringement of an inventor's and patent rights, according to Article 147(1) of the Criminal Code of the Russian Federation, i.e. for the unlawful use of an invention, utility model or industrial design, disclosure without the consent of the author or applicant of the essential features of an invention, utility model or industrial design prior to official publication of information thereon, assimilation of authorship or coercion to joint authorship, where these acts have caused major damage.

In addition, the Criminal Code of the Russian Federation provides for criminal liability for the unlawful use of a trademark, service mark, appellation of origin or similar designations for goods of the same type belonging to another person, and also for the unlawful use of preventive marking in relation to a trademark or appellation of origin not registered in the Russian Federation, where these acts are performed more than once or have caused major damage (Article 180 of the Criminal Code of the Russian Federation).

[*] The views expressed in the Study are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

1.3 – The term “counterfeit” is used currently in the Russian legislation in force and in the law of many countries, meaning literally “illegal copy”. A copy is a material carrier of an author’s work or of any subject of related rights.

Goods and the labels and packaging for such goods on which a trademark or designation similar to the point of confusion is used are counterfeit.

In addition, the concept of “counterfeiting” has not been defined in law. However, as of January 1, 2008 the fourth part of the Civil Code of the Russian Federation enters into force, which describes the concept of counterfeiting as follows:

Where the preparation, dissemination or other use, including the import, transport or storage, of material carriers on which the result of intellectual activity or means of individualization are expressed, leads to the infringement of the exclusive right in such a result or such a means, such material carriers shall be deemed counterfeit and, on a court decision, shall be removed from circulation and destroyed, without any form of compensation whatsoever, unless other consequences are provided for by this Code (Article 1252 of the Civil Code of the Russian Federation).

The inventor’s rights referred to in Article 147 of the Criminal Code of the Russian Federation shall be understood not only as the rights of the author of an invention, but also of a utility model and equally of an industrial design.

TRADEMARK: according to Russian legislation, a designation able to distinguish goods of certain natural persons or legal entities from goods of the same type of other natural persons or legal entities. A means of individualizing production, the exclusive rights in which relate by law to intellectual property (Article 138 of the Civil Code of the Russian Federation). Verbal, figurative, volume and other designations, or combinations thereof may be registered as trademarks.

Article 1515 of the Civil Code of the Russian Federation. Liability for unlawful use of a trademark.

1. Goods and the labels and packaging for such goods, on which a trademark or designation similar to the point of confusion are unlawfully placed, shall be counterfeit.

Article 1225 of the Civil Code of the Russian Federation. Protectable results of intellectual activity and means of individualization.

1. The results of intellectual activity and the means of individualization of legal entities, goods, work, services and firms equivalent thereto, for which legal protection is granted (as intellectual property), shall be:

(1) works of science, literature and art;
(2) computer programs;
(3) databases;
(4) performances;
(5) phonograms;
(6) broadcasting or cablecasting of radio or television programs (broadcasting or cablecasting organizations);
(7) inventions;
(8) utility models;
(9) industrial designs;
(10) selection achievements;

(11) topographies of integrated circuits;
(12) production secrets (know-how);
(13) trade names;
(14) trademarks and service marks;
(15) appellations of origin;
(16) commercial designations.
2. Intellectual property shall be protected by law.

1.4 - In accordance with Article 146(2) of the Criminal Code of the Russian Federation, an essential condition for incurring criminal liability for the acquisition, storage or transport of counterfeit copies of works or phonograms shall be the performance of the above actions for the purposes of sale.

Sale shall be recognized as any means of the transfer of counterfeit products with or without remuneration.

1.5 - The crimes provided for by Article 146(1) of the Criminal Code of the Russian Federation shall be considered completed from the time when major damage is caused to an author, and the crimes provided for in Article 146(2) of the Criminal Code of the Russian Federation - from the time of performance of a large-scale act.

Article 146(3) of the Criminal Code of the Russian Federation shall be a qualified component of Article 146(2).

Article 146(3)(a) of the Criminal Code of the Russian Federation – "repeated performance" – has ceased to be valid in accordance with Federal Law No. 162-93 of December 8, 2003.

Subparagraph (b) provides for liability for the commission of a crime by a group of persons by prior agreement or by an organized group. It should be noted that a crime may be recognized as committed by a group of persons by prior agreement only in the case of joint commission.

Decision No. 14 of the Plenum of the Supreme Court of the Russian Federation, of April 26, 2007, "on the practice for the examination by courts of criminal cases relating to the infringement of copyright and related rights, an inventor's and patent rights, and also on the unlawful use of a trademark", contains the following opinion (para. 26): "In characterizing acts as guilty, in accordance with Article 146(3)(b), Article 147(2) and Article 180(3) of the Criminal Code of the Russian Federation, as committed by a group of persons by prior agreement, it should be borne in mind which specific acts have been committed by each of the perpetrators and other co-participants in the crime. In accordance with Article 35(2) of the Criminal Code of the Russian Federation, criminal liability for the commission of a crime by a group of persons by prior agreement is incurred in those cases where, according to a prior agreement, each of the co-participants commits part of the acts which, in objective terms, form part of the crimes (for example, according to a previously existing agreement certain co-participants acquire counterfeit copies of works or phonograms for the purposes of sale, while others store, transport or directly sell such copies)".

2.1 *Jurisdiction for criminal cases*. Criminal cases relating to the infringements provided for by Articles 146, 147 and 180 of the Criminal Code of the Russian Federation shall be examined, in the capacity of a court of first instance, by justices of the peace and judges of regional courts. Justices of the peace have jurisdiction over criminal cases relating

to crimes, for the commission of which the maximum punishment does not exceed a three-year term of imprisonment, i.e. as provided for by Article 180(1) and (2) of the Criminal Code of the Russian Federation, with the exception of criminal cases relating to crimes provided for by Article 146(1) and Article 147(1). Cases relating to crimes provided for by Article 146(1) and (3), Article 147 and Article 180(3) are under the jurisdiction of a regional court (Article 31 of the Code of Criminal Procedure of the Russian Federation).

The territorial jurisdiction for a criminal case shall be determined by the place where the crime is committed. Where a crime was undertaken in a place to which the jurisdiction of one court extends, and completed in a place to which the jurisdiction of another court extends, the criminal case in question is subject to the jurisdiction of the court in the place where the crime was completed.

2.2 The sanctions contained in the above articles of the Criminal Code of the Russian Federation provide for the following punishments: as a fine – up to 300,000 roubles or the salary or other income of a convicted person for a period up to two years, or in the form of compulsory work – from 120 to 240 hours, or in the form of corrective labor – up to two years, or arrest from three to six months, or imprisonment for a period of up to six years with a fine starting at 500,000 roubles or the salary or other income of a convicted person for a period up to three years without such a fine.

The following sanctions are established for specific elements of crimes:

Article 146(1) of the Criminal Code of theRussian Federation provides for punishment in the form of a fine of up to 200,000 roubles or the salary or other income of a convicted person for up to 18 months, or compulsory work for a period ranging between 180 and 240 hours, or arrest for a period of three to six months;

Article 146(2) of the Criminal Code of theRussian Federation – a fine of 200,000 roubles or the salary or other income of a convicted person for a period up to 18 months, or compulsory work for a period ranging between 180 and 240 hours, or a prison sentence of up to two years;

Article 146(3) of the Criminal Code of theRussian Federation – imprisonment for a period of up to six years with a fine of up to 500,000 roubles or the salary or other income of a convicted person for a period of up to three years without such a sentence.

Article 147(1) of the Criminal Code of theRussian Federation provides for punishment in the form of a fine of up to 200,000 roubles or the salary or other income of a convicted person for a period of up to 18 months, or compulsory work for a period ranging between 180 and 240 hours, or a prison sentence of up to two years;

Article 147(2) of the Criminal Code of theRussian Federation – a fine ranging between 100,000 and 300,000 roubles or the salary or other income of a convicted person for a period ranging between one and two years, or arrest for a period of between four and six months, or imprisonment for up to five years.

Article 180(1) of the Criminal Code of theRussian Federation – provides for the following punishment: a fine of up to 200,000 roubles or the salary or other income of a convicted person for a period of up to 18 months, or compulsory work for a period ranging between 180 and 240 hours, or corrective labor for a period of up to two years;

Article 180(2) of the Criminal Code of the Russian Federation – a fine of up to 120,000 roubles or the salary or other income of a convicted person for a period of up to one year, or compulsory work for a period ranging between 120 and 180 hours, or corrective labor for a period of up to one year;

Article 180(3) of the Criminal Code of the Russian Federation – imprisonment for a period of up to six years with a fine of up to 500,000 roubles or the salary or other income of a convicted person for a period of up to 3 years or without such a fine.

2.3, 2.4, 2.5, 2.6 – Specialized courts for examining cases relating to intellectual property infringements do not exist in Russia. There is no need currently to establish such courts in Russia as a result of the low number of cases examined by Russian judges in 2006: in accordance with Article 146(1) of the Criminal Code of the Russian Federation – 12 persons convicted, according to 146(2)-1380, according to 146(3)-490, according to Article 146-a total of 1882; according to Article 147(1) – two persons convicted, according to Article 180(1) – 32, 180(3)-8 and according to Article 180 of the Criminal Code of the Russian Federation – a total of 40 persons convicted.

The working practice of courts of general jurisdiction in the Russian Federation shows that the level of specialization of judges examining such cases rises in the event of an increase in the number of cases in one or other category. For example, this kind of specialization has been created for cases in which crimes are committed by minors.

2.7 - *Article 11 of the Criminal Code of the Russian Federation. Validity of criminal law in relation to persons committing a crime on the territory of the Russian Federation.*

1. A person who has committed a crime on the territory of the Russian Federation shall incur criminal liability in accordance with this Code.

2. Crimes committed within the limits of the territorial sea or air space of the Russian Federation shall be recognized as having been committed on the territory of the Russian Federation. The validity of this Code shall extend also to crimes committed on the continental shelf and in the exclusive economic zone of the Russian Federation.

3. A person who has committed a crime on a vessel registered with a port in the Russian Federation, located in open water or air space outside the Russian Federation, shall incur criminal liability in accordance with this Code, unless otherwise provided for by an international treaty to which the Russian Federation is party. In accordance with this Code, criminal liability shall also be borne by a person who has committed a crime on a military ship or military aircraft of the Russian Federation, irrespective of their location.

4. The question of criminal liability of diplomatic representatives of foreign States and other citizens who enjoy immunity, where these persons have committed crimes on the territory of the Russian Federation, shall be resolved in accordance with international law.

Thus, the provisions of this Article strengthen the territorial principle in defining the limits of the validity of Russian criminal laws in spatial terms: any person (citizen of Russia, foreign citizen or person without citizenship) who has committed a crime on the territory of the Russian Federation shall be subject to the effect of Russian criminal law.

In the case of a crime committed jointly, such a crime may be considered to have been committed on the territory of the Russian Federation, if the perpetrator has committed an act on its territory, while the other co-participants have operated abroad. If the perpetrator operated abroad, and the other co-participants (organizer, abettor, accomplice) have performed their functions in participating in said crime in Russia, the acts of those persons shall be recognized as having been committed on its territory.

The group of individuals enjoying immunity from the effect of Russian criminal law in the case of crimes committed by them on the territory of the Russian Federation is determined on the basis of reciprocity by the 1946 Convention on the Privileges and Immunities of the United Nations, the Vienna Convention on Diplomatic Relations of April 18, 1961, the Vienna Convention on Consular Relations of April 24, 1963, the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of March 14, 1975, the Convention on Legal Status, Privileges and Immunities of

Intergovernmental Economic Organizations Operating in Designated Areas of Cooperation, numerous consular conventions and agreements on the legal status of trade representations, concluded between States, and the Regulations on Diplomatic and Consular Representations of Foreign States on the Territory of the USSR, approved on May 23, 1966.

Article 12 of the Criminal Code of theRussian Federation . Validity of criminal law in relation to persons who have committed a crime outside the Russian Federation.

1. Citizens of the Russian Federation and persons permanently resident in the Russian Federation without citizenship who have committed a crime outside the Russian Federation against the interests protected by this Code shall incur criminal liability in accordance with this Code, if no decision of a court of a foreign State exists in relation to such persons for the crime in question.

2. Military personnel in military units of the Russian Federation stationed outside the borders of the Russian Federation shall incur criminal liability in accordance with this Code for crimes committed on the territory of a foreign State, unless otherwise provided for by an international treaty to which the Russian Federation is party.

3. Foreign citizens and persons without citizenship not permanently resident in the Russian Federation who have committed crimes outside the borders of the Russian Federation shall incur criminal liabilityin accordance with this Code, in cases where a crime is directed against the interests of the Russian Federation or a citizen of theRussian Federation, or a person residing permanently in the Russian Federation without citizenship, and also in the cases provided for by an international treaty to which the Russian Federation is party, if foreign citizens and persons without citizenship, not permanently resident in the Russian Federation, were not convicted in a foreign State and incur criminal liability on the territory of the Russian Federation.

It is clear from this Article that in defining the spatial limits of the effect of Russian criminal laws, the principle of citizenship is applied. Citizens of the Russian Federation and persons living permanently in Russia without citizenship, where they commit crimes outside the territory of the Russian Federation, are placed in the jurisdictional sphere of two States: (1) the State on the territory of which they committed a crime, and (2) Russia, of which they are citizens or where they reside permanently, but do not have citizenship.

The concept of citizenship of the Russian Federation is disclosed in Federal Law No. 62-FZ, of May 31, 2002, on Citizenship of the Russian Federation. In accordance with Article 3 of this Law, a person without citizenship is a person who is not a citizen of the Russian Federation and does not have proof of the existence of citizenship of a foreign State.

It should be borne in mind that in accordance with Article 1(3) of the Code of Criminal Procedure of the Russian Federation, the generally recognized principles and standards of international law and the international treaties to which the Russian Federation is a party are components of Russian Federation legislation regulating criminal court proceedings. Where an international treaty to which the Russian Federation is a party establishes rules other than those provided for by this Code, the rules of the international agreement apply.

Article 453 of the Code of Criminal Procedure of the Russian Federation. Sending of a request for legal aid.

1. Where necessary for the purposes of conducting, on the territory of a foreign State, an interrogation, inspection, excavation, search, judicial examination or other procedural acts, as provided for by this Code, the court, prosecutor, investigator or interrogator shall request such acts to be carried out by the competent authority or an official

of the foreign State, in accordance with an international treaty to which the Russian Federation is party, an international agreement or on the basis of the principle of reciprocity.

2. The principle of reciprocity shall be confirmed by the written mandate of the Supreme Court of the Russian Federation, Ministry of Foreign Affairs of the Russian Federation, Ministry of Justice of the Russian Federation, Ministry of the Interior of the Russian Federation, Federal Security Service of the Russian Federation, Federal Service of the Russian Federation for Regulating the Circulation of Narcotics and Psychotropic Substances or the Office of the Prosecutor General of the Russian Federation to provide, in the name of the Russian Federation, legal aid to the foreign State for the conduct of individual procedural acts.

3. A request for the conduct of procedural acts shall be sent through:

(1) The Supreme Court of the Russian Federation – for matters relating to the judicial activities of the Supreme Court of the Russian Federation;

(2) TheMinistry of Justice of the Russian Federation – for matters relating to the judicial activities of all courts, excluding the Supreme Court of the Russian Federation;

(3) TheMinistry of the Interior of the Russian Federation, the Federal Security Service of the Russian Federation, Federal Service of the Russian Federation for Regulating the Circulation of Narcotics and Psychotropic Substances – in relation to investigavative acts which do not require a judicial decision or consent of the Prosecutor;

(4) The Office of the Prosecutor General of the Russian Federation – in other cases.

4. The request and documents attached thereto shall be translated into the official language of the foreign State to which they are sent.

Article 455 of the Code of Criminal Procedure of the Russian Federation. Legal force of evidence obtained on the territory of a foreign State.

Evidence obtained on the territory of a foreign State by its officials during their carrying-out of orders to provide legal aid for criminal cases or sent to theRussian Federation as an attachment to an order to carry out criminal prosecution in accordance with international treaties to which the Russian Federation is a party, international agreements or on the basis of the principle of reciprocity, certified and transmitted in accordance with the established procedure, shall have the same legal force as if it were obtained on the territory of theRussian Federation in full compliance with the requirements of this Code.

When resolving the matter of the infringement of the rights in the results of intellectual activity and means of individualization, it should be borne in mind that the rights in said intellectual property subject matter of foreign natural and legal persons enjoy protection in accordance with the procedure established by federal law, equally for natural and legal persons of the Russian Federation, in accordance with international treaties to which the Russian Federation is party or on the basis of the principle of reciprocity.

In accordance with Article 15(4) of the Constitution of the Russian Federation and Article 5(2) and (3) of Federal Law No. 101-FZ, of July 15, 1995, on International Treaties of the Russian Federation, when deciding whether an infringement of an inventor's and patent rights, or the unlawful use of a trademark, has taken place, courts must bear in mind that where an international treaty to which the Russian Federation is party establishes rules other than those provided for by the Law, the rules of the international treaty shall apply.

On this subject, a *special Ruling No. 15 of the Plenum of the Supreme Court of the Russian Federation, of June 19, 2006, on matters arising in courts in the examination of civil cases relating to the application of copyright and related rights legislation* was adopted.

In paragraph 4 of this document, the attention of courts is drawn to the fact that the international treaties to which the Russian Federation is a party are a component of its legal system, and if an international treaty to which the Russian Federation is party establishes other rules, the rules of the international treaty apply (Article 3 of the Law of the Russian Federation on Copyright and Related Rights). A number of provisions contained in international treaties are not reinforced in Russian legislation.

In this connection, courts must take into consideration that the Russian Federation is currently a party to the following international treaties which regulate the legal relations in question:

The Convention Establishing the World Intellectual Property Organization (Stockholm, July 14, 1967, October 2, 1979 version; entered into force for the USSR on April 26, 1970);

The Berne Convention for the Protection of Literary and Artistic Works (Berne, September 9, 1886; entered into force for the Russian Federation on March 13, 1995);

The Universal Copyright Convention (Geneva, September 6, 1952; revised at Paris on July 24, 1971; entered into force for the USSR on May 27, 1973);

The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, October 26, 1961; entered into force for the Russian Federation on May 26, 2003);

The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva, October 29, 1971; entered into force for the Russian Federation on March 13, 1995).

5. Courts must take into account the international principles for the protection of copyright and related rights which are strengthened, in particular in the Berne Convention for the Protection of Literary and Artistic Works, and also the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

In accordance with the Berne Convention, the protection of authors' rights is based on the following principles:

(1) a national system of copyright protection for literary and artistic works, in accordance with which any work created in one of the States parties to the Convention, is granted the same protection in any other State party as the works created in that State;

(2) the invocation of copyright is independent of the performance of any formalities: registration, deposit etc.;

(3) the grant of protection in all States parties to the Convention is independent of the existence of protection or the term of its validity in the country of origin of a work.

As regards works protectable by copyright, it is envisaged that protection in the country of origin of a work is regulated by domestic legislation. Where an author is not a national of the country of origin of a work for which he is granted protection, in that country he shall enjoy the same rights as authors who are nationals of the country (Article 5 of the Berne Convention).

In relation to the question of possible legal protection for a work on the territory of the Russian Federation, it should be borne in mind that protection is granted to authors who are citizens of one of the States parties to the Berne Convention, for their works, both published and unpublished, and to authors who are not citizens of one of the States parties to the Berne Convention, for works published for the first time in one of the countries or simultaneously in a country which is not party to the Convention and in a State party thereto. Authors who are

not citizens of one of the States parties to the Berne Convention, but have their habitual residence in one of those countries, are for the purposes of the Berne Convention equivalent to citizens of that country.

In this regard, it should be considered that in accordance with Article 4 of the Berne Convention, protection is extended to the authors of cinematographic works, the maker of which has his headquarters or habitual residence in one of the States parties to the Berne Convention, and also to authors of works of architecture erected in a State party to the Berne Convention, or of other artistic works incorporated in a building or other structure located in one of the States parties to the Berne Convention.

In relation to performers, phonogram producers and broadcasting organizations, Article 2 of the International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961 Rome Convention) establishes a national system of protection, which implies rules provided by the domestic legislation of the Contracting Party in which protection is requested:

(1) for performers who are its nationals, as regards performances taking place, broadcast, or first fixed on its territory;

(2) for producers of phonograms who are its nationals or legal entities, as regards phonograms first fixed or first published on its territory;

(3) for broadcasting organizations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory.

6. When examining cases, courts should bear in mind that in accordance with the Law of the Russian Federation on Copyright and Related Rights, protection shall be granted on the territory of the Russian Federation for subjects of related rights of foreign natural and legal persons on the basis of the international treaties to which the Russian Federation is a party, in relation to the corresponding phonogram, broadcast, cablecast, and also performances which have not entered the public domain in the country of their origin, as a result of the expiry of the period of validity established in such a State for related rights and which have not entered the public domain in the Russian Federation, as a result of the expiry of the period of validity of related rights, provided for by the Law of the Russian Federation on Copyright and Related Rights (Article 35(4)).

3.1 and 3.2 – see 3.2.1

3.2.1 – In accordance with Russian legislation (Article 146 of the Code of Criminal Procedure of the Russian Federation), in order to take a lawful and reasoned decision to institute criminal proceedings, in addition to a cause there must be grounds, i.e. sufficient data indicating signs of a crime. Often in cases in this category such data are insufficient at the time communication concerning a crime is received. For example, documentary evidence of counterfeit products is missing. Therefore, as a rule, pre-investigation checks are required in this area. The checks must help to obtain only minimal essential objective data concerning an act which allows the conclusion that a crime has or has not been committed. The completeness of the collection of all the data relating to such an act is guaranteed subsequently during an investigation. In this case, the checks must be carried out within a strictly limited time period (three days with the subsequent possibility of a 10-day extension, and where inspections and documentary checks are required – up to 30 days).

3.2.2 and 3.2.3 – As a result of the fact that legislation concerning the infringement of intellectual property rights is fairly new, and the subject very current, the Supreme Court of the Russian Federation has made judicial practice more widespread, according to the results

of which on April 26, 2007, the Plenum of the Supreme Court of the Russian Federation adopted Ruling No. 14 on the practice of the examination by courts of criminal cases concerning the infringement of copyright and related rights, an inventor's and patent rights, and also the unlawful use of a trademark, in which clarifications were provided regarding issues arising in judicial practice in the examination of criminal cases in the relevant category.

In order to guarantee unity of judicial practice and legality in the examination of civil cases concerning copyright and related rights disputes, on June 19, 2006 the Plenum of the Supreme Court of the Russian Federation adopted Ruling No. 15 on matters arising for courts in the examination of civil cases relating to the application of copyright and related rights legislation.

Texts of the rulings in question are attached.

3.3.1. – The crimes provided for by Articles 146 and 147 of the Criminal Code of the Russian Federation are investigated by investigators of the authorities of the Office of the Prosecutor General of the Russian Federation, and Article 180 of the Criminal Code of the Russian Federation by interrogators (parts 1 and 2) and investigators (part 3) of the interior ministry authorities, excluding cases where these crimes are committed by individual categories of persons, as indicated in Article 151(2)(i)(b) and (c) of the Code of Criminal Procedure of the Russian Federation (employees of the law-enforcement authorities, judges, military personnel, deputies, lawyers, members of electoral commissions etc.). In these cases, a preliminary investigation is conducted by investigators of the Office of the Prosecutor General.

4.1 – A rights holder is entitled to institute civil proceedings in the period after a judicial investigation has been launched, and up to its completion, where the criminal case in question is dealt with by a court of first instance. Where civil proceedings are instituted, the plaintiff is exempt from paying the State fee and shall not bear any expenses relating to the examination of the criminal case. Nor does he bear expenses where an appeal is lodged against a court sentence, if he does not agree with the conclusions cited in this document.

4.2 – The rights of a civil plaintiff or civil defendant are defined by Article 250 of the Code of Criminal Procedure of the Russian Federation:

1. A civil plaintiff, civil defendant and/or their representatives participate in civil proceedings.
2. A court is entitled to examine a civil suit in the absence of a civil plaintiff, if:
   (1) the civil plaintiff or his representative so requests;
   (2) the civil suit is supported by the prosecutor;
   (3) the defendant is in full agreement with the civil suit brought.
3. In other cases where a civil plaintiff or his representative is not present, a court is entitled to leave the civil suit unexamined. In this case, the civil plaintiff retains the right to bring the suit in accordance with the civil jurisdiction procedure.

4.3 and 4.4 – A civil plaintiff may be a natural or legal person who has submitted a request for compensation for material harm, where grounds exist to assume that the harm in question has been caused to him directly by a crime.

Clarification shall be requested from a rights holder (his representative) of the circumstances indicating the existence of the elements of a crime: to which subject matter do his rights extend, how is this confirmed, and was legal protection granted for such subject

matter at the time the crime was committed. Correspondingly, documents establishing the rights (patent, trademark or appellation of origin registration certificate, agreement to assign rights, author's agreement, agreement to transfer related rights) are requested from him as confirmation of the existence of his exclusive rights.

As a result of the fact that exclusive copyright and related rights in civil circulation are often transferred in accordance with the procedure for assignment to other persons, sometimes it is necessary to clarify who was the holder of such rights at a particular time. For these purposes, a whole chain for the transfer of such rights is established and the agreements relating to case materials are attached.

The complications in establishing the rights holder relate to the fact that copyright and related rights are not subject to compulsory registration in the Russian Federation. Such registration may be effected only on a voluntary basis.

In this area investigative work is simplified significantly by collective representatives of rights holders, who, as a rule, provide information of interest in operational terms with a complete set of documents establishing rights.

4.5 – In the Russian Federation, no provision is made for an oath in the case of interrogation of an accused person, a victim and witnesses.

In accordance with Article 277 of the Code of Criminal Procedure of the Russian Federation, a victim shall be interrogated in accordance with the procedure established by Article 278(2) – (6) of this Code.

Article 278 of the Code of Criminal Procedure of the Russian Federation. Interrogation of witnesses.

1. Witnesses shall be interrogated separately and in the absence of witnesses not interrogated.

2. Prior to interrogation, the presiding party shall establish the personality of a witness, clarify his relationship to the defendant and victim, explain to him his rights, obligations and responsibility, as provided for by Article 56 of this Code, which the witness shall undertake to respect in writing, and said document shall be attached to the report of the judicial hearing.

3. The first questions shall be asked of the witness by the party at whose request he has been called to the judicial hearing. The judge shall ask questions of the witness after the latter's interrogation by the parties.

4. Interrogated witnesses may leave the room where the judicial hearing takes place before the end of the judicial investigation with the permission of the presiding party who, in this regard, shall take into account the opinion of the parties.

5. In case of the need to guarantee the safety of the witness, his close relatives, relatives and those closely involved, a court may, without publicizing true facts about the witness's personality, interrogate him in conditions excluding the visual observation of the witness by otherparticipants in the court proceedings, and the court shall issue a decision or ruling to that effect.

6. In the case of submission of a reasoned request by the parties to disclose true information about the person providing indications relating to the need to protect a defendant or establish some of the circumstances essential for examining a criminal case, a court may provide the parties with the possibility to familiarize themselves with said information.

5.1 – Bringing a convicted person back on to the right path largely depends on the person himself. In trying to achieve the aim of punishment, the State fights for an individual and strives to provide him with the opportunity to be useful to society, while at the same time protecting society from possible encroachments on the foundations of its existence.

The means used to achieve the aims of punishment within the process of implementing criminal law measures not connected with isolation from society is containment (punishment) which provides a minimal restriction on the rights of convicted persons. These restrictions are expressed either as deprivations of a material nature (in the case of a fine imposed or corrective labor), or the establishment of different kinds of restrictions or prohibitions (in the case of probation, deferment of a punishment to be served, application of coercive measures of an educational nature for minors).

Punishment is characterized by two indicators, qualitative and quantitative. The qualitative indicator defines a series of limitations on rights, specific to the serving of a particular form of punishment (degree of isolation and disciplinary restrictions in the case of imprisonment; limitations of a material nature in the case of a fine; limitations in relation to labor rights relations in the case of corrective labor etc.). The quantitative indicator defines the scale of punishment and the period of its application (term of imprisonment, corrective and compulsory labor, size of fine etc.).

5.2 – Minimum levels of punishment exist in the Russian Federation, in particular imprisonment may be for as little as two months (Article 56 of the Criminal Code of the Russian Federation) and corrective labor from two months upwards (Article 50 of the Criminal Code of the Russian Federation).

In designating punishment, circumstances are recognized by Russian courts as mitigating the punishment, as provided for by Article *61 of the Criminal Code of the Russian Federation*, i.e.:

1. The following shall be recognized as mitigating circumstances:

(a) the commission for the first time of a non-serious crime as the result of a chance coincidence of circumstances;

(b) the fact that the guilty party is a minor;

(c) pregnancy;

(d) the existence of small children belonging to the guilty party;

(e) the commission of a crime as a result of a confluence of serious life-related circumstances or by reason of compassion;

(f) the commission of a crime as a result of a physical or psychological compulsion, or by dint of a material, employment or other dependency;

(g) the commission of a crime in violation of the conditions of the lawful nature of necessary defense, or restraint of a person committing the crime, extreme need, justified risk, commission of an order or instruction;

(h) the illegality or amorality of the behavior of the victim, serving as a cause of the crime;

(i) a report with a confession, active assistance in the disclosure of a crime, exposure of other co-participants in the crime and search for property procured as a result of the crime;

(j) provision of medical and other assistance to the victim directly after the crime has been committed, voluntary compensation for material damage and moral harm, caused as a result of a crime, other acts aimed at mitigating the harm caused to the victim.

2. In designating a punishment, circumstances not provided for in paragraph 1 of this Article may also be taken into account as mitigating.

3. If a mitigating circumstance is provided for by the corresponding Article of the Special Section of this Code as a sign of a crime, it may not in itself be taken into account on a further occasion in designating a punishment.

In this regard, the circumstances mitigating punishment are recognized as such on the basis of the actual circumstances of a criminal case established at a court hearing. For example, the existence of small children belonging to a guilty person cannot be evaluated as a circumstance mitigating punishment (Article 61(1)(d) of the Criminal Code of the Russian Federation), if a convicted person has committed a crime in relation to his own child or has been deprived of parental rights. Where a circumstance is not recognized as mitigating punishment, it must be appropriately justified in the descriptive and reasoning portion of a sentence.

5.3 – The reasons motivating assistance in conducting a case lie as a rule in the desire to mitigate punishment. For more details see 5.2.

In addition, in accordance with Articles 25 and 28 of the Code of Criminal Procedure of the Russian Federation, a court may take a decision to terminate a criminal case on the basis of Article 76 of the Criminal Code of the Russian Federation in relation to a person who has committed a crime for the first time, as provided for by Article 146(1) and (2), Article 180(1) and (2) or Article 147 of the Criminal Code of the Russian Federation, if he has been reconciled with the victim and has mitigated the harm done to him, or to terminate criminal prosecution of a person on the basis of Article 75 of the Criminal Code of the Russian Federation as a result of active repentance.

In this regard, before a decision is taken to terminate a case a court must ensure that the harm caused to the victim as a result of the crime has actually been mitigated. Moreover, the consequences of such a decision and also the right to appeal against the termination of a criminal case or criminal prosecution must be explained to the guilty party.

5.5 – (The terms of punishment in accordance with Articles 146, 147 and 180 of the Criminal Code of the Russian Federation are discussed in paragraph **2.2**).

Article 180(3) of the Criminal Code of the Russian Federation provides for a maximum punishment of up to six years' imprisonment for acts committed by a group of persons by prior agreement or an organized group.

5.5a – In accordance with Article 60 of the Criminal Code of the Russian Federation, in the Russian Federation punishment is designated according to each article contained in the Special Section of the Criminal Code.

Article 69 of the Criminal Code of theRussian Federation . Designation of punishment for a series of crimes.

1. In the event of a series of crimes, punishment shall be designated separately for each crime committed.

2. If all the crimes committed in a series are crimes of lesser or average seriousness, final punishment shall be designated by the least serious crime being subsumed in the most severe crime, or by partial or complete assimilation of designated punishments. In this connection, the final punishment may not exceed more than half the maximum term or level of punishment, as provided for the most serious of the crimes committed.

3. If, however, one of the crimes committed in a series is serious or especially serious, the final punishment shall be designated by partial or complete assimilation of punishments. In this regard, the final punishment in the form of imprisonment may not exceed more than half the maximum term of punishment in the form of imprisonment, as provided for the most serious of the crimes committed.

4. In the case of a series of crimes, additional forms of punishment may be combined with the main forms of punishment. Final additional punishment in the case of partial or complete assimilation of punishments may not exceed the maximum term or level provided for the particular type of punishment in the General Section of this Code.

5. In accordance with the same rules, punishment shall be designated if, after a court has passed sentence on a case, it is established that the convicted person is guilty also of another crime which he has committed prior to the sentence being passed by the court on the first case. In this case, the punishment served according to the court's first sentence shall be included in the final punishment.

A series of crimes shall be recognized as the performance by a person of two or more acts, provided for by the different articles or parts of articles of the Criminal Code, for neither of which the person has been convicted, except in the cases where the commission of two or more crimes is provided for by the articles contained in the Special Section of the Criminal Code of the Russian Federation as circumstances entailing more severe punishment. As a result of the fact that a guilty person is convicted in these cases for two or more crimes which he has committed, the question of the special procedure for designating punishment in this case arises (not only for a separately committed crime among the series of crimes, but also punishment as a whole). The article in question is also used to settle this issue.

Final (general) punishment is designated either by subsuming the least severe crime in the most severe, or by the partial or complete assimilation of punishments. In accordance with paragraph 2 of the Article in question, the principle of subsuming crimes is applied only when a series of crimes includes crimes of lesser or average seriousness. In this case, final punishment is designated by subsuming the least severe crime in the most severe, or by partial or complete assimilation of punishments, although in this regard final punishment in the form of imprisonment may not exceed more than half the maximum term of punishment in the form of imprisonment, as provided for the most serious of the crimes committed.

Article 146(1) and (2) and Article 180 of the Criminal Code of the Russian Federation, together with Article 147(1) of that Code, relate to the category of crimes of lesser seriousness.

Article 147(2) of the Criminal Code of the Russian Federation relates to the category of crimes of average seriousness.

Article 146(3) and Article 180 of the Criminal Code of the Russian Federation relate to the category of serious crimes.

Paragraph 4 of the Article in question regulates the procedure for combining additional punishments with main forms of punishment. In this regard, additional punishment may not be defined according to a series of crimes, if it is not designated for any of the crimes forming part of the series.

Paragraph 5 of the Article in question extends the rules indicated in the Article referred to for the designation of punishment to cases where, after sentence has been passed by a court on a case, it is established that the convicted person is guilty also of another crime which he has committed prior to the court passing sentence on the first case.

5.6 – In accordance with the Criminal Code of the Russian Federation in force, a punishment measure depends on the characterization of criminal acts.

Articles 146, 147 and 180 of the Criminal Code of the Russian Federation contain features characterizing the seriousness of cases of counterfeiting (for example, commission of criminal acts by a group of persons by prior agreement or by an organized group) and sanctions with an indication of the maximum level of one or other form of punishment.

The characterization of a criminal act through the application of these features provides the possibility to designate a stricter punishment.

Circumstances aggravating punishment may be reflected on the designation of a punishment within the framework of a specific article.

Article 63 of the Criminal Code of theRussian Federation . Circumstances aggravating punishment.

1. The following shall be recognized as aggravating circumstances:

(a) recommission of crimes;

(b) occurrence of serious consequences as a result of the commission of a crime;

(c) commission of a crime as part of a group of persons, a group of persons by prior agreement, an organized group or criminal community (criminal organization);

(d) a particularly active role in the commission of a crime;

(e) involvement in the commission of a crime of persons who suffer from serious psychological disturbances or are in a state of intoxication, and also persons who have not yet reached the age of criminal liability;

(f) commission of a crime by reason of national, racial or religious hatred or hostility, from vengeance against the natural acts of other persons, and also with the aim of concealing another crime or facilitating its commission;

(g) commission of a crime in relation to a person or his close relatives as a result of the performance by said person of professional activities or a social duty;

(h) commission of a crime in relation to a woman, known by the guilty party to be pregnant, and also in relation to a minor, or other defenseless or helpless person, or person dependent on the guilty party;

(i) commission of a crime with particular cruelty, sadism, humiliation, and also suffering for the victim;

(j) commission of a crime using a weapon, military supplies, explosives, explosive devices or imitations thereof, specially manufactured technical means, poisonous and radioactive substances, medicinal and other chemical and pharmacological preparations, and also the use of physical or psychological compulsion;

(k) commission of a crime in an emergency situation, natural or other public disaster, and also in the case of mass disorder;

(l) commission of a crime on the basis of trust placed in a guilty party as a result of his employment situation or a related agreement;

(m) commission of a crime using a uniform or documents of a representative of authority.

2. If an aggravating circumstance is provided for by the corresponding article of the Special Section of this Code as a feature of a crime, it may not in itself be taken into account more than once when designating punishment.

5.6a – In accordance with Articles 25 and 28 of the Code of Criminal Procedure of the Russian Federation, a court may take a decision to terminate a criminal case on the basis of Article 76 of the Criminal Code of the Russian Federation in relation to a person who has committed a crime for the first time, as provided for by Article 146(1) and (2) and Article 180(1) and (2), or Article 147 of the Criminal Code of the Russian Federation, if that person has been reconciled with the victim and has mitigated the harm caused to him, or to terminate criminal prosecution of a person on the basis of Article 75 of the Criminal Code of the Russian Federation as a result of active repentance.

In this regard, before a decision is taken to terminate a case a court must ensure that the harm caused to the victim as the result of a crime has actually been mitigated. In addition, the consequences of such a decision, together with the right to appeal against the termination of a criminal case or criminal prosecution, must be explained to the guilty person.

5.7 – The invocation of criminal liability for legal officials is not allowed.

Furthermore, in accordance with Article 2.10 of the Code on Administrative Infringements of the Russian Federation, legal officials shall be subject to administrative liability for the commission of administrative infringements in the cases provided for by the articles contained in Section II of this Code or by the laws of the subjects of the Russian Federation on administrative infringements. Article 7.12 of the Code on Administrative Infringements of the Russian Federation provides for liability for the infringement of copyright and related rights, inventor's and patent rights, including in relation tdegal officials.

5.9 – In accordance with Article 1 of the Criminal Code of the Russian Federation, the criminal legislation of the Russian Federation consists of the Code in question.

If the sanction contained in an article of the Criminal Code of the Russian Federation does not provide for the confiscation of property (or other additional punishment), the article may not be applied.

Articles 146, 147 and 180 of the Criminal Code of the Russian Federation do not provide for sanctions in the form of confiscation.

At the same time, the Plenum of the Supreme Court of the Russian Federation clarified the following in paragraph 30 of Ruling No. 14 of April 26, 2007 on the practice of examination by courts of criminal cases concerning the infringement of copyright, related rights, inventor's and patent rights, and also the unlawful use of a trademark:

"Courts' attention should be drawn to the fact that the circulation of counterfeit copies of works or phonograms infringes the copyright and related rights protected by federal legislation, as a result of which the copies of works or phonograms in question shall be confiscated and destroyed without any compensation (excluding cases of the transfer of confiscated counterfeit copies of works or phonograms to the holder of copyright or related rights, if this is provided for by the federal law in force at the time a decision is taken on a case).

In accordance with Article 104.1(1)(a) of the Criminal Code of the Russian Federation, courts shall proceed on the basis that money, valuables and other property obtained as the result of crimes, provided for by Articles 146 and 147 of the Criminal Code of the Russian

Federation, and any income from this property shall be confiscated, excluding property and income therefrom, which is subject to return to the lawful owner.

On the basis of Article 104.1(1)(d) of the Criminal Code of the Russian Federation, instruments and other means of committing a crime belonging to an accused person, in particular equipment, other devices and materials, used for the reproduction of counterfeit copies of works or phonograms shall be confiscated.

Courts must also take into account the provisions of civil legislation, in accordance with which counterfeit copies of works or phonograms, and also equipment and materials, used or intended to infringe the exclusive rights in the results of intellectual activity and means of individualization, shall on a court decision be removed from circulation and destroyed at the expense of the infringing party, unless the law provides for their return as revenue of the Russian Federation".

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