



Subject: Minutes First CC Russia Roundtable and proposal for next steps.

Date: Moscow, 9 September 2008

List of participants in alphabetical order: Anatoly Semenov, (analyst State Duma, Culture Subcommittee on economics, innovations and IP), Anton Nossik, (SUP company/media expert), Anton Sergo, (President of the legal company "Internet & Law"), Artem Karpov, (Moscow State Academy of Law), Dmitry Golovanov, (Media Law & Policy Institute), Dmitriy Levshits, (Legal advisor to Council of Federation), Mark Chizhenok, (Russian patent and trademark attorney), Maxim Labzin, (Managing Partner, Labzin & Partners), Mikhail Braude-Zolotarev, (Academy of National Economy), Syb Groeneveld, (Ambassador to Creative Commons in the Russian Federation), Vadim Vadimovich Guschin, (CCRussia.org coordinator).

Introduction:

The *'First Roundtable on the Introduction of Creative Commons licenses in the Russian Federation'* was held on Tuesday 9th of September 2008 and was chaired by Syb Groeneveld and Anton Nossik.

In the welcoming words it was stressed that this meeting would focus on a first draft of the roadmap for launching the licenses and a list of legal impediments and challenges for introducing Creative Commons in the Russian Federation. Discussion language during the meeting was primarily Russian.

Overview of Creative Commons and porting process

Berlin based Creative Commons International (CCi) works to port the core Creative Commons Licenses to different copyright legislations around the world. The porting process involves both linguistically translating the licenses and legally adapting them to the national law of the particular jurisdiction. At the moment the licenses have been ported in 47 jurisdictions.

Syb explained that the work is coordinated by CCi and a team in each jurisdiction who are committed to introducing CC to their country and who consult extensively with members of the public and key stakeholders in an effort to adapt the CC-licenses to their jurisdiction. So far, not much progress has been made to start the adaptation and localization of the licenses to Russian law.

Ideally, the legal partner for the Russian Federations fits within the following criteria:

- Professional legal credentials;
- Strong track record among © and IP experts;
- Enthusiasm and open-minded;
- Work PRO-BONO;



- Willingness to work within CCi guidelines and with international community;
- Ability to communicate in English.

The past few months there have been talks with many interested legal experts, institutions and companies. However, for many reasons (no time, no budget, no priority, not enough experience or political restraints) no legal lead has been appointed. This also means that no formal agreement has been signed between CCi and any partner in the Russian Federation. The official guidelines for the porting process can be downloaded at http://wiki.creativecommons.org/images/e/e6/CCi_Guidelines.pdf

CC licenses and Civil Code part IV

Participants received prior to the meeting the '*Working document of the 'Creative Commons - Non Commercial –Share Alike -Russian Unported 3.0' version*'. This document contains the original unported version of the license in English and the Russian translation of the license text. The community of www.ccrussia.org produced the translation of the license. A preliminary inventory of possible legal restraints was included in the documents as well. A summary is provided at the end of this document

During the meeting this document was discussed in greater detail. The current translation is a good start for the porting process but is considered 'raw material' that needs much further legal research.

A roadmap towards introduction of CC licenses in the Russian Federation

One of the most important factors is that CC not only literally translates the licenses but also legally adapts them to the national copyright law. The following roadmap was presented during the roundtable:

- 1) An inventory of the legal impediments and opportunities in the Russian Federation to introduce the Creative Commons licenses.
- 2) Selecting legal project lead: this person/institution will be responsible for the drafting of the CC licenses in the Russian Federation.
- 3) Signing of Memorandum of Understanding between legal project lead and Creative Commons International.
- 4) Legal Project Lead produces first draft and discusses with Creative Commons International.
- 5) Public Discussion.
- 6) Project Lead produces second draft.
- 7) Creative Commons reviews draft.
- 8) Legal Project Lead finalises licenses and arranges all technical requirements.



- 9) A public project lead (public spokesperson for CC Russia) and the affiliate institution (official representation of CC in the Russian Federation) are chosen and sign an MoU with CCI.
- 10) A project plan needs to be designed, written and agreed upon by the various stakeholders. This plan will present future projects on the use, promotion and research of CC licenses in Russia.
- 11) Launch of the Russian version of the licenses.

No timetable was attached to this roadmap.

Conclusions

During the meeting the possibility to form a group of experts that act together as legal project lead was discussed. It was pointed out that this requires that one of these persons/institutes becomes official legal lead for CCI and signs a Memorandum of Understanding with them.

There was a long debate during the roundtable on the sequence of activities to come to the introduction of Creative Commons licenses. Some argued that before the official porting process starts, it is necessary to first carry out an economic impact study on the pro and cons of open content licenses in the Russian Federation.

The study would have to answer questions like:

1. Which problems would the introduction of open content licenses solve;
2. Who would benefit from open content licenses and how;
3. How can open content licenses be monetized;
4. What are international best practices and how can these be translated to the Russian Federation.

The group widely acknowledged that such a study is necessary to convince government and legislative institutions in the Russian Federation to give support to the introduction of open content licenses.

It was proposed to start a parallel track:

1. **A group focusing on the economic impact;** an online collaboration space for this economic study will be created that should answer the above questions. This virtual experts committee will advise the responsible committees of the Russian State Duma on the economic impact of the use of open content licenses.

The impact of the introduction and use of Creative Commons Licenses are one of the main issues to be researched. Duma advisor Anatoly Semenov and media-expert Anton Nossik indicated to be interested to take the lead in forming this committee.

2. **A group starting to work on the adaptation of the CC licenses.** This group of legal experts will work on a legal accurate translation and adaptation of the licenses. It will research the possibilities of



introduction of the CC licenses with the current Civil Code. If all elements of the CC 3.0 unported license can be incorporated to the Russian CC 3.0 version in a way that the license is compatible to the Civil Code the group will prepare a first draft of the Russian Creative-Commons-3.0-BY-NON-COMMERCIAL-SHARE-ALIKE license for discussion with Creative Commons International and the public. At the same time Semenov presented four possible ways to introduce CC if the license is not compatible:

- a) Adopting an International Treaty of Creative Commons by State Duma. According to Russian Constitution International treaties have primary effect comparing to local legislation. Achieving this will overcome all incompatibilities with Civil Code of Russia automatically.
- b) Making changes to Civil Code of Russia. According to the position of the President and Civil Code developers this chance is really low.
- c) Developing special law for Charity and grants in arts and science. Special law may overcome some incompatible things in Civil Code.
- d) Developing voluntary technical standards according to the Russian Law of Technical regulation. These standards will reflect correspondent CC license applications and tech data of how to prepare, store and exchange the license data between users and owners.

Some legal experts (present and not present at the meeting) expressed their interest to be part of this group.

3. **Additional roundtables on Creative Commons in the Russian Federation.** After this first legal roundtable additional events will be organized. One for the private sector (Microsoft, SUP, YANDEX, publishers, media, music labels etc) on the socio-economic value of CC licences, and one for creators (Russian CC artists and cultural institutions). These events aim to deepen the understanding of the need for and interest in CC. In the coming months the feasibility of the organisation of a main event (international conference) on open content in the Russian Federation will be researched as well.



Preliminary inventory of possible legal impediments and opportunities for CC within Civil Code part 4 of the Russian Federation

Part IV of the Civil Code (CC-4) took several years to work out and was submitted to the State Duma in July 2006 and entered in force on January 1, 2008 with the effect of invalidating and replacing all previous intellectual property legislation.

License agreement

Art. 1234 and 1235 of CC-4 provide definitions of the *assignment and license agreements*. The former is understood as an agreement under which "one party (the right holder) transfers or undertakes to transfer fully its exclusive right to a result of intellectual activities or to a means of identification to another party (assignor)", while the license agreement is defined as an agreement according to which "one party – the holder of the exclusive right to a result of intellectual activities or to a means of identification (licensor) grants or undertakes to grant to another party (licensee) the right of use of such a result or such a means within the limits provided for by the agreement".

Assignment agreement and a license agreement may be gratuitous, provided that a non-profit legal entity or a citizen is a party to the agreement. Art. 575 of the Russian Civil Code prohibits gratuitous deals between profit-making legal entities. A statement of the paid basis of an agreement obliges the parties to specify the amount of remuneration or way of its calculation (Item 3, Art. 1234 and Item 5, Art. 1235 of the Russian Civil Code).

The fact that the CC4 permits the conclusion of *gratis* agreements potentially opens up the way to promote the Creative Commons license but obviously Art 575, which prohibits gratuitous deals between profit-making entities, hinders the introduction and use of CC licenses.

Agreement conditions

The license agreement has been subjected to a more detailed regulation. Any license agreement made after 1st January 2008 must provide the following particulars:¹

- 1) Subject of the agreement with the number and date of issue of the document confirming the exclusive right (where appropriate). The Civil codes also requires to define the means of using of the exclusive right;
- 2) Item 1, Art. 1238 of the Russian Civil Code provides for licensor's written consent to the licensee granting a sublicense. It is not quite clear whether a special written permission will have to be requested from the licensor or will the consent included in the license agreement be enough. Judging by the wording of Item 1, Art. 1238, the licensee will have to request a separate permission of granting a sublicense

¹ This overview is partly based on the analysis by Liupanov & co. See www.liapunov.com/Russian_CC_obsev.pdf for the full article.



each time. This of course would have consequences for the use of CC licenses (especially license for derivative works);

- 3) A non-exclusive license may be granted to an unlimited number of users. Unless otherwise provided in the agreement, a license shall be considered as non-exclusive (Art. 1236). This is in line with the requirements of the CC License. The code also states that under both types of agreements the granting of sub-licenses shall be allowed if so agreed between the parties. This allows the use of derivative works under CC.
- 4) A licensee has the right to use the work only in the ways listed in the agreement. Any agreement (and CC license does) shall contain the essential information about which work a licensee may use and what the scope of rights is that he has been granted (Art. 1235 para. 6).
- 5) Limits of the granted rights (e.g., an ordinary (non-exclusive) or exclusive license may be provided in respect of various ways of using the IP object);
- 6) Contractual territory (if no particular territory is specified, it is supposed that the granted right is valid throughout the territory of Russia);
- 7) Validity period of the license agreement, which in any case may not exceed the period of the exclusive right (if the validity period of the agreement is not defined, the agreement shall be considered as concluded for 5 years);
- 8) Amount of remuneration or way of its calculation, if the agreement is made on a paid basis;
- 9) Condition on quality of licensed goods, if a trademark is the subject of the agreement (Item 2, Art. 1489 of the Russian Civil Code). It should be noted that the licensor is no longer obliged to exercise supervision over licensee's observance of the goods quality condition; the licensor may supervise the licensee, if the licensor wishes so (Item 2, Art. 1489 of the Russian Civil Code). And *"the licensee and the licensor shall bear joint and several liability in respect of the requirements for the licensee as the manufacturer of goods"*.
- 10) Also important is the regulation of how agreements are executed. A licensee shall be obliged to provide a licensor with a report on the use of the work; while the latter shall be obliged not to bar the enjoyment of rights by the licensee (Art. 1237). This sounds problematic within the context of CC.

For further information on the roundtable and CC Russia, pls contact Syb Groeneveld at syb@creativecommons.org