

IP rights are both victims and weapons in Russia's war on Ukraine

By [Thomas Long, J.D.](#)

After years of tension between western nations and the Kremlin arising from Russia's annexation of Crimea in 2014, relations have reached an unprecedented state of crisis. Russia's commencement on February 24 of a full-scale invasion of Ukraine has spurred several western nations to take a host of economic actions to punish the Russian Federation, including a broad sanctions regime that amounts to a cessation of business with the country. As part of this general reaction, several major IP offices have halted cooperative efforts with their Russian counterparts.

In contrast, IP offices throughout Europe have pledged assistance and support to Ukrainian rights holders whose pending actions are disrupted by the conflict. Meanwhile, western sanctions appear to have begun to draw countermeasures from Russia, which has shown signs of a willingness to ignore or blatantly violate IP rights owned by entities based in "unfriendly" countries.

This article will explore the impacts of the Russian invasion of Ukraine on the global IP scene, including government agency operations; effects on rightsholders in Ukraine, Russia, and elsewhere; and actions taken by private organizations, as well as hints the current conflict might give us as to the future state of IP-rights relations internationally.

Troubled history. Relations between the United States and Russia in the IP realm

have been troubled for many years prior to the Ukraine military action. According to the 2021 "Special 301 Report" issued by the Office of the United States Trade Representative (USTR)—an annual report on countries found to engage in substantial IP rights violations—IP rights owners face problems in Russia that include copyright infringement, trademark counterfeiting, and a lack of transparency in the operation of collective rights management organizations in that country. The [report](#) placed Russia on the USTR's "priority watch list" (along with Ukraine, as well as Argentina, Chile, China, India, Indonesia, Saudi Arabia, and Venezuela), as it has since at least 2005. Placement on this list means that the USTR has deemed Russia as having "serious intellectual property rights deficiencies." The USTR has identified Russia as a host of marketplaces—virtual and physical—for counterfeit goods and unlawfully distributed copyright-protected materials, such as movies. Russia also has been accused of failing to live up to its IP-related obligations under international trade agreements. With respect to western businesses still operating in Russia, the situation promises to only get worse.

USPTO. In a [statement](#) published on its website on March 4, the USPTO announced that it had terminated engagement with officials from Russia's IP agency (Rospatent), and with the Eurasian Patent Organization (EAPO, an international organization

SPECIAL REPORT | The Ukraine Crisis



headquartered in Moscow comprising Russia and seven former Soviet republics). The USPTO also terminated engagement with the national IP office of Belarus. While this action will certainly have an effect on Russian rights holders seeking to extend protection to the U.S., it also might affect U.S. businesses that continue to operate in Russia. For example, in an October 2021 [guidance](#) document on protecting IP rights in Russia, the International Trade Administration (part of the U.S. Department of Commerce) advised U.S. firms to "take proactive steps to protect their intellectual property in Russia, including registering their trademarks with the Federal Service for Intellectual Property (Rospatent) and having the patents recorded in the Russian Federal Customs Service's IP Register." Any assistance from the USPTO stemming from the office's cooperation with its Russian counterparts will no longer be available under the sanctions regime.

In addition, as of March 11, 2022, the USPTO is no longer granting requests to participate in the agency's Global Patent Prosecution Highway (GPPH) when such requests are based on work performed by Rospatent as an Office of Earlier Examination under the GPPH. The GPPH provides means of speeding up the examination process for corresponding applications filed in participating IP offices, one of which Rospatent had been. This doesn't mean that the USPTO has stopped granting patents to



Russian applicants, but it has eliminated certain procedural perks that went along with cooperation between the countries' respective IP offices. The USPTO said that in pending cases in which the USPTO had granted special status under the GPPH to applications based on work performed by Rospatent, the USPTO will remove that status and return those applications to the regular processing and examination queue.

European Union. The European Union Intellectual Property Office (EUIPO) [announced](#) on March 9 that it had halted cooperative activities with Rospatent and EAPO. Additionally, to provide support to Ukrainian IP rights owners, EUIPO [issued](#) a one-month extension of time limits from February 24, 2022, for all Ukraine-based parties in proceedings before the EUIPO. The EUIPO explained that these actions have been taken with the approval of the European Commission. EUIPO also said, "EUIPO will ensure that intellectual property rights originating from Crimea are not falsely registered as coming from Russia."

The European Patent Office (EPO) also suspended cooperation with IP offices in Russia and Belarus, according to a [March 1 media release](#). "An immediate decision has been taken to freeze our co-operation activities with the national patent offices of the Federation of Russia and of Belarus, as well as to put on hold our co-operation activities with the Eurasian Patent Organisation," the EPO said. "Looking ahead, we will assess and debate other possible measures and consequences with our 38 Member States, extension states and observers in preparation of the next Administrative Council meeting on 22 March."

United Kingdom. No longer part of the European Union post-Brexit, the United

Kingdom's Intellectual Property Office (UKIPO) joined the E.U. offices in taking actions against Russia and in support of Ukrainian IP rights owners. "The UK's economic sanctions against Russia include intellectual property, and we are enforcing these sanctions robustly," UKIPO [said](#) on March 2. "We will not be providing services to those on the sanctions list, either directly or through their agents." UKIPO assured Ukrainian customers that it will "use the maximum flexibility available to us in law to consider requests for extensions of time, reinstatements and restorations."

Germany. The German Patent and Trade Mark Office (DPMA) has not publicly taken any action against Russia or Russian IP stakeholders, but it has [advised](#) Ukrainian IP owners of steps they can take to protect their rights during the conflict. "Statutory time limits cannot be extended by the DPMA. However, the DPMA advises the applicants of the possibility of re-establishment of rights," the agency said. "Any person who through no fault of his or her own was prevented from observing a statutory time limit due to current circumstances, may have his or her procedure restored upon request. The person filing the request is then treated as if he or she had observed the time limit. Whether the requirements for re-establishment are fulfilled has to be assessed in each individual case by the competent unit at the DPMA."

Outpouring of support for Ukraine. As of March 11, the Ukraine Intellectual Property Institute (Ukrpatent) indicated that it is continuing operations. "All the key divisions of the enterprise perform their functions for the continuous operation of the state system of legal protection of intellectual property in Ukraine," Ukrpatent [said](#). On March 14, Ukrpatent [announced](#)

that it has been added to the list of member states of the World Intellectual Property Organization's (WIPO's) Central European and Baltic States Group (CEBS). Ukraine already was listed as a member of WIPO's Section for Caucasian, Central Asian, and Eastern European Countries. Its addition to CEBS is consonant with Ukraine's desires (reflected in the Maidan Revolution itself) to move symbolically closer to the west.

Ukrpatent also has posted on its website letters from numerous countries' IP agencies showing an outpouring of support for the beleaguered country. Among the countries whose IP offices have sent Ukrpatent letters of support and solidarity are Georgia, Estonia, Lithuania, Finland, Austria, the Slovak Republic, and Poland.

Private entities take part. Digital performance rights organization SoundExchange, Inc., said via social media posts (see LinkedIn post [here](#)) that it has cut ties with its Russian counterpart, the Russian Organization for Intellectual Property (VOIS). SoundExchange is the sole U.S. entity designated by the Copyright Royalty Board to collect and distribute to performing artists and copyright owners certain statutory royalties owed for the use of sound recordings protected under the Copyright Act. VOIS was established by performers and recording companies for collective management of rights in Russia and abroad.

U.K. royalty collection entity PRS for Music [said](#) on March 8 that it had "formally suspended, with immediate effect, our rights representation relationship with RAO, the Russian collecting society for musical works, pending confirmation of its separation from the Russian Government and those individuals and companies on



the sanctions lists.” PRS for Music added, “It is not our desire to punish the Russian composer, songwriter and publisher communities who support peace, and we will work with the global community to identify opportunities to amplify the voices of protest.” U.S.-based performing rights organization BMI also suspended its copyright representation payments to RAO. While international performing rights confederation CISAC (International Confederation of Societies of Authors and Composers) has not kicked RAO out of the network, it has [initiated](#) a solidarity fund it calls “Creators for Ukraine,” through which it will collect donations to assist displaced Ukrainian artists and authors.

Digital music streaming service provider Spotify [said](#) on March 2 that it has closed its office in Russia indefinitely, although streaming services remain operative there. The Swedish company’s CFO Paul Vogel said, “[Spotify has] cut all monetization off in Russia, so there’s no advertising and no premium revenue in Russia coming up.” Spotify later clarified that it is continuing to pay rightsholders for streams in Russia.

Academia’s role. At least one major research university has taken a public stance on the conflict. The Chancellor of the Texas A&M University System, in a letter to system member CEOs, [said](#), “You should immediately dissolve all agreements with Russian entities, specifically those relating to academics, research and intellectual property. I also urge you to review any other non-contractual engagements with Russian entities.” The letter specified that this directive could affect license agreements, nondisclosure agreements, commercial material transfer agreements, and other documents regarding the commercialization of system technologies.

ICANN. Not all authorities have shown a willingness (or ability) to take part in sanctions. The Internet Corporation for Assigned Names and Numbers (ICANN)—the nonprofit organization that manages the Internet’s Domain Name System (DNS)—has [rejected](#) a request by a Ukrainian government minister to revoke country-code top-level domains operated from within Russia and to take other actions to shut down Internet operations there. On February 28, Deputy Prime Minister and Minister of Digital Transformation Mykhailo Fedorov [asked](#) ICANN to “introduce strict sanctions against the Russian Federation in the field of DNS regulation.”

In response, ICANN President and CEO Göran Marby declined to take any such actions. “In our role as the technical coordinator of unique identifiers for the Internet, we take actions to ensure that the workings of the Internet are not politicized, and we have no sanction-levying authority,” Marby said. “Essentially, ICANN has been built to ensure that the Internet works, not for its coordination role to be used to stop it from working.”

According to Marby, policies based on global agreements do not provide for ICANN to take unilateral action to disconnect domains. “You can understand why such a system cannot operate based on requests from one territory or country concerning internal operations within another territory or country,” Marby said. “Such a change in the process would have devastating and permanent effects on the trust and utility of this global system.”

Marby also explained that ICANN lacks the ability to revoke the Secure Sockets Layer (SSL) certificates for Russian domains as requested by the Ukrainian government.

“These certificates are produced by third-party operators and ICANN is not involved in their issuance,” he said.

ICANN has, however, taken additional steps to safeguard against domain name security threats associated with the war, by bolstering its Domain Name Security Threat Information Collection and Reporting (DNSTICR) system, which it initially created as a means to report COVID-19-related DNS security threats. In a March 9 [release](#), it said, “ICANN org is now adding terms in English, Ukrainian, Russian, Polish, and other appropriate languages to the DNSTICR watchlist to search for malicious domain registrations related to the Russia-Ukraine war. When evidence of maliciousness is found, the results are reported to the corresponding registrars.”

Kremlin strikes back. For its part, Rospatent has not indicated any change in its operations, at least on its [website](#). Nor has EAPO, which posted a [media release](#) on March 3 announcing, among other things, the agency’s ambitions to create a unified regional dispute resolution mechanism and to introduce a single Eurasian trademark. The agencies [participated](#) in early March in Dubai’s “Expo 2020” (so named because it was originally scheduled to begin in October 2020 but was delayed due to the pandemic).

At higher levels in the government, however, there could be signs that IP rights are among the weapons in the Kremlin’s economic arsenal. According to media reports, the Russian government has decided to retaliate against sanctions by issuing a decree that, if carried out to its logical extreme, would permit the cessation of payments of royalties and other compensation to patent holders from “unfriendly countries.”



This category includes all members of the European Union, the United States, the United Kingdom, Canada, Australia, and a few others. The decree in question was issued March 7 by Russian Prime Minister Mikhail Mishustin.

Many western IP analysts have described the decree as “legalizing piracy.” The Washington Post quoted patent attorney Josh Gerben ([excerpted](#) in a media release by the Gerben Perrott PLLC) as predicting that the suspension of IP rights by the Russian government will have lasting effects well after hostilities end in Ukraine. “It’s just another example of how [Russian President Vladimir Putin] has forever changed the relationship that Russia will have with the world,” Gerben said. Gerben further hypothesized that a similar decree relating to trademark rights could allow Russian businesses to exploit American brand names, such as McDonald’s.

However, a Moscow patent attorney, in a March 10 [blog post](#) titled “Much Ado About Something,” provided a differing view. According to Vladimir Biriulin, of the firm

Goroditsky & Partners, western analysts have misinterpreted the scope and import of the decree. “The said decree concerns situations of extreme urgency only. So far, this concerns patents for an anti-Covid medicine that were allowed to be used by two Russian pharmaceutical companies while the media state that all intellectual property is cancelled in Russia.” He clarified that the decree’s scope was limited to the drug Remdesivir.

Biriulin went on to say, “What really may be stated as a fact, is that a law has been adopted on March 8 [that] allows the government to list the goods in respect of which separate provisions of IP law may be waived. The government has not used the law so far and it is believed that this may happen in extraordinary situations when there will be absence of certain goods on the Russian market.”

He continued, “We admit that the international situation is confusing and the events may take unexpected turns however it is necessary to stick strictly to the facts and publish only information which is actually

valid and confirmed. At the same time it is worth noting that all IP laws remain valid and membership in international conventions is maintained.”

Could China become Russia’s best friend?

Among the world’s economic powerhouses, China has been notable in its nonparticipation in sanctions over the invasion of Ukraine. In fact, the China National Intellectual Property Administration (CNIPA) [said](#) on March 11 that it has extended participation in a CNIPA-EAPO patent prosecution highway program until March 31, 2023. This move goes along with recent reports that China has signaled its willingness to provide economic and even military assistance to the Kremlin. It is worth noting that China has been another perennial name on the USTR’s Section 301 priority watch list. Cooperation between the nations’ IP agencies seems to be part of a broader effort to forge a new, multilateral geopolitical order. It should become clearer in the coming months what direction this effort is taking and what effects it will have on IP rights and the global economy in general. ■