

## SUPPLEMENT - RUSSIA IP FOCUS 2009 Roads to success in Russia

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*Russia is an important but frustrating market for many IP owners. James Nurton spoke to CIPR chair Lucy Nichols about the challenges and how companies can overcome them*

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### What does your role as chair of CIPR involve?

As the chair I have the privilege of leading a group of private sector companies that are committed to improving IPR legal protections for rights holders in Russia, Ukraine and in other countries of the former Soviet Union. Our members are not satisfied with just being kept informed but want to participate through meeting and collaborating with regional IP decision-makers and rights holders to resolve IP legal and enforcement issues. Working with staff, I listen to the members' issues and feedback and seek to channel their interests and enthusiasm into involvement in CIPR's programs.

I chair the executive policy committee (EPC), CIPR's governing and policy-making body, which includes corporate members and legal co-counsel. The EPC is responsible for developing and monitoring CIPR's annual policy priorities, objectives and programmes, as well as its budget. The EPC has monthly calls where staff report on progress on policy and legislative issues, programme activities and administrative issues. The monthly calls are also a forum for discussing emerging policy and political issues, such as developments in the WTO accession negotiations with Russia and proposed IP legislation in the region and CIPR's response. The results of the EPC calls are communicated to the membership to get feedback and suggestions. Thus, we have a continual information loop between the EPC, the membership and staff.

### What are your priorities in Russia/CIS at the moment?

CIPR's mission is to play a collaborative and constructive role in bringing IP laws and enforcement practices in Russia and in other countries of the former Soviet Union into compliance with TRIPs and other international treaty obligations and norms. That said, our overarching goals are to support the growth of strong national economies of Russia, Ukraine and other countries in the region, to create attractive foreign investment climates and to promote greater integration into the international economic community. To get there, national and international rights holders need strong and predicable laws and enforcement practices to provide protections of trade marks, patents and copyrights from infringers, counterfeiters and pirates.

In Russia, for example, CIPR is focused on four areas. The first is to advocate for the enactment of key IP legislation that will bring Russia into compliance with TRIPs and other international treaty obligations, including amendments to Part IV of the Civil Code, *ex officio* amendments to the Customs Code and pharmaceutical data exclusivity. Passing those draft laws are vital to fulfilling Russia's IP commitments in the WTO accession negotiations. CIPR is and has been a long-time advocate for Russia's accession into the WTO.

The second area is to look to the future and beyond the IP requirements of WTO accession and to examine existing civil and criminal laws and procedures for ways to improve rights holder protection and enforcement practices on the borders and in the marketplace, as well as meeting the unique challenges posed by online infringement, piracy and counterfeiting.

The third area is to address specific member issues regarding the protection of their trade marks, patents or copyrights through issue advocacy, coalition building and education.

The fourth area is to continue to build relationships between national and international IP stakeholders in business, consumer and IP organisations and government. CIPR's philosophy of working together with all IP stakeholders to achieve common goals has been effective in Russia and in other countries of the former Soviet Union over the past

Lucy Nichols

Lucy Nichols is Nokia's director of global brand protection and trademarks. She is also vice-chair of the Quality Brand Protection Committee, chair of INTA's Anti-Counterfeiting and Enforcement Committee, and chair of the Coalition for Intellectual Property Rights, which works to advance IP protection and enforcement in Russia, the CIS and the Baltic states. Since March last year, Nichols has been based in Beijing.



10 years of our existence.

CIPR's priorities for other countries of the former Soviet Union are similar to those that we have in Russia. Each country will, of course, have similarities and differences in its level of IP legal protection and the enforcement situation on-the-ground. We closely evaluate these factors to decide on how best to have a constructive influence on IP protection in each country.

### **Has protection improved in these countries and if so in what ways?**

Yes, the overall protection of IP has improved in Russia and in other countries of the CIS. The entire IPR legislative framework in the region is decidedly stronger.

However, there is still much to be done to improve IPR protection, especially law enforcement. The national police forces and the procurator's office are working more effectively together with rights holders to interdict against the production, distribution and sale of fake goods. But counterfeit goods of all kinds are still prevalent in the marketplace and many, such as medicines, foods and car parts, pose a real threat to the health and safety of consumers.

The courts are handling more IPR cases and rendering decisions that are in line with international standards of law and practice, but overall the performance of the courts is uneven and plagued by poor jurisprudence and undue influence.

The Customs services are seizing more fake goods at the border and, like Russia, offer rights holders the option of registering their trade marks to help Customs officers to identify legitimate and fake goods. That being said, the high level of imported fake goods in marketplaces throughout the region underscores the difficulties of controlling the flow of fake goods from outside of the region from the transiting across the borders of Russia, Ukraine and other countries of the region.

### **What particular changes/improvements in protection would you like to see?**

The first is for all countries in the region to bring their IP laws and regulations up to a TRIPs-plus level. For example, Russia's Part IV of the Civil Code will achieve a basic level of TRIPs compliance with the enactment of legislative amendments now under review by the Parliament. However, Part IV's IP protections could be significantly improved if further amendments were enacted to strengthen protection for well-known marks, to stop over-protection of geographic indications, bad faith registrations and lack of opposition procedures, to name just a few.

Product counterfeiting and copyright piracy are major problems in Russia, Ukraine and in other countries of the region. All countries need to have clear definitions of counterfeiting and to mandate destruction of seized counterfeit goods and production equipment. Give *ex officio* authority to Customs officials. Enact stronger licensing regimes for optical disc factories and more effective enforcement measures against illegal production of copyrighted goods. Pass legislation to impose meaningful criminal penalties for counterfeiting and copyright piracy, including major fines, seizure of property and jail time.

The countries of the region must engage the IP crimes of the 21st century, such as online infringement, counterfeiting and copyright piracy, through legislation and cooperation with their trading partners to address this growing international problem. Improved enforcement against internet infringers is needed, including the investigation and closure of websites offering counterfeit and pirated products and the prosecution of website operators.

The cross-border traffic in fake goods in Russia and in other countries of the region is a major problem. More cooperation on border control issues between Russia, Ukraine, Kazakhstan and their neighbours is necessary to address this transnational issue.