

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

NOV 19 2006

H.E. German Gref
Minister
Ministry of Economic Development and Trade
of the Russian Federation

Dear Minister Gref:

I have the honor to acknowledge the receipt of your letter of this date which reads as follows:

“In connection with the bilateral negotiations on the Russian Federation’s accession to the World Trade Organization (WTO), the Government of the Russian Federation and the Government of the United States of America (United States) have reached the following understandings regarding actions to improve the protection and enforcement of intellectual property rights (IPRs) in Russia. The Russian Federation and the United States share the goal of strengthening enforcement of IPRs in Russia and globally. Our Presidents have affirmed the importance of IPR protection to our creative and innovative communities and respective economies and established the objective of eradicating piracy and counterfeiting in the Russian Federation. Further, the Russian Federation has stated that it will comply fully with the TRIPs Agreement upon accession to the WTO.

Achieving these objectives will require immediate actions making full use of the Government’s authority in accordance with Russia’s present and future legislation and other normative legal acts to reduce piracy and counterfeiting and adoption of laws and other normative acts, on a priority basis, that are necessary to comply with the TRIPs Agreement and provide for stronger enforcement of IPRs.

1. With the objective of permanently closing down operations of plants that engage in production of optical discs and other optical media containing pirated and counterfeit material, including those that are operating on the territory of government-controlled military-industrial sites, the Government of the Russian Federation will:

- ensure that facilities on the territory of government-controlled military-industrial sites are not leased or otherwise made available to companies producing optical media bearing content protected by copyright or related rights¹ and immediately take action to terminate any existing leases;

¹ Production of optical media does not include reproduction or use of computer software that is authorized by relevant right holders and incidental to normal operations of the military or legitimate military-related enterprises.

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- continue to conduct repeated, unannounced inspections of all plants licensed to produce optical media bearing content protected by copyright or related rights. Such inspections will take place regularly, without prior notice, and at any time, day or night. If evidence of unauthorized production of optical media bearing content protected by copyright or related rights on a commercial scale is found, criminal proceedings will be initiated;
 - continue to conduct actions to find and shut down unlicensed plants producing optical media bearing content protected by copyright or related rights;
 - continue to conduct actions to find and inspect warehouses that store significant quantities of pirated and counterfeit goods. If pirated or counterfeit goods are found, the goods will be seized and retained as evidence, investigations will be initiated, including investigations to determine the owner, distributor, and manufacturer of such goods and prosecutions of these persons and enterprises, and criminal proceedings will be initiated in cases of piracy or counterfeiting on a commercial scale; and
 - strengthen the licensing regime for optical media plants licensed to produce optical media bearing content protected by copyright or related rights by June 1, 2007 to prevent infringements of IPR, and to provide more effective control over plants' operations. This regime will include grounds to deny applications for licenses and to suspend, and then immediately seek revocation by a court of, licenses of persons whose production premises are found to be manufacturing pirated product; enhanced recordkeeping requirements; and government monitoring of production.
- This regime will include licensing conditions that ensure, among other things, that each licensee will verify that the customers for whom it produces optical media bearing content protected by copyright or related rights have authorization from all relevant right holders; and that licensees mark optical media with data that identifies the licensee and the license number. Right holders may also require that licensees use additional markings, such as source identification codes.
- Grounds to deny or suspend, and then immediately seek revocation by a court of, a license to produce optical media bearing content protected by copyright or related rights would include violation of any licensing condition, such as producing optical media bearing content protected by copyright or related rights without authorization from all relevant right holders. The Government of the Russian Federation will introduce and actively work with the Duma to enact legislation by June 1, 2007 providing that licenses will be denied to persons who have previously had

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a license revoked by a court for infringement of any license requirement, such as violation of copyright or related rights.

2. With regard to websites that work by means of technical devices (servers) situated on the territory of Russia² and with the objective of shutting down websites that permit illegal distribution³ of content protected by copyright or related rights and providing for more effective enforcement of IPRs in relation to the Internet, the Government of the Russian Federation will:
 - continue to take actions against the operation of websites with servers located in Russia that promote illegal distribution of content protected by copyright or related rights, such as phonograms (sound recordings).
 - investigate and prosecute companies that illegally distribute objects of copyright or related rights on the Internet;
 - work actively with the Duma to enact by June 1, 2007:
 - amendments to the law to provide that collecting societies may act only on behalf of rights holders that explicitly authorize such action; and
 - provisions needed to implement the World Intellectual Property Organization (WIPO) Copyright Treaty and WIPO Performances and Phonograms Treaty (WPPT).
3. The Government of the Russian Federation has as its objective deterring further piracy and counterfeiting in Russia, especially with respect to acts of piracy and counterfeiting committed for purposes of commercial advantage or private financial gain. To this end, and while fully respecting the independence of Russia's courts, the Government of the Russian Federation will refer to the Supreme Court of the Russian Federation a proposal for it to pass a resolution of the Plenum of the Supreme Court of the Russian Federation that clarifies to courts the practice to be followed in the application of the criminal legislation provisions concerning copyright and trademark infringement, including the imposition of penalties that take into account the high degree of public harm from such infringement and the concrete circumstances of the crime, and which practice is to be guided by the object and purpose of preventing future crimes.
4. With the objective of strengthening enforcement against piracy and counterfeiting at Russia's border:

² Such as allofmp3.com.

³ For purposes of this agreement, "distribution" includes making the object of a copyright or related right available.

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Russia's Customs officials will significantly increase the percentage of export shipments inspected to determine if counterfeit or pirated goods are:

- being exported from Russia and provide information on such actions to appropriate authorities for investigation and prosecution of those involved; and
- the Government of the Russian Federation will actively work with the Duma with the aim of enacting legislation by June 1, 2007 strengthening Customs officials' authority to take actions *ex officio* with respect to suspected exports and imports of pirated or counterfeit goods, and will encourage Customs officials to use such authority.

With respect to the longstanding objective of fully implementing the TRIPs Agreement and other IPR-related international agreements to which the Russian Federation and the United States are parties, and of fully implementing the WCT and WPPT, the Government of the Russian Federation is examining changes to its laws and other normative acts required to implement and comply with these agreements. Such changes will include amendments to provide protection to trademarks and geographical indications that comply with TRIPs Agreement obligations with respect to the rights conferred to trademark owners, broader authority to order the seizure and destruction of machinery and materials used in the production of infringing goods (including in criminal cases), appropriate remedies for trademark counterfeiting, and other measures to provide for more effective enforcement against piracy and counterfeiting. The Government of the Russian Federation will ensure that any changes in its laws, regulations and other measures made prior to its accession to the WTO, including any changes that may result from consideration of a possible new Part IV of Russia's Civil Code, do not result in a lesser degree of consistency than exists on this date with the provisions of the TRIPs Agreement and other IPR-related international agreements to which the Russian Federation and the United States are parties.

With respect to the enactment and implementation of legislation and regulations on the protection of undisclosed information and test data, the Russian Federation is committed to implementing Article 39.3 of the TRIPs Agreement as part of its WTO accession. The Government of the Russian Federation will work with the Duma to enact legislation and implementing regulations providing that undisclosed information submitted to obtain marketing approval, i.e., registration, of pharmaceutical products would provide for a period of at least 6 years of protection against unfair commercial use starting from the date of grant of marketing approval in the Russian Federation. During this period of protection against unfair commercial use, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, could without the explicit consent of the person or entity who submitted this data, rely on such data in support of an

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application for product approval/registration. Notice of subsequent applications for registration would be provided in accordance with established procedures. During this 6-year period, any subsequent application for marketing approval or registration would not be granted, unless the subsequent applicant submitted his own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant, and products registered without submission of such data would be removed from the market until the requirements were met. The Government of the Russian Federation will work actively with the Duma to secure enactment of this legislation by June 1, 2007.

For agricultural chemical products, the Russian Federation's laws do not permit unauthorized reliance on undisclosed data developed or submitted by another to obtain product approval/registration.

You have assured me that the United States recognizes and encourages the Russian Federation's ongoing efforts to strengthen protection and enforcement of IPRs. The United States and the Russian Federation share the goal of strengthening enforcement of IPRs in Russia and globally and pledge to work together to achieve this goal through agreed steps, including through frequent high-level consultations on IPRs, exchanges of information between experts on best practices in enforcement of IPRs, and continued cooperation through training programs. As part of our bilateral cooperation on IPR issues, the Governments of the Russian Federation and the United States will continue to consult on implementation of the TRIPs Agreement and other international IPR standards.

The United States will increase its training activities, and agrees that the Russian Federation-United States Bilateral Working Group will monitor assistance and adapt programs as necessary to ensure a cooperative effort between both governments. As part of that effort, a "hotline" will be established and maintained to facilitate the exchange of information between the United States Trade Representative and the Minister of Economic Development and Trade and to receive and follow-up on information regarding piracy and counterfeiting.

As part of the ongoing enforcement effort and to facilitate discussions between our experts, the parties to this agreement will provide semiannual reports in writing to the Russian Federation-United States Bilateral Working Group on IPR regarding all enforcement actions described in this agreement, with information of a statistical nature, information on the outcomes of specific criminal and administrative proceedings, and publicly available information on pending criminal and administrative cases. The Working Group will meet quarterly to assess progress and agree further follow on activities.

I look forward to working with you and your colleagues on this important issue. I would be grateful if you would confirm by affirmative letter in response that your government

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shares these understandings and that this letter and your letter in reply shall constitute an agreement between our governments.

Please accept, dear Ambassador Schwab, the assurances of my deepest respect.”

I have the honor to confirm that my government shares these understandings and that your letter and this letter of confirmation in reply constitute an agreement between our two governments.

Please accept the assurances of my deepest respect.

A handwritten signature in black ink, appearing to read "Susan C. Schwab". The signature is written in a cursive, flowing style.

Susan C. Schwab