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Software and databases in Russia

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- › Legal nature
- › Depositing of software and databases
- › Software as medical device
- › Additional privileges for domestic software
- › Comment

Software and databases are intangible products and are viewed as key technical and commercial tools on the IT market. They are IP assets that enjoy unique legal protection all over the world. The goal of this article is to highlight the most important aspects that a company's business and legal team should be aware of when dealing with Russian software and databases and maximising their potential.

Legal nature

According to international treaties and domestic law, software is handled similarly to literary works and is protected by copyright law. Being a copyright work, software is not subject to compulsory registration in any governmental authority and enjoys legal protection as soon as it is created, without any need for formalities. The mere fact of software creation in any material form constitutes its recognition (subsistence) as the subject matter of copyright. Software in itself is not subject to patent protection. However, in practice, there are certain cases when software becomes an integral part of a method, device or product (ie, a technical solution), which may be protected by patent as a whole.

As for databases, they can be protected under two legal regimes. The structure and compilation of materials in a database, which can be found and processed by a computer, shall enjoy copyright protection as a compilation (copyright work). The other important matters are the content of the database and the right of the database producer (related rights). Related rights protect the materials (elements) of the database in case it is subject to significant financial or other material input (expense). If there is uncertainty with regard to the amount of contribution, a database consisting of 10,000 elements shall enjoy legal protection. Similar to software, no registration is required in order to protect a database.

Depositing of software and databases

As in some other jurisdictions, such as the United States and China, software and databases can be voluntarily deposited (registered) with the state authority. The Russian Patent and Trademark Office (PTO) accepts applications along with source code and other identification materials, which may be presented on a CD or flashcard. Electronic filing is also possible and accepted by the PTO.

The registration of software and databases brings a number of practical benefits. Once deposited, software and databases can easily be recorded with the company's balance sheet and improve its corporate value. Registration helps to enforce the exclusive rights to the software and database because it serves as additional evidence of title and may prevent infringers from saying that they were not aware of them (information about software and databases becomes available to the public when they are registered).

Software as medical device

Another important aspect of software regulation in Russia is the application of software products in healthcare. Subject to certain prerequisites, software may be treated as a medical device. To be duly certified as a medical device, software shall pass through a strict registration procedure with the Russian Ministry of Healthcare.

Earlier this year, the Eurasian Economic Commission adopted new recommendations regarding the criteria to establish what constitutes a medical device, including for software products.⁽¹⁾ According to the recommendations, software shall be considered a medical device if:

- it is a computer program or module, regardless of the hardware and the type of access or connection to the software;
- it is not a part of another medical device;
- it is intended to be used for the provision of medical aid; and
- it processes and interprets data in an automated mode (including artificial intelligence) or according to parameters and instructions given by medical personnel.

Additional privileges for domestic software

Not long ago, the Russian government created a unified register of Russian computer programs and databases, which is supported by the Ministry of Digital Development, Communications and Mass Media of the Russian Federation.

The initial purpose of the register was to expand the usage of domestic software for computers and databases, especially in the public sector. The inclusion of software in the register confirms the Russian origin of software and provides its holder with several privileges, such as in public procurement programs.

Another practical benefit is that starting from 1 January 2021, transactions relating to computer programs and databases listed in the register are VAT exempted, which makes the register popular among national IT companies for being tax efficient. The same rule applies when computer programs and databases are provided as a service under service or other similar agreements.



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The register primarily supports domestic companies. However, if a foreign IT company is heavily oriented towards the Russian market and is ready to follow the requirements of the regulations, its inclusion in the register would be justified too.

Comment

Software and database products are valuable assets on the Russian market. Whether the matter relates to a startup, transaction or court dispute, there are always a number of legal solutions to achieve the desired targets in a timely manner. A company's business and legal team should be aware of the current IT landscape and latest regulations to get more benefits out of their software and database products and multiply their profits.

For further information on this topic please contact [Sergey Vasiliev](#) or [Nikita Maltsev](#) at Gorodissky & Partners by telephone (+7 495 937 6116) or email (vasilievs@gorodissky.ru or maltsevn@gorodissky.com). The Gorodissky & Partners website can be accessed at www.gorodissky.com.

Endnotes

(1) Recommendation of the Board of Eurasian Economic Commission on 29 June 2021 N 15.