

Official Kremlin Int'l News Broadcast

November 9, 2006 Thursday

RADIO INTERVIEW WITH PYOTR SHELISHCH, VICE CHAIR OF THE STATE DUMA  
COMMITTEE FOR LEGISLATION, ON IPR MAYAK RADIO, 12:15, NOVEMBER 9, 2006

Anchor: Good day, this is Panorama on Mayak. I am Vladimir Averin. Yesterday the State Duma passed the second reading of a draft Section IV of the Civil Code, which regulates the protection of intellectual property rights in Russia. Our guest today is Pyotr Shelishch, Deputy Chairman of the State Duma Committee on Civil, Criminal, Arbitration and Procedural Legislation and the Chairman of the Union of Consumers of Russia.

Good day.

Shelishch: Good day.

Anchor: I think we should turn off our phones to make sure no one bothers us during the program. I understand that our readers may remember our previous program after the first reading of the Section IV of the Civil Code. Just in general, why it was necessary to define the results of intellectual activities and put all these things together. Now it has gone through the second reading. More than 500 amendments were submitted by deputies as far as I know. Why were deputies so active this time? This does not happen so often. What had to be specified and what was the final conclusion? I understand that you eventually reached a compromise.

Shelishch: Indeed, there was a very active response to this bill and about 800 amendments were proposed. About 400 of them were adopted, which does not happen so often, and less than half were rejected. In other words, our Committee and the State Duma in general listened to market players. And we think all the rational suggestions were included.

Not all of course because you can't satisfy everyone. I too proposed some amendments that were not included even though I thought and still think that they were necessary. Maybe they are a little bit ahead of their time and our legislation, but I will continue working on this. On the whole I think we took a step forward in protecting intellectual property rights, and this is the kind of rights that marks a fundamental shift in mentality.

Several decades ago this was not topical in our country, even 20 years ago even though in developed countries intellectual property had the same status as conventional property. And when our system changed, economic and public, this question became quite relevant. Six laws were prepared and passed on copyright and related rights, on trademarks, on selection achievement and so on. Most of them were passed in the early 1990s and were updated now and then, which created discrepancies between these laws. But what is even more important is that general provisions of the Civil Code that regulate civil relations in the country did not apply to intellectual property rights directly. This is why it was decided to develop a new section of the Civil Code that will deal specifically with these matters.

Anchor: And put everything in order.

Shelishch: Right. Everything was pretty much streamlined.

Unfortunately I do not know how detailed the discussion was and why you did it before the first reading --

Anchor: When we discussed it during the first reading and over and over again after it, many of our radio listeners and experts asked many questions because the general impression was that this was done in order to protect the rights of foreign right holders in Russia. And Bill Gates has come to Moscow obviously in order to protect the rights of his corporation. And it seems that all this is directed more at foreigners and that what is happening inside the country remains on the backburner, in shadow. So who will benefit from this legislation more?

Shelishch: It's not so of course. When we were preparing this law we geared it mainly to the needs of our society, our economy, and the rights of our citizens who make up the overwhelming majority of those who create new products in our country, I mean musical works, literary works, films and trademarks. And this is for new companies that mark their new products or new services to protect their brand names or commercial logos they use, as well as new objects introduced just recently and entitled to protection by law.

But it is true that foreign right holders speak lauder. I can tell you that this puts us at a disadvantage and we need to learn from them, including Americans, how to fight for our rights and protect our rights. If three rubles are stolen from someone here, and billions of dollars are stolen from them here, they cry to the whole world while we say, well, it has always been like this, we are used to this.

If we don't pay this attention, we will never win. We should call things by their proper names. This is theft. And it's not different from when someone gets into your pocket even though the public does not take it quite this way yet. I agree that right holders should act more rationally, and this has been talked about lately, including at the top level in our country. I mean they should not only cry and demand, but they should also exert some effort to protect their rights here. They should make their products more affordable to consumers because some of the intellectual products demand for which is very high are very expensive. And the reason for this is that a big portion of the price is royalty and awards to the distributors of unique or original products. And all this prompts consumers to buy counterfeit products.

Anchor: Now we have come to consumers. Will this affect ordinary consumers in any way, people who buy products?

Shelishch: First, I would not put consumers and producers of unique products, whose rights this law protects, against each other. They are the same people. They are all our citizens. Those who develop those products are also consumers. Those who consume at least have opportunities, potentially, to create something that will require protection.

So, it is important for me to make sure that our young people, first and foremost, should understand that if they have really invented something important and useful, if they have developed some intellectual product that is in demand -- a book, a movie, a musical piece -- they will get worthy remuneration, rather than be robbed by millions of co-citizens who readily use their product, while paying nothing for that.

So, what will the reaction of these talented young individuals be like? They will look for a country where their talent, their

labor will give them better remuneration. Naturally, this runs counter to our interests. We want talented individuals to stay here, to engage in creative activities here. This is, in my opinion, the main problem of counterfeit. It is an ideological and political problem. It concerns the future of this country. If we do not want to see exclusively consumers staying here, if we do not want those manufacturing something required by many other people choose a different country as a place of their residence, we must protect the rights of those who create.

Anchor: In that case some punitive sanctions should be introduced for those who steal and sell what they have stolen.

Shelishch: Certainly.

Anchor: Does this new legislation strengthen this enforcement component?

Shelishch: Well, penalties is certainly a thing for the Criminal Code to deal with, rather than the Civil Code. The State Duma recently passed in the first reading a draft law -- it is now being prepared for other readings -- that toughens penalties for the use of trademarks owned by others. It is now a five-year sentence for that, but it will be six years. Does it make much difference if it is five or six years? one may ask. The thing is that more than five years is a grave crime, with different procedures and difference consequences. Those who have dealt with that and have gone unpunished should bear this in mind.

The problem is that counterfeit virtually involves no risks today. If one looks at the number of counterfeit products in our retail outlets and compare that with the number of criminal cases and court verdicts, they are incomparable figures. So, this is what criminal legislation should deal with. But the Criminal Code should also contain new in principle measures that would make those violating copyright and distributing counterfeit think.

Rude or repeated violations of norms of the Criminal Code and intellectual property rights may result in confiscation of equipment and materials used for the production of counterfeit. It is not just fake perfume or a vodka bottle that is counterfeit, but the label itself, Chanel No. 5 or Kristall, is also counterfeit, as well as a box and bottle containing this perfume.

So, if it turns out that a print house prints, while having no grounds for that, those labels, if a certain factory produces packaging, if another plant produces those bottles, it might be possible to confiscate all equipment of that print house or that factory and that should be scrapped at the expense of the owners of that factory. This should make them think a lot.

Anchor: In my opinion, there is another ideological component. Our society should come to realize that intellect also means money and deserves respect even in market conditions.

Much has been said that political will is required, that a signal should be given to society, the authorities and business that this or that event or direction of activities is important. In my opinion, what is now being done about intellectual property is particularly a signal to society. Really, young people who decide to engage in scientific research have been regarded by many as lunatics, to put it mildly, in recent years.

Shelishch: This is disastrous for an individual of my

generation. With the exception of my younger years, when I used to work for a construction company, at a factory, after graduation, I have engaged in scientific research for all my life, and I was convinced that there cannot be a better, worthier, more interesting and pleasant job. We all had roughly the same salaries. By the way, those engaged in research were even paid somewhat higher salaries. That was quite a worthy remuneration and one was not concerned about earning one's living.

It has all changed in the past 15-20 years, and I can see how my comrades who engaged in research for years live today. A country, whose young people do not want to engage in research -- in Soviet times we were willing to join research institutions because one could get a reliable job there. Perhaps, the number of those employed in that sector was really excessive. But if young and talented guys do not want to go into research, this strips the country of its future.

Anchor: So, amendments to legislation now being discussed could really encourage those working in the intellectual sphere, prompt them that they can expect to earn their living using their brains?

Shelishch: Indirectly. I do not think this is a sign that is so important. In connection with what you started with, the political will, I find that this is a prerequisite for the country's intellectual development. In this sphere, the sphere where creative products are manufactured, the main precondition is the will of the market players, right holders, rather than the political will. They have yet to learn to defend their rights persistently and confidently.

Anchor: A mechanism should be created for that.

Shelishch: That's right. A mechanism is required, but their will is also needed. This is what makes them different from American companies, European companies which have flooded our government with appeals and have raised this issue during all meetings of the Council on Foreign Investment, they have set this as the preconditions for the WTO accession. They are defending themselves. We need to follow suit. We need to have appropriate legislation as a thing that would let them defend themselves.

For many years I have dealt with this problem as a parliament member and a champion of consumers' rights and I have long arrived at the conclusion that police methods alone cannot resolve this problem. Unfortunately, it is a widespread opinion that the distribution of counterfeit in violation of copyright has been covered by people in uniforms. Just having will to mend this is not enough. Organized moves are required. They have managed to create their business and launch production. They should now see the protection of their rights to intellectual property as part of their business.

Inventors, performers, musicians or writers cannot defend themselves. This should be done by publishers, producers, companies producing something under patents. And we need to help them.

Anchor: Let us listen to phone calls.

Q: My name is Pavel, Moscow. Our company deals with exhibition business. We design exhibition stands. And our design is then used by many other companies. We have been unable to develop a strategy that would let us protect our intellectual property. That is, they take our design and build the same stands. Well, they can change

some minor details and claim that this is not our design any longer. How can we defend ourselves?

Shelishch: I understand Pavel and my heart is on his side. Really, I am sorry that someone uses your labor free of charge. So, you should register those stands as commercial samples and remember that it is not just precise copying that is banned by the law, if your rights are registered. It is also banned to produce something that is so similar that one may mix those things up. That is, if a certain detail is changed, but the general image is perceived as your product, the design you have registered as a commercial sample, you can sue those having breached your rights.

Anchor: A lot has been said recently about medicines, in particular those containing alcohol and other. It looks like it will now be impossible to print labels of a particular drug which is very similar to a registered brand, for example, by changing part of it. Take Bryntsalov's Nos-Bra instead of No-Spa. Right?

Shelishch: I do hope that something will change. But that's not the point really because this was already included in the law. Labels, packaging, demonstration at exhibitions, technical documentation, the use of other people's trademark or image to the point of confusion, similar with another trademark, was put under the jurisdiction of Article 180 of the Criminal Code that envisages punishment of up to five years now and it will soon be up to six years.

Anchor: In other words, it all boils down to law enforcement.

Shelishch: You are absolutely right. As far as I know labels make up for about 60 percent of all work done by printing shops. We think that they print only books and newspapers. But they print mainly labels and packaging. And this is where the Interior Ministry should act.

I have suggested many times that the Interior Ministry should carry out raids, but nothing has changed. I haven't seen any active efforts in this field so far. And in my view this is an area where fighting counterfeiting could be the easiest. You mentioned vodka. One can dilute alcohol with water in any basement and then bottle the solution. But it will become fit for sale in stores only when a label with a corresponding trademark is affixed to it. You can't open a printing shop in the basement. And if illegal activities of printing shops or other illegal operations that make packaging or glass bottles are stopped -- I think this is a sensitive aspect of counterfeiting, and this is where police should act resolutely to nip it in the bud.

Anchor: Rather than in retail trade.

Shelishch: Right. There are tens of thousands of retail outlets. You can't watch all of them. But you can do it here. And if you take production itself, we know that the production of CDs is often hidden behind the walls of defense enterprises. But they are made of materials that are not made in our country. They are brought in from abroad. Only now has the government made a decision to license the import of such materials. I don't remember the exact chemical now, but this is where such operations could be stopped.

As for alcohol in general, I can tell you frankly that counterfeit alcohol has become better in terms of quality and is often hard to distinguish from genuine alcohol. But this of course doesn't make it level. And people get poisoned not so much --

Anchor: But this is a different issue. So we have come to a conclusion that much will depend on how well and effectively we apply the law that is under discussion now and will soon head for the third reading.

I thank our guest, Pyotr Shelishch, Deputy Chairman of the State Duma Committee on Civil, Criminal, Arbitration and Procedural Legislation. Good luck.

Shelishch: Thank you.