

# Intellectual Property Rights Protection during Martial Law in Ukraine



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# Martial Law in Ukraine

- On February 24, 2022 Russia began a full-scale military invasion of Ukraine. The same day President Volodymyr Zelenskyy declared Martial Law by Decree № 64/2022.
- On March 15, 2022 The Verkhovna Rada extended Martial Law in Ukraine until May 25, 2022.

# IP issues during Martial Law

- On April 1, 2022 the Verkhovna Rada adopted the Law of Ukraine No. 2174-IX “*On Protection of Interests of Persons in the Sphere of Intellectual Property during Martial Law Imposed in Connection with the Armed Aggression of the Russian Federation against Ukraine*”.
- On April 13, 2022, the above Law entered into force.

# *Key changes aimed at protecting IP rights during Martial Law in Ukraine:*

## *a. Protection of intellectual property rights*

- Intellectual property rights continue to be valid and shall be exercised by their owners in full.

## *b. The status of intellectual property rights*

- If a Trademark Certificate expires or actions for maintenance of patent rights need to be taken on February 24, 2022 or during Martial Law in Ukraine, respective IP rights **remain in force** until the next day after cancellation or expiration of the Martial Law.
- If the relevant action to extend the Trademark Certificate or maintain patent rights is taken within 90 days following cancellation or expiration of Martial Law, it shall be deemed to have been taken in a timely manner.

### ***c. Procedural deadlines in the National Intellectual Property Authority (NIPO)***

- Most deadlines for actions related to the protection of intellectual property rights have been **suspended**, e.g. *deadlines for filing an objection against an application, deadlines for appealing a NIPO decision in court or to the Appeals Chamber of NIPO, deadlines for restoration of missed terms etc.*
- The period will be extended from the day following the day of termination of Martial Law (considering the time elapsed before its termination)
- No later than 90 days from the day following the day of termination of martial law, the right to submit documents required by law (statements, objections, answers) will be granted to applicants without paying fees for renewal or extension
- All the above extensions of terms are provided to the applicants. **The NIPO shall act within the standard deadlines without suspension.**

# IP Litigation in Ukraine

Starting from February 24, 2022 the work of courts in Ukraine faced sufficient challenges:

- the consideration of cases in open court hearings has been temporarily suspended;
- access to information on the status of proceedings is limited;
- access to the Unified State Register of Judgments has been suspended;
- territorial jurisdiction of the courts from the combat zone have been changed.

Since the beginning of May, despite the armed aggression of the Russian Federation, the work of courts is gradually recovering.

# Procedural Terms

Irrespective of whether the term for a procedural action within the court proceedings began before or after February 24, 2022, the procedural terms **are not suspended.**

**!** Martial Law can be a legitimate excuse to renew or extend the procedural term.

# *What happens with IP in Russia?*

## **Patent rights**

- On March 5, 2022 The Russian Federation issued Decree No. 299 according to which owners of Russian patents from designated “unfriendly” countries will not be entitled to any compensation for use of their patents under compulsory licensing procedure.
- The list of designated “unfriendly” countries includes the United States, European Union states, Canada, the UK, South Korea, Japan and other countries.
- The Decree covers use of inventions, utility models and industrial designs without consent of the patent owners.



# *What happens with IP in Russia?*

## **Enforcement of copyright and trademarks in Russia**

- On April 21, 2022 private cinemas in Russia began showing pirated copies of “The Batman”.
- Starting from May 6, 2022, the **parallel import mechanism** started working at the territory of Russian Federation. It applies to the list of goods and brands approved by the Russian Ministry of Industry and Trade. One of the principles of forming the list was the protection of the interests of domestic consumers of products of the foreign companies from “unfriendly” countries that left the Russian market.
- Number of applications for trademarks similar to trademarks owned by foreigners have been filed by Russia applicants.
- Ukrainian attorneys noticed recent growth of use of infringing designations similar to Ukrainian trademarks in Crimea and Russian Federation recently.

# *What happens with IP in Russia?*

***According to at least two recent Russian court decisions, trademarks and images can be used without punishment in Russia if they are owned by residents of “unfriendly” states:***

- On March 2, 2022 the Arbitration Court of the Kirov Region dismissed a case No.A28-11939/2021 brought by Entertainment One UK Ltd. claiming infringement of Peppa Pig images and trademarks. According the judgement, the sanctions against Russia allow the court not to protect trademarks rights belonging to the company from UK; the court found that the claim was an "abuse of right" and dismissed it.
- On April 13, 2022 the Arbitration Court of Sevastopol fully dismissed a case No.A84-453/2022 brought by ABRO Industries, Inc (the USA) claiming infringement of trademarks and counterfeiting of car care products. The court stated that the claimant is from “unfriendly country” and the claim is an "abuse of right".

# *Key findings regarding IP in Russia*

- Recent developments in Russia shows that enforcement of patent and other IP rights would be doubtful.
- **Filing strategy:**
  - (1) Filing National patents instead of Eurasian patent applications.** The Eurasian Patent Organization covers Azerbaijan, Armenia, Belarus, Kyrgyzstan, Kazakhstan, Russia, Tajikistan and Turkmenistan.
  - (2) To look carefully at countries other than Russia where Russians may continue to do business during sanctions (Middle East, China, India). Filings in those countries may provide protection against products manufactured in Russia.**
- **Unlike in Russia, IP rights in Ukraine during Martial Law remain valid and shall be exercised by their owners in full.**

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