



Russian Media Piracy in the Context of Censoring Practices

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This article suggests that media piracy in Russia is a cultural phenomenon caused largely by long-standing state ideological pressures. It also questions the common approach that considers the issue of piracy in economic or legal terms. In Russia, piracy historically concerned not only copyright issues but also censoring practices, and the sharing of pirated content is a socially acceptable remnant of Soviet times. This article uses an institutional approach to show how state anticopyright policy was used in the Soviet era to curtail freedom of speech. Analysis of the new antipiracy law reveals that current state policy intended to protect copyright may also be used to control content; moreover, this analysis concludes that the new policy is not likely to curb piracy.

Keywords: media piracy, Russian media, censorship, regulation, antipiracy law

Media piracy has been a central issue affecting the Russian economy. The development of new information and communication technologies has created new opportunities for pirates to disseminate infringing content, posing new challenges for existing antipiracy measures. Russia has remained on the U.S. Priority Watch List as one of the world's worst copyright infringers (U.S. Trade Representative, 2013). To stop piracy on Runet (the Russian Internet), a federal antipiracy law ("On Introducing Amendments to the Legislative Acts of the Russian Federation on Issues of Protection of Intellectual Rights in Information and Communication Technologies") came into force on August 1, 2013.

It is most likely that this new law was the result of lobbying by the Russian film industry, particularly the major TV and cinema production companies. The law may also have been adopted to show that Russia is attempting to meet its external obligations in the intellectual property arena. After 18 years of negotiations, in 2012, Russia finally joined the World Trade Organization (WTO), which required compliance with the WTO Agreement on Trade Related Aspects of Intellectual Property. In December

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Date submitted: 2014-02-03

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2012, Russia and the United States signed the Intellectual Property Rights Action Plan, which imposed upon Russia the obligation to develop legal frameworks for the liability of Internet service providers.

The new Russian antipiracy law has been met with strong public criticism. Interpreted as an attempt to establish online censorship, the law stimulated an online petition calling for its abolishment (Onlinepetition.ru, 2013). More than 100,000 users signed the petition within 10 days after the law came into force. Within a month, the Communist Party presented a new draft to the State Duma, the lower house of the Russian Parliament, to abolish the law. So far, however, the law has been neither abolished nor revised. Moreover, the amendments to this law extending its scope passed the first reading in March 2014. It is expected that the law will be applied not only to film piracy but also to piracy of any copyrightable object.

This article argues that in Russia, the current legal antipiracy measures are not likely to contribute materially to the fight against piracy because piracy is a cultural phenomenon rather than an economic or legal problem in Russia. We also suggest that the new Russian antipiracy law may represent a new censoring mechanism operating under the pretext of copyright protection.

The methodology used here is based largely on an institutional approach because this article defines media piracy as an informal institution. Media piracy in Russia is considered within the context of the historical and cultural tradition of media consumption. The Soviet era “unofficial cultural practices,” which formed in opposition to Soviet official ideology in the public sphere (Kiriya, 2012), were to a large extent prototypes of the pirating practices of modern Russia.

We first briefly review the approach used here to study piracy. We then analyze the Soviet cultural industries, their regulation, and the Soviet “unofficial cultural practices.” Third, we examine how these unofficial cultural practices were transformed into media piracy practices, while showing how antipiracy policy was accompanied by the changes in media policy. Finally, we investigate recent changes in the antipiracy legislation to show how the new antipiracy law supports the general Soviet and post-Soviet trends of media content control.

Theoretical Review

Russian Piracy Research: Toward an Institutional Approach

Piracy is often considered merely as a legal issue (Neigel, 2000). Such an approach understands antipiracy regulation as a set of laws established to protect industrial agents and consumers from different kinds of opportunistic behavior. This approach can be defined as “industry driven” because it is primarily developed in the interests of copyright holders. This approach’s main limitation is that it fails to fully acknowledge the significance of cultural, economic, and other incentives for consumer behavior, which are largely regulated by informal (and social) rules rather than by formal (legal) ones.

Another approach can be defined as “economy driven” because it suggests that piracy is merely an economic phenomenon. Under this approach, piracy is considered among other illegal or semilegal

activities such as hiding income, failure to pay taxes, and using nonregistered employees (Ledeneva, 2006; Yakovlev, 2006). It implies that the amount of piracy that occurs within a country depends directly on the extent of economic development within that country (Piquero & Piquero, 2006). Thus, piracy is considered to be a phenomenon that exists only in emerging economies. Recent research, such as "Media Piracy in Emerging Economies" (Karaganis, 2011), argues that piracy in emerging economies is largely a matter of price and that more reasonable pricing schemes would affect the amount of pirated content. However, over the last 10 years, the per capita revenue in Russia and China has significantly increased, yet piracy remains high in both countries.

Another economic approach considers piracy as an issue of supply and demand. This approach argues that piracy exists despite the interests of international multinational companies which distribute mass content (Sezneva & Karaganis, 2011). This approach pays more attention to the variety of the content distributed on the local market by dominant global monopolies. Therefore, Sezneva and Karaganis (2011) argue, DVD prices remain high on the Russian market because the major global interests retain a monopolistic position that maintains low content diversity. In Russia, the problem of content diversity can be accounted for by significant geographical and socioeconomic disparities because remote regional markets of Russia are not attractive for major foreign interests (Kiriya, 2011). However, this approach implies that consumers act predominantly in accordance with their own interests and principles of achieving individual gain. This approach also forgets that consumption is not strictly a matter of financial value. When people exchange content, they also share concepts and ideologies provided in the content. Thus, piracy may also be considered an alternative way to disseminate information freely rather than just a phenomenon of consuming without paying.

Contrary to the aforementioned approaches, the institutional approach considers piracy as an informal institution. In general, institutions are defined as "humanly devised constraints that shape human interaction" (North, 1990). According to North, effective institutions should be deeply implanted in social life. Formal institutions, such as regulatory frameworks or contractual provisions, should correspond to informal institutions, such as everyday practices, rites, or conventions. Under the institutional approach, piracy can either reinforce formal institutions or smooth over their imperfections (Tamasz, 2002). Informal rules are generally based on grounded, long-term traditions, and they generally depend on social culture. Thus, we consider media piracy and censoring practices to be culturally driven phenomena affecting another institutions in the field of media.

In Russia, where the legal frameworks were artificially imported, there is a conflict between formal and informal institutions. Such conflicts may trigger opposing practices, and society may perceive illegal activities such as piracy to be socially acceptable informal practices. Interestingly, Sezneva (2012) notes that Russian consumers often fail to distinguish legal from pirated content because the distinction between them is based on conventions rather than on law. In situations "where the policy problem is ill-defined and the solution is complex or uncertain," Garsten and Jacobsson (2013) suggest applying "post-political forms of regulation" such as soft law (guidelines, recommendations, codes of conduct, etc.). However, in the Russian media sphere, the "old-style governance" still dominates, and the state continues the attempts to regulate the media from the top down.

"Subversion" and Official Cultural Industries in the Soviet Union

The Soviet Union maintained strict ideological control of the media. Because the integration of various ethnic groups into the "Soviet family" was ideological in nature, the Soviet identity was also strictly ideological rather than "national" or "cultural" (Castells, 2010). After Stalin's regime, physical violence, which had maintained the stability of the state, was replaced by soft power. This power relied to a great extent upon cultural industries to create a new common culture for the entire heterogeneous Soviet population. As a result of this transformation, Soviet social life became more Westernized, and social structures were completely mixed. By the 1950s, worker and peasant groups had fully replaced the old bourgeois and middle classes. After the 1950s, Soviet society developed a closer resemblance to Western societies. Soviet people strove for higher education, salaries, and nicer apartments, generally seeking to improve their standard of living. Under these circumstances, only ideology could continue to distinguish Soviet society from Western ones. Thus, ideological control over culture became an important task to protect the Soviet identity.

This, in turn, led to a sophisticated system of state control over the media and cultural industries. Such control was also maintained by careful ideological selectivity and a system to filter foreign content (Mattelart, 1995). In the field of culture, this control (i.e., censorship) was maintained by the Ministry of Culture in the area of visual arts, museums, and monuments; by the Goskomizdat for the book and publishing sector; by the Goskino for the film industry; and by the Gosteleradio in the field of television and radio broadcasting. All of these bodies were subsidiaries of the Soviet government (Elst, 2005), and all of the media and every institution of the cultural industry were directly state owned. As Sezneva (2012) notes, Soviet consumer choice was restricted by official censorship rather than by price. To make propaganda more effective, the production of cultural goods was organized similar to Western cultural industries (Kiriya, 2004). So that the Soviet people consumed propagandist content, the state ensured its mass production and easy access. Such access was guaranteed at the constitutional level as the "right to use the achievements of culture" (Elst, 2002, p. 52). The nationalization of all private collections and cultural industries, which occurred immediately after the revolution, also facilitated easy access to cultural goods (Elst, 2005). Some cultural products, such as movies, were distributed free of charge by professional cultural unions and organizations. This practice shaped certain social habits of media consumption along with the attitude that the access to the cultural goods should be free or at least affordable for the masses. Such attitudes became the basis of Soviet media culture and formed the kind of informal institutions that actually conflict with the rules implemented in post-Soviet times.

The severe vertical control over cultural institutions within the country naturally implied control over information from abroad. Official censorship also applied to foreign entertainment content, which was often modified to comply with Soviet ideology. Therefore, the Soviet Union never ratified the main international document on copyright, the Berne Convention for the Protection of Literary and Artistic Works, which guarantees that authors have the exclusive right to alter their works. However, within the country, the Fundamentals on Copyright of 1928 protected the copyrights of Soviet authors (Kiriya, 2004). The USSR used domestic legislation when collaborating with foreign authors and respected the intellectual

rights of authors who fully conformed to Soviet ideology. The cultural administration was free to decide whether a foreign author deserved such respect in the Soviet Union.

The financial relationship between authors and editors in Soviet culture should also be noted. Some research suggests that within Western cultural industries, the non-wage-based relationship between editors and artists promotes greater authorial freedom while also allowing editors to share economic risks with authors (Herscovici, 2012; Huet, Ion, Lefebvre, Miége, & Perron, 1978). In the Soviet cultural economy, the problem of risk was secondary because culture was state owned and vertically financed. From a formal point of view, the independence of authors was guaranteed (Elst, 2005); however, authors had to comply with Soviet ideology. Thus, the Soviet Union had a difficult task. On one hand, it had to maintain variety and "creativity" of cultural products. On the other hand, it had to encourage authors to create works conforming to Soviet ideology. In response to this task, the powerful mechanism of the professional union (e.g., Union of Moviemakers, Union of Writers) was created. Such organizations wielded huge economic power, as they allocated financial resources, including grants for young members, apartments, and other privileges. Moreover, they completely controlled cultural production, because it was almost impossible to be published without being a member of such an organization. Therefore, although all artists were officially independent, they were, in fact, quasi-employees of such unions (Kiriya, 2004).

The restrictive policies related to both production and consumption gave rise to prohibited, or unauthorized, content. This content circulated in a realm that Mattelart (1995) calls the "parallel public sphere." In this sphere, works that were alternative to and unauthorized by the Communist Party produced discourse that sometimes resulted in civil protest movements and other "parallel activities." For example, people listened to unauthorized international radio stations and illegally brought videotapes into the Soviet Union. These parallel cultural activities represented a way to consume alternative ideology (Lisyutkina, 1993). By consuming Western music and films, people expressed a kind of political position against Soviet ideological isolationism. Within such parallel networks of unofficial goods circulation, consumers were also producers of the content. They reproduced and exchanged books and musical records, thus giving rise to the "unofficial practices" of *samizdat*, *tamizdat*, and *magnitizdat*. Elst (2005) notes that *samizdat* was "the means par excellence to circumvent censorship," while *tamizdat* ("published over there") facilitated "avoiding the procedure for foreign publication provided by copyright law." *Magnitizdat* meant "the recording, multiplication, and distribution of light music by amateur groups, but, also, of protest singers, on audiotapes" (p.32). Thus, during the second half of the Soviet period, in parallel with access to cultural goods (like a commonly shared informal institution), the practice of subversion of the state ideology by media consumption was formed.

Primary Institutional Changes After the Collapse of the Soviet Union

Mickiewicz (2001) suggests that the growth of piracy was among the unexpected consequences of Perestroika. However, in the post-Soviet era, easy access to diversified information implied a process of democratization. According to Mattelart, both producers and consumers in Russia "interpreted the free circulation of music and films politically, as a sign of liberalism" (1994, p. 12). After the opening of the Russian media market to international communication, Western media content became popular. In this period, there was no distinction between legal and pirated markets for entertainment content (Beumers,

1999). At that point, piracy was the only way to access Western cultural products in the former Soviet Union. Television stations showed programs without permission from copyright holders; "video salons" showing pirated films were also very popular. Piracy played an important role in the formation of the alternative regional TV stations and had a "profound effect of information pluralism" (Mickiewicz, 2001, p. 39). Thus, as an informal institution, piracy was based on accessibility merged with subversive practices, which were driven by the high interest in Western content in general. In this period, piracy as an informal institution coincided with a formal authorization of previously prohibited Western content.

The first attempt to ban pirated content had indirect and even perverse ramifications. Because of growing piracy, in 1991, the Motion Picture Association (MPA) imposed a ban on the export of films produced by major U.S. companies to the USSR. On one hand, this ban finally resulted in the first copyright law adoption in 1993; on the other hand, piracy increased immediately after the ban. Additionally, the ban opened the legal market for unknown U.S. companies to distribute films in the post-Soviet era (Mickiewicz, 2001). Legally, the protection of copyright was guaranteed in the Russian Constitution of 1993. Russia finally joined the Berne Convention in 1995 and established criminal liability for copyright violations in the Criminal Code of 1996. Regardless, in the early post-Soviet period, piracy flourished, and intellectual rights were not properly protected.

Similarly, freedom to produce and consume content was achieved in the area of professional journalism. After the adoption of the 1991 Law "On Mass Media," the Communist Party and the state had to loosen content regulation because the law imposed a ban on official censorship. Prior to 1995, the year when wealthy oligarchs seized control of mass media, there had been no control over media content in post-Soviet Russia (Rantanen, 2002; Zassourski, 2004). However, central economic reforms changed this situation.

The adoption of the Berne Convention facilitated the entry of major Western players and their alliances (the MPA in films, the Business Software Alliance - BSA in computer software) into the Russian market. These parties elaborated on their strategies and established universal policies in new local markets. In this period, Russian oligarchs established control over the media, and the new media moguls were drawn into political games (Degtereva and Kiriya, 2010; Mickiewicz 1999; Zassourski, 2004). For example, the new media establishment was pushed to support the first Russian president, Boris Yeltsin, in his 1996 campaign. Under pressure from new owners, the media lost much of their remaining independence. Vladimir Putin's regime usurped media control from disloyal oligarchs and tightened the regulation of media content, justifying these measures primarily with national security and antiterrorism rationales. In fact, Putin virtually re-established state control over the media.

When the major foreign media companies entered the Russian media market, they began to apply the formal copyright rules used in a commercial market system. Russian authorities, with plans to accede to the WTO, could not overturn these rules. However, informal rules on access to cultural products contradicted the internationally recognized rules, provoking institutional conflicts between formal and informal rules. Piracy in Russia implied a protest against the capitalist policies of the major foreign companies; similarly, the Soviet unofficial practices of media consumption had implied a protest against

the official ideology. The Russian authorities were, therefore, reluctant to combat piracy, which operated as a mechanism to ensure popular access to cultural goods.

Particularly after 2000, Russian authorities realized that to easily promote the new state ideology, they should ensure better access to "official" content. State policy became more ambivalent about piracy. On one hand, antipiracy policy was strengthened, and police raided some vendors. On the other hand, piracy was tolerated to ensure access to a diversity of material. This access was also ensured through a system of state subsidies to fixed landline services, sports broadcasting, and filmmaking, among other services. State support inevitably implies a certain degree of state control. Almost every TV station accessible to Russian audiences free of charge is state owned or affiliated.

In 2008, Part 4 of the Russian Civil Code came into force to replace the 1993 Law on Copyright and Related Rights. Although the new legal framework strengthened the protection of copyright holders and "boosted the development of a market for 'legal' consumption of audiovisual content" (Golovanov, 2012, p. 23) on the Runet, copyright holders often fail to obtain protection of their rights in Russian courts. Ostensible antipiracy actions in Russia have had the primary goal of promoting the image that Russia is a champion for intellectual rights abroad. However, there have been no serious attempts to promote the respect of intellectual rights among the Russian people or to educate them about the concept.

With the development of digital technologies, the traditional Russian culture of accessibility converged with another phenomenon: "the read/write culture," which blurred the border between consumption and creation (Lessig, 2008). The new digital culture gives Russian users the opportunity to justify their pirating activity (based simply on the principle of access). The Pirate Party was created in Russia at the end of the 2000s (but is still not registered). In its platform, this party argues for "freedom of exchange" using anticorporate rhetoric.

Pavel Durov, an anticopyright activist and founder of the social network VKontakte (VK), the "Russian Facebook," used the same rhetoric to justify the high volumes of pirated music circulating in his social network. In April 2014, the monthly audience of VK reached almost 52 million people, whereas the audience of its main competitor, Odnoklassniki, was around 40 million, and the Russian audience of Facebook was far lower (TNS Russia, 2014). Notably, VK achieved its biggest audience after launching its famous audio service, which gives users the opportunity to exchange sound files freely. In fact, the success of VK is based mainly on the unauthorized exchange of music.

The Antipiracy Law as a Tool of Censorship

The new Russian antipiracy law enshrines the mechanism of injunctive relief and introduces the notion of the information intermediary; both can be used excessively. The Moscow City Court may grant injunctive relief based solely on the request of copyright holders without any standard of deliberation and regardless of territorial jurisdiction, despite the fact that this provision directly contradicts the Constitution of the Russian Federation. As soon as the court grants an injunction, Roskomnadzor, the main media and communication watchdog, contacts the hosting service of the pirating website, obliging the owner of the

offending site to delete the material. If the owner or the hosting service fail to delete the material, Roskomnadzor places the website on a blacklist of infringing websites and obliges the telecommunications provider to block the IP addresses to infringing content or—at its own discretion—to a whole website. More interestingly, since hosting services often place several websites on the same IP address, the blocking of one can result in the blocking of a chain of others, despite the fact that many contain no pirated content.

The new mechanism of injunctive relief is redundant, as it was in Article 1252 clause 2 of the Civil Code. However, now, inconsistent law enforcement rather than a lack of formal laws is one of the main problems with copyright protection in Russia. Golovanov suggests that the Russian judges of ordinary courts “have trouble establishing a balance of interests of rightholders and Internet intermediaries” (2012, p. 23). Thus, it is hard to predict how courts will interpret the new antipiracy law.

It seems reasonable that the new law attempts to differentiate the levels of liability for those intermediaries who provide the transmission of the content and for the publishers of it. The results are inconsistent. The notion of an information provider implicitly includes, in addition to hosting services, search-engine services and online users who share links to infringing content. Generally, the law motivates information providers to simply delete the content of websites accused of copyright infringement rather than to investigate whether the content is pirated. Thus, the regulation of piracy could easily be used to regulate content.

It is hard to determine whether public resistance or imperfections in the law itself constrain enforcement more, because the Moscow City Court cannot control piracy in the whole country. Between August 1, 2013, when the law became effective, and June 10, 2014, the Moscow City Court considered only 77 claims on cautionary judgments. Most of the claimants were influential Russian TV and cinema production companies. It is most likely that these are the only parties who benefit from this law. Some of them use this law as a pretext to initiate collaboration with the major Runet players: VK, Mail.ru, and Yandex.

Modern attempts to curb online piracy have clearly been skewed to bring back censorship in an obfuscated form. Richter (2008) suggests that while all of the post-Soviet countries prohibit censorship in their constitutions or media legislations, “the absence of censors has been ‘compensated’ [for] in other ways” (p. 308). Among other new censoring measures, Richter specifies “abuse of regulatory and supervisory functions,” which refers to actions against freedom of expression “under the cover of legal or market mechanisms” (p. 311). Generally, antipiracy law fits in with a common trend in Russian regulatory policy by the State Duma. For example, in 2012, Russia recriminalized defamation, required NGOs funded from abroad to declare themselves as “foreign agents,” and adopted the law regarding blacklists. Another legal initiative has resulted in substantial fines for protest actions that are “unsanctioned” by authorities. In 2013, the State Duma passed laws against obscene language, against the defamation of religions, and against “untraditional sexual relationships.” Most of these laws were adopted quickly by unanimous vote and without public debate. The law on “immediate” blocking of sites that contain extremism entered into force on February 1, 2014. However, a survey of the Russian sociological company Levada-centre (2013a) has shown that the majority of Russians support the above-mentioned repressive laws because they can “guarantee the public order.” The antipiracy law was among the least popular.

Social acceptance for obtaining free content may be a more significant factor limiting the law's effectiveness. In this context, it is not surprising that the official initiative to abolish the Russian antipiracy law came from the Communist Party. There are no large-scale efforts to reform public attitudes toward copyright infringement, and people clearly prefer not to pay. The Levada-centre (2013b) examined media consumption in Russia in May 2013. Its survey demonstrated that the majority of those who consume new films and music download them from the Internet for free and that only 2% claim to pay for downloaded movies. According to a survey conducted in September 2013 by the Fund of Public Opinion, only 25% of respondents were prepared to pay for the content, although 34% of respondents supported restrictions on access to pirated content. Interestingly, 20% are still unaware of the new law. A full 49% of the Russian respondents declared that they are against the antipiracy law, claiming that online content should be free or that the antipiracy measures violate human rights (Fund of Public Opinion, 2013). From the institutional perspective, we again see the formal rules' lack of correspondence with their real objective; however, the formal rules may correspond perfectly with other informal practices to regulate and restrict media content.

Conclusion

This article shows a strong connection between pirating and censoring practices in Russia. In Soviet times, cultural industries were subject to ideological control and shaped the social tradition of free access to propagandistic media. Those who were dissatisfied with such content alternatively produced and consumed cultural goods outside the institutionalized public sphere. Post-Soviet piracy is an informal institution that conflicts with formal rules on copyright. In Russia, piracy primarily follows two traditions: The first is the access to cultural goods. The second is a social habit of using informal practices to access overregulated media content. Strong censorship makes smuggled media even more attractive, and sharing such content can be even more desirable than sharing legitimate content.

Several attempts to strengthen content regulation have harmed Russia's image as a democratic country. Although the antipiracy law may produce for copyright holders and international organizations evidence that Russia strives to stop piracy, it may also justify the introduction of control over content, particularly when the regulation concerns such a liberal and global sphere as the Internet.

The official censorship that existed during Soviet times progressively moved from a formal institution to an informal one during the post-Soviet period. At the same time, free access, which was also a formal institution, became a kind of informal convention giving rise to a large set of practices stimulating piracy. Neither the formal guarantees of free speech nor copyright protection work properly, and neither is used for its real purpose. Measures initially intended to fight piracy correspond with informal restrictions on media content. And, similarly, pirates advocate for free speech. Table 1 summarizes the institutions that have been covered here.

Table 1. Dynamics of Institutions in the Field of Copyright Protection and Censorship Regulation.

| | Soviet Times | 1990s | 2000s |
|---|--|---|---|
| Formal institutions in censoring practices | Overregulation and filtering of media content and cultural goods | Very liberal regulatory framework; openness to any content (especially Western) | Shrinking freedoms and excessive regulation of content by laws on extremism, defamation, etc. |
| Informal institutions in censoring practices | Alternative practices of self-publication and consuming Western radio and cultural goods | Openness of population to any Western content (as a protest against former ideology); pressure on the media powerful owners | Consuming information from blogs, alternative media, etc.; using the antipiracy law to attempt content restrictions |
| Formal institutions in the field of copyright | Vertically organized system of Soviet culture promoting ideology | Legislation without enforcement; Western majors penetrating the market | Local legislation with excessive enforcement; purely market policies of Western majors |
| Informal institutions in the field of copyright | Free access to cultural goods | Rise of piracy driven by restricted access to cultural goods | Subversion of Western-dominated market by online piracy driven by demand for free access to cultural goods |

Table 1 shows how the system of correspondence between formal and informal institutions harmonized in post-Soviet times has changed and become imbalanced. In the 1990s, the orientation toward access was compensated for with nonworking copyright law enforcement and by liberal media legislation and was accompanied by the popularity of Western content. Therefore, this period could be characterized as having a perfect balance between institutions. Now, however, when free access is incompatible with the market-oriented policy of Western majors, there is an institutional conflict, and authorities overregulate content with antipiracy measures, effectively executing online censorship.

The abuse of legal anti-piracy measures such as the Russian antipiracy law presents a threat to both free speech and to public support for copyrights.

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