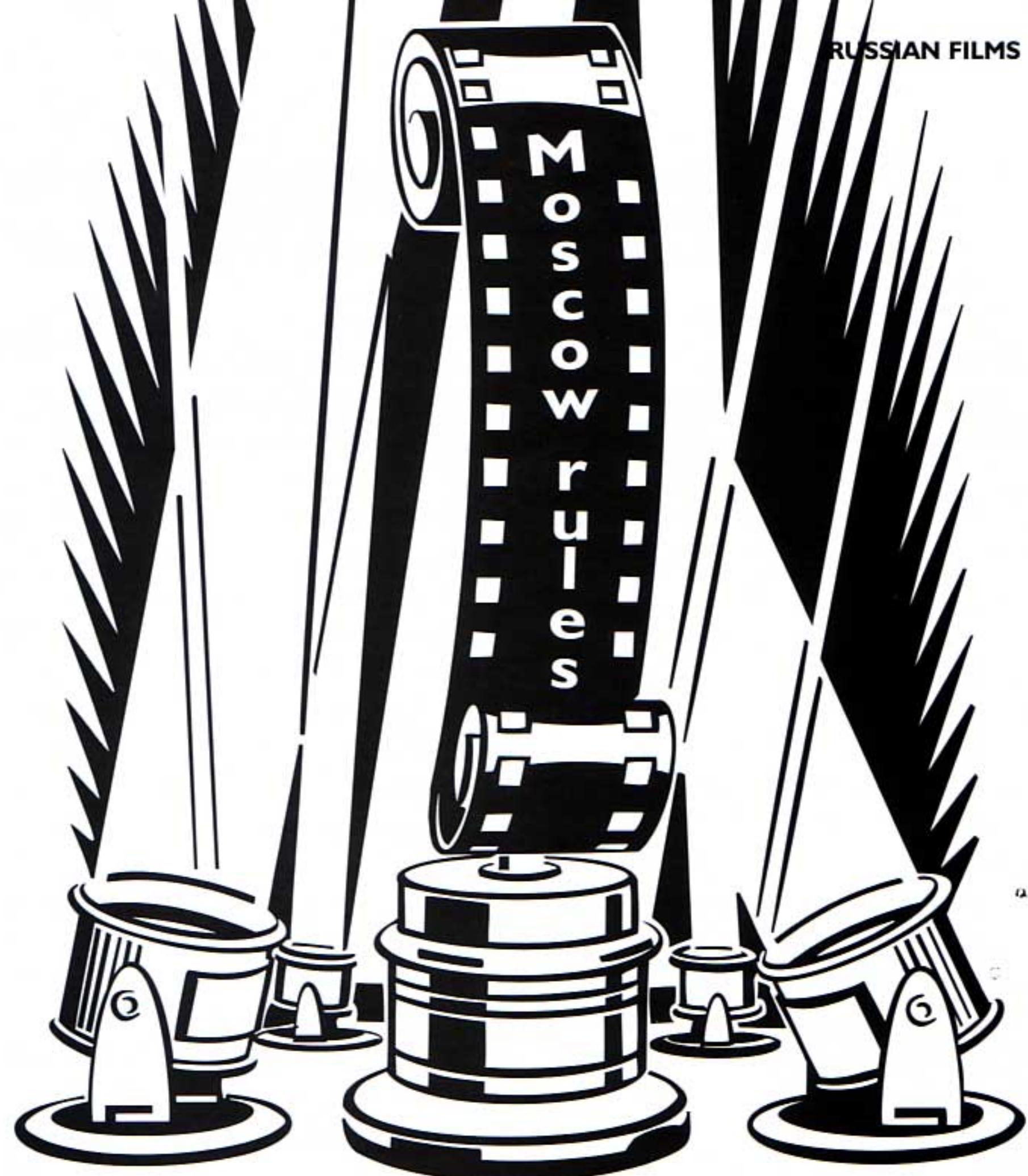


IN SUMMARY

- In recent years interest in film production in Russia has dramatically grown. As a result, Hollywood majors now look to Russia to either set up joint ventures to produce films or acquire a ready-made product
- However international distributors are likely to face issues relating to film production documents with Russian producers, and this article provides a brief summary of some of them



❖ *Hints for international distributors acquiring rights to Russian films*

Alla Naglis of Hogan & Hartson looks at some of the issues international distributors are likely to face when producing or acquiring Russian films

Over the past couple of years, the interest in film production in Russia has grown dramatically, and all of a sudden the very idea of Russian production has become quite attractive and competitive, in line with the more "traditional" slots in Eastern Europe. As a result, Hollywood majors now happen to be looking to Russia, both in terms of setting up joint ventures to produce films in Russia for international distribution or to acquire a 100% "made in Russia" product.

However, it is no secret that the market and the film production activity in Russia are much closer in this respect to the Western standard of expectation than the film production documents an international distributor dealing with a Russian producer is likely to face.

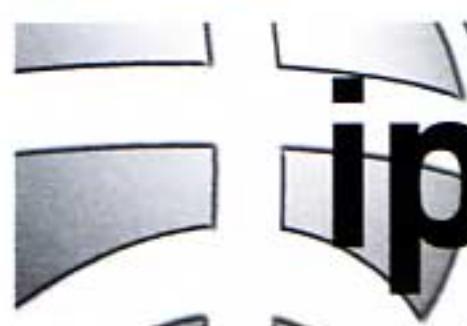
In this article we briefly summarise some of the key issues that are likely to arise in the

relationship between an international company and a Russian producer.

From a practical perspective, there are two common options: (i) an international company may cooperate with the Russian producer at the outset; or (ii) rights in a completed product may be acquired. Whilst it is of course a commercial decision to make (and in some cases, it may simply be impossible to opt for the first one for a number of reasons), the first option is more favourable for the international party in terms of having the proper paperwork in place, as it will have a chance to suggest certain forms of contracts the Russian producer is to follow. If it is an acquisition of a ready-made product, then the only available way would be to carry out a due diligence of the chain of title and have the Russian producer clear the defects, which in

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most cases is quite a time-consuming effort, as it implies amending a number of already-existing documents to make them compliant with Western standards.

Copyright vs. Right to Use

The framework of the Russian legal regulation of rights in a motion picture is the Law of the Russian Federation No. 5351-1 - "On Copyright and Neighboring (Related) Rights", dated 9th July 1993, as amended (the "Copyright Law").

In respect of copyright and, specifically, its transfer, Russian law follows the continental legal system in that copyright is: (i) always vested with an individual; and (ii) cannot be fully assigned or transferred. The individual authors always retain the so called "personal non-property" rights (or moral rights), such as, for example, the right to name and the right to protect the work from distortion (as opposed to reworking), which are non-assignable.

Consequently, what can only be assigned are the rights of commercial use of the work, and such rights not coming as a whole, but rather as a specific list. Any right not expressly listed as being assigned is by default deemed to be retained by the author (or a rightholder, in case of a subsequent assignment)¹. Needless to say, any transfer of rights must expressly be defined as exclusive or non-exclusive.

Another tricky issue causing a lot of misunderstanding is the requirement set forth by the Copyright Law that any copyright assignment agreement is to specify the term for which the rights are granted², which in fact makes the whole concept closer to a licence, rather than a full scope assignment. A failure to specify the copyright grant term may result in the author's rights, upon the expiration of five years from the copyright grant date, terminating the grant of rights. Thus, it is essential to make sure that the time period is defined in the agreement (the recommended language would be to refer to the maximum term of the copyright protection under Russian law³).

Authors and rightholders of the picture

In respect of a motion picture (an audiovisual work, as defined under the Copyright Law), Article 18 lists only the following individuals as its authors and initial rightholders:

- Director;

- Screenplay writer;
- Composer (only to the extent the composition was specifically created for the motion picture, i.e. not pre-existing).

Producer and grant of rights

A separate reference is made by the Copyright Law to the producer of the motion picture, which is defined as an "individual or the legal entity bearing the initiative and responsibility for the production of such works"⁴. The specifics of the relationship between the producer and the authors of the picture is that the mere fact of conclusion of an agreement between the producer and each of the authors implies, by force of law, an automatic transfer to the producer of certain rights of commercial use, irrespective of whether such rights are explicitly listed in the agreement. Such automatically transferred rights are as follows:

- the right to reproduce;
- the right to distribute;
- the right to publicly perform;
- the right to broadcast by air or cable;
- the right to subtitle; and
- the right to dub⁵.

The problem, as is clear from the above list, is that the list of rights that are transferred automatically to the producer of a picture is not sufficient to entitle the producer to fully use and distribute the picture, particularly against the background of what an international distributor would expect to see in the right acquisition and distribution agreement. Therefore, eventually, the agreements with authors of the picture should end up being drafted in full detail without much reliance on the automatic statutory grant of rights. In this regard, two specific rights should be mentioned that have not found their way into the statutory list and that are indispensable for the international distribution, namely: (i) the right to rework the picture (which would comprise the right to create all sorts of derivative works, such as translations, adaptations, remakes, sequels and prequels, and the creation of non-cinematographic works based on the picture); and (ii) the right to further assign/transfer the rights (which is absolutely crucial to enable the producer to grant the international distribution rights to a third party).

Besides, there are a couple of rights that, even being listed for automatic transfer by force of law, need clarification to fully comply

with the statutory requirements. For example, the right to reproduce and distribute should specify the maximum number of copies for which it is granted, pursuant to the statutory provision requiring a specific number of copies in any agreement related to reproduction if it provides for a payment of a flat fee, as opposed to a participation in proceeds.⁶ From a practical perspective, it is recommended to specify such a number that will undoubtedly not be exceeded.

Contributors

Different treatment is set forth in respect of the authors of the audiovisual work (i.e. director, screenplay writer(s) and composer) and the authors of copyrightable works forming parts in the picture of the film, such as cameramen, costume designers, art directors, etc. (contributors).

The principal difference from the regime of the authors is that the rights to the contributors only extend to their respective contributions, but not to the picture in general. Thus, they are not entitled to in any way impede the distribution of the picture. However, to the extent the works created by the contributor are supposed to be used separately from the picture (e.g. costumes or sets), the full scope of the rights assignment has to be obtained.

Another distinction is that, unlike the authors, contributors are not granting their rights to the producer automatically by operation of law, which means that whatever has to be granted must be properly reflected in the respective agreement. ♦

Notes

- 1 Article 31(2) of the Copyright Law.
- 2 Article 31(1) of the Copyright Law.
- 3 By way of reference, the copyright protection term under Russian law currently is the lifetime of the author or, in case of several authors, of the last to survive, plus 70 years thereafter.
- 4 Article 4 of the Copyright Law.
- 5 Article 13(2) of the Copyright Law.
- 6 Article 31(3) of the Copyright Law.

[The above is an outline of only some of the questions that arise in connection with the film production, rights acquisition and distribution agreements in respect of motion pictures produced under Russian law. In addition to the above, there are also issues related to the agreements with actors and performers, and an extensive list of various other issues and concerns]