

# Important court ruling on provider liability for violation of exclusive rights

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## Legal Update No. 129

26 January 2011

Goltsblat BLP advises of the adoption of **Resolution of the Ninth Arbitration Court of Appeal of 1 February 2010 No. 09AP-26277/2009-GK** (the Resolution). This Resolution sets out a new judicial position on liability of persons providing services involving placement of information on the Internet (Internet providers) for placement by their users of materials in violation of copyrights and neighbouring rights of others.

OOO Rambler International Holding was held liable for violating the exclusive rights of OOO Pervoye Muzykalnoye Izdatelstvo to an audio-visual work as a result of unlawful placement of materials on the site [www.rambler.ru](http://www.rambler.ru) by an unknown user. Until recently, the consistent position was that formulated by the Supreme Arbitration Court of the Russian Federation on 23 December 2008 on case No. 10962/08 ZAO Masterhost, partly reflected in the decision of the court of the 1st instance on this case. The motivation for rejecting the right-holder's suit consisted in the provider not performing any actions to make the work public, since its functions are comprised exclusively of providing technical services for placing video-materials to any duly registered user; consequently, the unlawful actions as such were performed by the user. The provider, in turn, is not liable for the information transmitted if it is not the provider that initiates its transmission, chooses the recipient of the information and influences the integrity of the information transmitted.

In its Resolution, the Ninth Arbitration Court of Appeal formulates a different position, referring mainly to the powers of the server administrator to combat posting of materials violating the copyrights and neighbouring rights of third parties, in particular, the possibility of suspending placement of such materials until claims are settled. In the case under review, there was a request from the right-holder that the provider halt placement of the work on the Internet and a response to this request, which affected the outcome of the case. The court considered that the failure by the provider to exercise its powers to halt unlawful actions was tantamount to its participation in making the work public.

Internet providers should take the given position into consideration, since, if it becomes widespread, opportunities will be created for imposing liability for any unlawful actions committed by users in the absence of any rapid response to requests from right-holders.

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