Electronic Licenses in Russia, Creative Commons

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1. **Laws**, actually, **are not bad at all**. Legislation is not as bad as it's apprehension and misunderstanding.

2. **Interpretation**. First, we need to study laws thoroughly, and see if we can interpret it the way we need, the way it is demanded by time and present circumstance.

3. **First – study, then – do** and do if you know what you are doing. Many actions taken come to be superfluous, because those who act do not study the issue to the extent needed.
What are the tendencies (G8, May 2011)

Openness, transparency and freedom of the Internet together with non-discrimination and fair competition must be included in a broader framework: that of respect for the rule of law, human rights and fundamental freedoms, the protection of intellectual property rights, which inspire life in every democratic society for the benefit of all citizens. Both the framework and principles must receive the same protection, with the same guarantees, on the Internet as everywhere else (par. II(9,10) Declaration).
What are the tendencies (G8, May 2011)

With regard to the protection of intellectual property, in particular copyright, trademarks, trade secrets and patents, we recognize the need to have national laws and frameworks for **improved enforcement**. We are thus renewing our commitment to ensuring effective action against violations of intellectual property rights in the digital arena, including action that addresses present and future infringements… We are committed to identifying ways of **facilitating greater access and openness to knowledge**, education and culture, including by encouraging continued innovation in legal online trade in goods and content, that are respectful of intellectual property rights. (par. II(15) Declaration).
Kinds of signatures

Signature

handwritten

Analog of h/w Sign. (AHS)

electronic signature

facsimile

other

plain ES

strong ES

unqualified ES

qualified ES

Art. 160 CC

Law on ES as of 06.04.2011 N63-FZ

Is signature needed?

Article 160: 1. Deal in a written form can be concluded by drafting a document with conditions **signed** by parties of a deal. **Bilateral** (multilateral) deals **may** be concluded way, specified in par. 2 and 3 of article 434 of the Civil Code.

Par. 2 art. 434: Contract in a written form may be concluded by drafting a **single** document **signed** by parties, as well as by **exchange of documents** by postal, telegraph, teletype, telephone, **electronic or other means of communication**, allowing to ascertain that a document is originated from a party to a contract.

• a) so do we need signing AND exchange (with ascertained origin) – the court practice goes, OR
• b) if an origin can be ascertained no signature is needed?
Nota bene

1. Parties should provide in a contract that they consider legally binding analogs of handwritten signatures (electronic signatures).
2. Electronic signature must be contained in the document.
3. The parties should be identified as well as the way to identify a party by its electronic signature.
4. Parties should provide obligations to keep confidentiality of the signature (for instance, of the passwords).
Duly done offer to conclude a deal may be accepted by **executing of the actions** implied and specified as such in the offer, thus a contract will be considered concluded (par. 3 art. 434 and par. 3 art. 438 of the Civil code).

- This could work for Internet-form submitting, registrations, code authorizations, etc.
On the way to electronic government

- Filing of the procedural documents with the state arbitration court through Internet (upload of scanned documents).
- Filing of the complaints, inquiries and the like with other state bodies, including police, by submitting an electronic form in the Internet.
- Registration at gosuslugi.ru allowing to acquire some state services, file documents online and obtain information online.
creative commons

waiver of right

for instance, uk copyright law allows to waive rights, as well as to set conditions of such waiver.

russian law does not allow to waive rights.

draft law on analog of cc licenses makes worse, than it is now.

it is considered a permission on specific conditions and valid through set term and on set territory. if term is not specified, it is considered to be 5 years, if territory is not specified – it will be russia.

copyright holder can not give such permission if he has effective license with same rights granted and it is a paid one.

such permission should be published on the official web-site of a special state body.

license

creative commons licenses are civil law contracts allowing use of creative works (licenses). copyright holder allows and user accepts by using.