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Russian Software Development: A Personal View

David Crocker gives his unique personal insights into a lawyer's IT dealings in the new Russia.

I don't like the taste of straight vodka, however expensive. This can be a social obstacle while working in Russia, I've found. But apart from one's particular taste in alcohol, I've found that there's much to recommend outsourcing one's software development there. The country is loaded with brainy, entrepreneurially-minded engineers who yearn for bigger and better things. They also can be hired for a fraction of the cost of UK or US developers. So it's no surprise to me that Russia has become a destination of choice for offshore software development. And while the Russian development market is not as large as India just yet, the Russians may, for very specific, hands-on reasons, yet give the Indians a run for their money. So, it's here, at a hands-on level, that I begin my story.

A Personal Story

I come to Russian development as a lawyer representing software companies that outsource all or part of their development effort. My clients all sell products destined for the broader commercial and enterprise markets and, in some cases, have substantial installed bases with clearly-defined marketing and product paths. While these companies had periodically used Indian programmers, it made sense for a variety of reasons I'll discuss to establish large-scale development efforts in Russia early in the decade.

My Russian experience is heavily personal. It's been my 15-year privilege to work closely with the founder of one such US company, who is himself a Ukrainian immigrant. Particularly in this relationship I tend to wear two hats: certainly as an IT lawyer, but also as a junior propeller-head, sizing up both technologies and people. In the last year alone I've made several trips to Russia in my dual capacity, part lawyer and part talent scout, actively looking for promising technologies to commercialize. And there are certainly plenty to be had. But what should one know, practically and legally, to embark on a software development adventure in Russia? One cannot discuss such matters abstractly and hence this discussion will run more heavily to the practical than the abstractly legal. So, let's start with the environment.

It's Not a Mystery

For those of us who came of age during the Cold War, Russia appeared to be an alien place, populated by impassive people who looked neither to the right nor to the left. While the

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crowds may still be impassive, I've found the Russians I've worked with to be friendly, generous, curious, well-read and excruciatingly bright. Among developers, English skills tend to be strong (although stronger on the written side, which makes e-mail that much easier).

They also tend to have another characteristic that can be decisive in development projects: they are direct and if they disagree with you, they'll tell you so forthrightly. Moreover, if they disagree over a technical matter, they've usually thought out a better way to do things. Because Russians are used to getting the most out of kludge, they'll often think of quite inspired workarounds that would never occur to more complacent US or British programmers.

But it's that directness that makes them most useful. If you hand them specifications that won't work, they'll tell you so and quickly. There is no cultural avoidance of the word 'nyet' nor a reluctance to break bad news. This saves time which, as we all know, can be a killer, particularly when there's a new version that the sales group has over-promised to the company's customers. It also makes for a better product.

As a group, Russian developers actually like to program (it appeals to puzzle-oriented, problem-solving minds); my observation of Indian developers is that they view coding as an entry-level job to be endured for a couple of years before moving up to consultancy, which is viewed as more prestigious. Russian development houses tend to have lower turnover among their coders and therefore more continuity from one project to the next. The average level of engineering skill and experience is high – it is indeed formidable. Russian programmers directly benefit from an educational system that emphasizes science and maths - and it shows.

Where Russians tend to be weak is on the marketing and commercial side of things. The majority of developers work in per-project contract companies. While there are signs of change, Russian development companies tend not to develop their own products. Those that do so don't know how to market them. The prevailing joke is that a typical Russian software company has 50 developers but only one marketing guy – and he's the one always on a smoke break. Humour aside, this particular weakness has practical consequences: Russian developers tend to be more academic and, in some cases, not very customer-driven. They approach development as a science project and not as a commercial proposition. This weakness can be overcome fairly easily with inspired leadership, a younger workforce and strong specifications written with customer expectations and usability in mind. In Russia, the young are quickly leaving behind old ways and none want to look or think like a Soviet apparatchik.

Shopping Around

The IT business being what it is (relentlessly chatty), finding a good development partner in Russia is often a matter of the grapevine, which is particularly effective if one already has contacts in the Russian IT sector. For a more a distanced overview, there are two main trade associations representing very different sides of the Russian software industry. First, there is St. Petersburg-based Russoft (www.russoft.org), whose mission is to promote Russian contract development and IT services worldwide. It tends to cater to the bigger houses and is aggressively commercial. Russoft's membership database is rather large and, for the most part, reasonably up to date. Its recently published 2007 survey report is remarkably candid about problems with infrastructure and the

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business climate (more in a moment).

Then there's the Independent Software Developers Forum (www.isdef.org), based in Moscow. ISDEF is considerably more outré than Russoft and its members tend to be hard-core programmers from companies actually marketing interesting products. Its geeky orientation is reflected in its founder, Alexander Katalov, who happens to be one of the world's foremost encryption experts and, not incidentally, an interesting dinner companion with the quite extraordinary ability to devour a cigarette in two or three deep gulps. Katalov is President of Elcomsoft, which produces password recovery software that is quite legitimate in the proper hands but also beloved by crackers and other night crawlers. Elcomsoft survived a brush with the US government in 2002, winning an acquittal in federal court when prosecuted for violating anti-circumvention provisions of the US Digital Millennium Copyright Act. But the important thing to remember about the ISDEF is that while its members are individuals, these members are the visible representatives of an enormous talent pool working for companies that both create products and, in many cases, provide contract services as well.

Problems

The Russoft report mentioned above underscores a number of problems with outsourcing to Russia and these practical problems affect how one legally approaches an outsourcing relationship. First, there is the general lack of respect for intellectual property rights. Software piracy is rampant in Russia. My friends tell me it's as high as 90 percent, which is an improvement, they say, over a few years back when it was nearly 100 percent. Everyone and everything uses illegal software, even the developers. And, in true karmic fashion, the developers' products are then pirated as well. You can buy pirated music and DVDs from vendors on the streets of major cities (I noticed, for instance, that 'The Devil Wore Prada' was on sale in Ryazan before it could be legally purchased in New York). It's a prevailing culture that the Russian authorities do little about, trips by Bill Gates to Moscow notwithstanding. Developers are beginning to become adamant about the importance of IP rights, however, as they themselves suffer the effects of piracy.

Second, there are the difficulties with infrastructure. Even though the Russian government is sitting on nearly a trillion dollars of foreign exchange (courtesy of the oil and gas business), it doesn't seem to recycle much into transportation infrastructure. As far as telecommunications go, while mobile service is good, landlines lag behind. Broadband is readily available in larger cities but spotty elsewhere. Most developers have access to broadband, however, so data transfer and VoIP are usually not a problem. While the government has built some incubator facilities, these are far from ubiquitous. When you go talent-hunting in Russia, you'll find development companies sandwiched into facilities that could, with charity, be described as Spartan.

Third, while there are some larger contract companies in the Moscow-St. Petersburg axis that have the project management skills to take on truly large projects, most companies in the provinces tend to be smaller. There have been complaints about the degree of management skill that Russians bring to a project. My sense is that the learning curve is steep, however, and complaints are fading with experience.

Finally, there is the state of Russian IP laws, specifically its copyright law. The current 1993 statutes (covering both copyright and treatment of computer programs) will be repealed and replaced on January 1, 2008, with sweeping new legislation that creates a new Part IV of the Russian Civil Code. Part IV as a whole has been controversial both within and without Russia, both for its scope and for the novelty of some of its provisions (mostly relating to trademarks). The 1993 laws recognized basic concepts that we take for granted, such as works made for hire and the rights of employees and contractors in their work product. The 1993 laws had special provisions relating to computer programs that explicitly recognized a limited decompilation right for engineering purposes, although one could, by contract, limit such decompilation. New Part IV seems to retain much of the older law, at least as it relates to computer software. Such copyright novelties as exist seem to be confined to several provisions relating to publication rights.

But the problem was never really with the laws but with enforcement. Russia has long had on its books criminal and civil sanctions for counterfeiting and piracy, but neither government nor individuals have done much to enforce existing laws. Unfortunately, large-scale counterfeiting in Russia seems to be the work of sophisticated (and well-funded) darknets that will require considerable resources to break. In fairness, however, piracy is not strictly a Russian problem; it's also a problem in the UK and US, where enforcement efforts have also been inconsistent, to put it politely.

Practical Legalities

So, beyond the prolegomena, what should legal counsel do to protect a client contemplating hiring Russian contractors? With a few special wrinkles, there's the inevitable due diligence process, both technical and legal, which takes into account most of the factors that we come to expect from US or UK companies. What is the size of project? Is it a one-off job or is there a continuing relationship akin to consulting involved? Are the specifications well-defined? Is there adequate project management at both ends with key individuals who can communicate effectively in English or Russian, or both? Beyond the initial questions, here are a few specific considerations.

First, it is very important to review the Russian company's history, financial stability and employee retention rate. For this phase, I have worked with a trusted Russian advocate who is very experienced in Russian business law. He does the initial investigation of the company's organization and good standing with the Russian tax authorities and reviews the company's books. Unfortunately, consistent use of US or UK GAAP (or any kind of generally accepted accounting principles) is a new concept in Russia and one should employ a green eyeshade and a very sharp pencil. Good employee retention indicates both satisfied employees and consistent quality. It also lessens the danger that an unhappy employee will be peddling your client's source code in the aftermarket.

Second (and after a positive report), it is often useful to visit the contractor with the technical people to review with on-site counsel the IP and other items that one would expect in any contractor exercise. These include:

- whether the Russian contractor's operating and development software is licensed;
- a full description, including the development,

authorship, or ownership, of tools and standard code that the company plans to use to fulfill the specification with a list of open-source, public domain or other third-party materials likely to be used;

- a review of third-party subcontractors, if any, to be used by the Russian company and a list of their code, practices and employees as well to insure that they are compliant;
- an audit of the Russian contractor's security processes, procedures, backup and storage, including a description of all policies and practices followed by the Russian company to protect the copyright and trade secret (and, if applicable, patent) rights in code produced and any related technology.

This last process should include an examination of the physical security of the premises (building location, doors, locks, security cards and physical access to the building). Physical security in Russia is no laughing matter.

Finally, if all goes well, then it is time to negotiate the development agreements. While Russian companies tend to have standard documents in English (project development services tending to be somewhat fungible), these vary in sophistication. I typically use my own documentation, which is usually a framework agreement with specific work statements describing defined deliverables and specific guidelines. If the relationship is to continue then the final draft tends to resemble a consulting agreement in certain respects. I have employees and contractors sign rights assignments and set up a paper trail to cover the periodic transfers of code to the client. Everything I do is done with the knowledge that my client will have to endure similar due diligence by a potential acquirer.

Although these documents tend to be unremarkable compared to other framework development agreements, there is always one provision on which I insist: it must be governed by the home team's law and courts, whether US or UK. IP rights and enforceability are always the lurking problems – and this goes both ways. In conversations with the general director of one substantial development house, he asked my advice on collecting payments owed by a deadbeat Delaware company. When I asked the amount in dispute, I was surprised to learn that it was only about \$25,000.00, which told me a great deal about the scale of Russian expectations. In this particular case, the development agreement specified US law and a Delaware forum, and this man was unfortunately holding the slimy end of the stick.

Creating One's Own Development House

If you or your clients have fears about the controls and compliance of established Russian companies, it is not that expensive, in the grand scheme of things, to set up one's own captive organization in Russia. One need not be Microsoft, Symantec or Google to have a permanent offshore presence. I have seen this done myself. It requires a basic investment in legal organization, premises, equipment and networking and could work well if you have a strong (and trusted) local leader on the ground to run the show. In a place like Moscow (or another provincial city with a good technical university), there's an abundance of talent if one knows where to look. With one's own organization, it is possible to control security and IP rights management and, more importantly, develop a trusted workforce.

It's the Relationship, Stupid

Legalities aside, I must say that relationships matter a very great deal in Russia (as they do most everywhere else). Whether a project works or not is largely dependent on trust, communication and shared enthusiasm for the particular project. This means (even for the lawyer) eating and drinking with one's Russian counterparts and building the kinds of friendships that make a project work and, more importantly, make it fun. It does, however, help if you like the taste of vodka. Unfortunately, I've always been more of a scotch man, myself.

David P. Crocker manages an international law practice in licensing, intellectual property, information technology and business law. He is currently qualified to practice in the United States and England and Wales. He advises United States, United Kingdom and Commonwealth clients in intellectual property, technology and business matters: www.davidcrocker.com



SUMMARY

First admitted to practice in 1989, David P. Crocker manages an international legal practice in information technology, licensing, intellectual property and business law. He has experience in technology development, domestic and international licensing, and general intellectual property law, including copyright, trademark and trade secret protection.

Crocker is currently qualified to practice in the United States and England and Wales. He has extensive international experience and advises United States, United Kingdom and other overseas clients in technology, intellectual property and business matters.

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Production Editor, *Maine Law Review*
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EXPERIENCE

Judicial Clerk, *Maine Supreme Judicial Court* 1989-1990
Crocker Solicitors 1993-Present. International practice in information technology, licensing and intellectual property law. For practice areas and case studies, go [here](#)

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PROFESSIONAL AFFILIATIONS

Law Society of England and Wales
American Bar Association
New Hampshire Bar Association
Maine Bar Association
Federalist Society
Alliance Defense Fund

INDUSTRY ASSOCIATIONS

MESDA/TechMaine—Maine IT Trade Association (Two Term President)
Society for Computers and Law (UK)

RECENT ARTICLES

Russian Outsourcing, A Personal View (Society for Computers and Law)
Buying American (Society for Computers and Law)
Keeping it in the Family: The US-UK Defense Treaty (The Legal Practitioner)

PERSONAL NARRATIVE

For a personal narrative (which is somewhat entertaining), go [here](#)

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