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Kazakhstan: Introduction of user identification requirements aimed at regulating mass media

The President of Kazakhstan, Nursultan Nazarbayev, signed, on 28 December 2017, the Law No. 128-VI on Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Information and Communication ('the Law'). Marina Kahiani and Lola Abdukhalykova, Partner and Associate at GRATA International, provide an analysis of the obligations under the Law, including user identification, data retention and data localisation provisions, applicable for telecommunications operators and website operators.

Introduction

The Law, which entered into force on 9 January 2018, is largely aimed at the improvement of legislation on issues of information and communication, and regulates social relations in the area of mass media, television and radio broadcasting, informational support and telecommunication.

Identification of users

Following adoption of the Law, the owner of a publicly available electronic informational resource shall be obliged to identify website users if they intend to publish user's information on their website. In this case the user and the owner shall enter into a user agreement¹, which is conducted by way of identification on the so-called Kazakh 'electronic government' portal or by texting a one-use password from a mobile number registered on the website.

Information provided for the purposes of entering into the user agreement shall be kept during the valid period of the agreement and for three months upon its termination. Publication of information by the user or comments of other users to such published information may be made pseudonymously.

Data retention and localisation

In addition, the Law requires telecommunication operators and owners of publicly available electronic information resources to store information on their subscribers or users in the

territory of Kazakhstan only. The Law does not clarify the purpose of this requirement, but we understand that it was introduced for the purposes of facilitating the undertakings of law enforcement and state security bodies. Telecommunication operators and owners of publicly available electronic information resources shall provide access to stored information to such bodies per their request².

Such data must be stored by telecommunication operators for two years according to existing legal requirements under the Resolution of the Government of the Republic of Kazakhstan of 30 March 2010 No. 246 on the Approval of the Rules of Conducting by Telecommunication Operators of Collection and Storage of Service Information.

There are no established time limits for the storage of such data by owners of publicly available electronic information resources. If information to be stored includes personal data, such personal data shall be stored for the period necessary to reach the purposes of collection and processing of such personal data under the Law of 12 May 2013 No. 94-V About Personal Information and its Protection. A cross-border data transfer of such information is not permitted, except for information which shall be transferred during the course of providing roaming services³. Parallel storage of databases is not

permitted, as such, the data localisation requirements may lead to additional costs necessary for the storage and protection of personal information of users.

The Law applies to all types of companies. As to the operation of websites, the Law regulates legal relations arising in the territory of Kazakhstan. Our interpretation of the law suggests that the Law shall not apply to websites which are established and supported abroad. It must be noted, however, that Kazakh state authorities have blocked access from the territory of Kazakhstan (i.e. to the population of Kazakhstan) to foreign websites that breached Kazakh legal requirements, since there was access to such websites from the territory of Kazakhstan.

Other requirements

In addition to the amendments above, the Law introduced a number of further noteworthy amendments.

Under Article 21 of the Law of the Republic Kazakhstan of 23 July 1999 No. 451-I on the Mass Media ('the Mass Media Law'), journalists have to confirm the accuracy of published information by contacting and gaining consent of relevant persons on distribution of personal, family, medical, banking, commercial and other secrecy protected by law.

The Law elaborates upon Article 19 of the Mass Media Law, related to retraction

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of information published in mass media and, as such, introduces rules for the pre-trial dispute settlement related to the publication of false data discrediting honour, dignity and business reputation of a person. Prior to the adoption of the Law, a private individual or legal entity had to apply to a court in order to dispute information discrediting honour, dignity and business reputation of a person.

However, upon adoption of the Law, if mass media publishes false data discrediting honour, dignity and business reputation of a person, the private individual or legal entity effected may apply to the mass media directly to dispute such data. Importantly, the burden of proof regarding the accuracy of published information is with the mass media, not with the individual bringing the claim. The Law also establishes requirements to disputing such data, as well as the possibility of a published response regarding the use of false data.

The list of exemptions from liability of the mass media for the disclosure of false data, under Article 26 of the Mass Media Law, has been extended. In particular, the mass media shall be released from liability if it used information distributed by another mass media source and referred to it in due course.

The Law introduced a list of cases when mass media may use the image of an individual without their consent, for example when they are participating in public activities, or they have made their photo publicly available on the internet⁴.

If a person provides and distributes information through mass media, for example by providing an official message, mass media may reply to such person with a clarification request related to such message. Prior to the adoption of the Law, only messages of state authorities were considered 'official messages', and if mass media had requested clarification of such an official message, the relevant state authority would have to provide such

clarification within three business days with the possibility of an extension for one month. Now, information provided and distributed through mass media by any person is considered to be an official message. If mass media request the official message source to provide clarification, such a person would have to provide clarification within two business days with a possible extension of 15 calendar days⁵.

Terms for providing additional information not included in official messages, per the request of the mass media, are limited to seven business days. As a Kazakh delegate mentioned, this term should allow mass media to promptly prepare analytical material, journalist investigations and allow state bodies to enhance transparency⁶.

Only Kazakh residents may render telecommunication services in Kazakhstan⁷. Moreover, employees of the telecommunication operators working with information on their users must be Kazakh citizens⁸.

Foreign television and radio channels may work in Kazakhstan only when they have established a legal entity, branch or representative office in Kazakhstan, which is registered as a foreign tele- or radio channel. If activities of the legal entity are terminated or the branch or representative office is de-registered, and another one is not established, the certificate on registration as a foreign tele or radio channel shall be revoked within 15 calendar days⁹.

The above also applies in relation to existing foreign television and radio channels working in Kazakhstan as of the enforcement date of the Law. In this case, establishment of a legal entity, branch or representative office of such channel shall be performed within six months following entering into force of the Law (i.e. by 9 July 2018)¹⁰. Following the adoption of the Law, PPP projects in the area of informational support do not fall

under the general PPP legislation and shall be implemented on basis of the informational support legislation only¹¹.

Conclusion

The main innovations of the Law in the informatisation sphere is (i) the requirement imposed on owners of a publicly available electronic informational resource to identify their users and (ii) the requirement imposed on telecommunication operators and owners of publicly available electronic information resources to store information on their subscribers or users in the territory of Kazakhstan. These amendments seem to increase the regulation of the public information sphere, raising the level of responsibility and the safety of users in electronic communication.

Moreover, the Law introduced further innovations such as a requirement to check and obtain consent for the disclosure of legally protected secrets (personal, family, medical, banking, commercial) and a local presence requirement that applies to foreign tele and radio channels. These amendments have been criticized for limiting the rights of mass media and foreign media sources. The state authorities have argued however, that significant analysis was conducted prior to the introduction of these amendments and that they would be beneficial. State authorities argued, for example, that banking, family and commercial secrets have been already protected by law and the Law has just clarified this protection in mass media context.

At this stage it is difficult to identify the exact consequences of the adoption of the Law and only its implementation will demonstrate its effect on the local environment.

1. Article 36 of the Law of the Republic of Kazakhstan of 24 November 2015 No. 418-V on Informatisation ('Informatisation Law')

2. Article 15.1 of the Law of the Republic of Kazakhstan of 5 July 2004 No. 567-II on the Telecommunication ('Telecommunication Law')

3. Article 15.2 of the Telecommunication Law

4. Article 14 of Law of the Republic Kazakhstan of 23 July 1999 No. 451-I on the Mass Media

5. Ibid. Article 18

6. Ibid. Article 18-1

7. Article 39-2.1 of the Telecommunication Law

8. Ibid. Article 21.3

9. Article 18.2, 21.2-1 of the Law of the Republic

of Kazakhstan of 18 January 212 No. 545-IV on Television and Radio Broadcasting Law ('TV and Radio Broadcasting Law')

10. Ibid. Article 42.9-1

11. Article 45 of the Informatisation Law, Article 10, 31 of the Law of the Republic of Kazakhstan of 31 October 2015 No. 379-V on Public-Private Partnerships