



**BLOCKING OF INTERNET SITES AND REGULATION OF MESSENGERS IN RUSSIA:
LEGAL DEVELOPMENTS**



The Federal Service for Supervision in the Area of Communications, Information Technologies and Mass Communications (Roskomnadzor) in accordance with Federal Law No. 149-FZ dated 7 July 2006 'On Information, Information Technologies and Information Protection' ('Information Law') maintains the 'Uniform Register of Domain Names, Indexes of Web-Pages and Network Addresses that Allow to Identify Internet Sites, Containing Information that is not Allowed for Distribution in the Russian Federation' ('Register').

Domain names and network addresses can be included in the Register on the basis of:

- 1) a court decision that became effective on the recognition of the information contained on the respective Internet site or a page of an Internet site prohibited for distribution in Russia;
- 2) decisions of the federal executive bodies authorised by the Government of the Russian Federation, if the relevant Internet sites contain certain materials and information (in particular, on the methods, ways of developing, manufacturing and using narcotic drugs, psychotropic substances and their precursors; information violating the requirements of the law on the prohibition of activities for the organisation and conduct of gambling and lotteries using the Internet and other means of communication).

From 1 October 2017, domain names and network addresses can be included in the Register by the decision of the competent authority also where there is information on a respective Internet site containing an offer for retail sale of alcohol products and(or) alcohol-containing food products and(or) of ethyl alcohol, and(or) alcohol-containing non-food products, the retail sale of which is restricted or prohibited by law.

According to the Information Law, the decision of the Moscow City Court is required to limit access to:

- information distributed with violation of copyright and(or) related rights;
- information processed with violation of Russian legislation on personal data;
- Internet sites on which information containing copyright and(or) related rights objects or information necessary for their obtaining with the use of information and telecommunication networks has been repeatedly and illegally placed.

From 1 October 2017, Roskomnadzor is authorised to send to the search engines' operators distributing advertisements through the Internet that are aimed at attracting the attention of Russian consumers, the formal request in e-form to stop issuing information about the domain name and indexes of the respective Internet sites' pages on which information containing copyright and(or) related rights objects or information necessary for their obtaining was repeatedly and illegally placed. The request shall be sent within one day from the receipt of the relevant decision of the Moscow City Court that entered into force.

The operator of the search engine must stop issuing information about the domain name and indexes of Internet site's pages, access to which is restricted by Roskomnadzor, within one day after the receipt of Roskomnadzor's request.

Blocking of 'Mirror' Internet Sites

On 1 October 2017, the administrative procedure for restricting access to copies of Internet sites blocked by the decision of the Moscow City Court in connection with the repeated and illegal

placement of information containing copyright and(or) related rights or information necessary to get access thereto - the so-called 'mirror' sites, was also enacted.

The Ministry of Communications of Russian Federation, upon receipt of the information from federal executive authorities or right holders about an Internet site that is confusingly similar to a previously blocked Internet site, shall within 24 hours, according to the procedure established by the Government of the Russian Federation¹, make a motivated decision to recognise the Internet site in question as a copy of the blocked Internet site, and send the decision to Roskomnadzor and the owner of a copy of the blocked Internet site (in e-form in Russian and English).

Within 24 hours upon the receipt of the motivated decision of the Ministry of Communications of Russia on the recognition of an Internet site as a copy of the blocked Internet site, Roskomnadzor shall:

- identify the hosting provider or another person that provides for hosting of a copy of the blocked Internet site and send thereto a notice (in e-form in Russian and English) about the decision to recognise the Internet site as a copy of the blocked Internet site;
- send to telecom operators through the system of interaction a request to take measures to restrict access to a copy of the blocked Internet site;
- send to the operators of search engines distributing advertising in Internet aimed at attracting the attention of consumers in the territory of Russia the e-request to stop issuing information about the domain name and indexes of pages of a copy of the blocked Internet site.

Within a day after the receipt of the relevant Roskomnadzor's request, the communication operator shall restrict access to a copy of the blocked Internet site, and the operator of a search engine distributing advertising in Internet must stop issuing information about the domain name and indexes of the pages of the copy of the blocked Internet site.

Thus, a 'mirror' Internet site can be blocked within three days after the receipt by the Ministry of Communications of the information about such an Internet site.

Information about copies of blocked Internet sites will be posted on the official Internet site of Roskomnadzor.

Blocking of VPN-services and anonimaysers from 1 November 2017

The Information Law is supplemented with an article providing for measures to counteract the use in the territory of Russia of information and telecommunications networks, information resources (Internet sites and(or) pages of Internet sites), information systems and software which allow

¹ The draft Decree of the Government of the Russian Federation 'On the Procedure for Making Decision to Recognise an Internet Site as a Copy of a Blocked Internet Site' provides that until proven otherwise, it is assumed that an Internet site is a copy of the blocked Internet site if it meets one of the following criteria:

- the accounts of Internet site users required for their authentication and granting access to their personal data and settings coincide with the accounts of users of the blocked Internet site;
- users are automatically redirected (server redirect) to the Internet site from the network address of the blocked Internet site.

access to the information resources and information and telecommunications networks, the access to which is restricted (blocked) in Russia (hereinafter – ‘blocked resources’). This concerns primarily VPN-services and anonymisers.

Roskomnadzor shall:

- establish and operate a federal state information system containing the list of blocked resources (‘FSIS’);
- based on the request from the federal executive authority conducting operative investigation activities or ensuring state security, determine the hosting provider or another person providing for placement in Internet of the firmware of access to blocked resources and send thereto a notice (in e-form in Russian and English) with the request to provide the data to identify the relevant owner of the firmware or to notify the latter of the need to place such data on its Internet site.

The hosting provider/other person shall within three business days after the receipt of the request notify Roskomnadzor on performance of the required actions.

Roskomnadzor, within three business days after the receipt of information that allows to identify the owner of the firmware of access to blocked resources, or independent identification of such information, shall send to the owner a request (in Russian and English) to connect to the FSIS, and the owner shall connect to this system within thirty business days after the receipt of the request. Further, within three business days, it shall stop providing the option of using such firmware in Russia.

Upon the request of Roskomnadzor, an operator of the search engine distributing advertising in Internet aimed at attracting the attention of consumers located on the territory of Russia shall also connect to the FSIS within thirty business days after the request receipt, and further, within the next three business days, it shall stop issuing in Russia information about blocked resources at requests of users of the search engine.

If the owner of firmware fails to observe the above requirements, Roskomnadzor shall restrict access to the relevant firmware (i.e., an Internet resource where the firmware is accessible).

The abovementioned changes do not apply to the use of firmware the owner(s) of which have determined the circle of users of such firmware in advance and which is used for technological purposes to provide for the activities of the relevant persons, as well as to operators of state information systems, state authorities and municipal authorities.

The procedure for identifying information resources to restrict access thereto, requirements to the ways (methods) for restricting such access, as well as requirements to information on restricting access to those information resources are to be approved by Roskomnadzor.

Duties of Organisers of the Instant Messaging Services from 1 January 2018

An organiser of the information distribution through the Internet is a person who is engaged in activities providing for functioning of information systems and(or) programs for electronic computers that are designed and(or) used to receive, transmit, deliver and(or) process electronic messages of Internet users.

From 1 January 2018, organisers of the information distribution through the Internet will have additional duties in the event they perform activities providing for the functioning of instant messaging services² (i.e., messengers).

An organiser of the instant messaging service shall be obliged:

- 1) to identify the Internet users, whose e-messages it transmits, by the subscriber number of the mobile radiotelephone communication operator, under the identification agreement concluded with the mobile radiotelephone communication operator (unless otherwise is provided for in the Information Law);
- 2) to restrict the transmission by the user of instant messaging service specified in the corresponding request of the competent federal executive authority request, within 24 hours after the receipt of the request, the electronic messages containing information prohibited for distribution in Russia and information distributed in violation of the requirements of Russian legislation;
- 3) to provide the technical possibility for users of the instant messaging service to refuse to receive electronic messages from other users;
- 4) to ensure the confidentiality of transmitted electronic messages;
- 5) to ensure the possibility of transmitting electronic messages upon the initiative of state authorities in accordance with the legislation of the Russian Federation;
- 6) not to allow the transmission of electronic messages to users of the instant messaging service in cases and according to the procedure determined by the Government of the Russian Federation.

The procedure for the identification of messengers' users and the procedure for restricting the transmission of electronic messages thereby shall be determined by the Government of the Russian Federation.

An organiser of the instant messaging service, which is a Russian legal entity or citizen, is also entitled to identify users of the instant messaging service independently by determining the subscriber number of mobile radiotelephone communication for each such user.

At the same time, an organiser of the instant messaging service that is a Russian legal person or citizen shall be obliged to store information about the identification of the subscriber numbers of the instant messaging service user only in the territory of Russia.

Identification data about the subscriber number can be provided to third parties only upon the consent of the user of the instant messaging service, except for cases provided for by federal laws (in particular, upon requests of competent authorities conducting operative investigation activities).

Performance of the above duties will require the organisers of instant messaging services to take certain administrative and technical measures. At the same time, these duties do not apply to

² Instant messaging services are defined as information systems and(or) programs for electronic computers designed and(or) used for the exchange of electronic messages exclusively between users of these information systems and(or) programs for electronic computers, in which the sender of the electronic message determines recipient or recipients of the electronic message, and at the same time there is no placement by Internet users of publicly available information on the Internet and no transfer of e-mail messages to the public.

telecom operators providing communication services on the basis of a relevant license, citizens (individuals) operating as organisers of the information dissemination through the Internet for personal, family and home needs, as well as operators of state information systems and municipal information systems.

Best Regards,

GRATA International Law Firm (Moscow)

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What we do (in conjunction with a licensed provider in the area of information technology and personal data protection):

- Advising on information protection issues;
- Comprehensive audit of information systems of personal data;
- Development of the personal data protection system and recommendations to optimise data processing and protection;
- Drafting a set of organisational and administrative documentation for the protection of personal data (including regulations on personal data processing and form of consent on personal data processing);
- Representation of clients during Roskomnadzor's inspections.

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