



MARCH 2015

Preliminary unofficial clarifications on personal data localization rules

New amendments to the Federal Law dated 27.07.2006 No. 152-FZ “On Personal Data” that inter alia introduce personal data localization rules take effect on 1 September 2015. The new rules therefore will enter into force sooner than initially announced, giving personal data operators less time to prepare for the upcoming changes.

We have collected some information on potential clarifications which are currently being drafted by the Russian Personal Data Authority – Roscomnadzor and would like to share them with you:

1. On duplication of data:

Trans-border transfer of data (Article 12 of the Federal law on personal data) was not prohibited by the new data localization rules and thus, shall remain in force once the new law rules come into force.

De jure the legislator does not use the term ‘duplication of data’, however de facto this duplication of data will be possible under the above-mentioned Article 12 of the Federal law on personal data as the duplication of data implies its trans-border transfer to the servers (data bases) located abroad.

The key to duplication of personal data shall be the following: initially the Russian citizens’ data shall be collected and adjusted in Russia via the data bases located in Russia. Once adjusted, the new data may be mirrored to the foreign servers.

2. Activities performed via data bases located in Russia

Only the following activities with Russian citizens’ personal data will have to be performed on the data bases located in Russia as they are directly mentioned in the Federal law dated 21.07.2014 No. 242-FZ “On amendment of legislation related to personal data”:

- l collection,
- l recording,
- l systematization,
- l accumulation,
- l retention,
- l adjustment (update, amendment),
- l and extraction.

Thus, other activities such as use, transfer, anonymization, block, deletion and destruction of personal data may be performed on data bases located in foreign countries.



3. Thescope of personal data localization rules

There are two approaches in relation to the application of the new rules:

- 1 According to the unofficial clarification given on the official website of Roscomnadzor in 2010-2012, the Federal law on personal data applies to foreign entities only in relation to their representative offices duly registered in Russia and exercising data processing activities. Accordingly, the new localization rules shall have the same scope of application.¹
- 1 Federal law on personal data is applicable to all cases where the process of personal data takes place in Russia regardless of the establishment of the data operator. Thus, any foreign entity that collects and processes data (performs the activities mentioned in clause (2) above) shall comply with the data localization rules and shall process Russian citizens' personal data via the data bases located in the territory of the Russian Federation.

4. The interpretation of the term "Russian citizen"

There are also two ways of interpreting the term "Russian citizen":

- 1 Russian citizen is a personal data subject that has the status of a Russian citizen under the Russian laws;
- 1 Any personal data subject, whose data was collected in the territory of the Russian Federation, will be mutually considered a personal data subject.

RECOMMENDATIONS

Keep an eye on Roscomnadzor's guidelines and clarifications, which shall be enacted in 2015.

Design the possible preliminary business model that permits the processing of personal data in Russia.

Seek legal advice in relation to the interaction with Roscomnadzor and provision of early notification of personal data processing in Russia.

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¹ <http://rkn.gov.ru/treatments/p459/p468/>