



February 2017

Legislative developments in the field of information technology

US SANCTIONS AND THE RUSSIAN FEDERAL SECURITY SERVICE

The US Treasury Department's Office of Foreign Assets Control has authorised certain transactions between US companies and the Federal Security Service.

The Office of Foreign Assets Control of the US Treasury Department issued a General Licence on 2 February 2017, which allows US companies to interact with the Federal Security Service in the course of (1) obtaining licences, permits, certifications, or notifications for the importation, distribution, or use of information technology products in the Russian Federation; (2) complying with law enforcement or administrative actions or investigations involving the Federal Security Service; (3) complying with rules and regulations administered by the Federal Security Service. Additional terms are set forth in the General Licence, available at the [link](#).

NEW FEDERAL ACTS AND REGULATIONS REGARDING INFORMATION TECHNOLOGY

Introduction of new administrative offences and differentiation of penalties for violations of personal data laws.

Federal Law "On amending the Russian Code of Administrative Offences" differentiates types of administrative liability for violating personal data laws. The following types of offences are set forth: (1) unlawful processing of personal data or processing personal data in breach of initial purposes; (2) processing of personal data without the subject's consent or with improper written consent; (3) breach of the requirement to publish the operator's personal data processing policy; (4) failure to provide subjects with information on the processing of their personal data; (5) failure to protect personal data in the course of non-automatic processing; (6) failure to comply with a subject's request to amend, block or destroy personal data; (7) failure to de-personalise personal data or to comply with de-personalisation rules.

The bill stipulates a maximum penalty of RUB 75,000 (approximately EUR 1,150) for a legal entity which fails to comply with consent requirements. The new rules will enter into force on **1 July 2017**.



Telecom operators and organisers of information distribution through the Internet ('information distributors')¹ are obliged to store metadata in Russia. Users' messages are to be stored from 1 July 2018.

Telecom operators are obliged to cease the provision of telecom services upon receipt of a request from the relevant authorities, while information distributors are obliged to provide authorities with details to enable electronic messages to be decrypted.

Amendments to the Federal Laws 'On Telecommunications' and 'On Information, Information Technologies and Protection of Information' came into force on 20 July 2016². Telecom operators and information distributors are now obliged to store metadata regarding the *receipt, transmission, delivery and (or) processing of voice data, text messages, written texts* (applies only to information distributors); *images, sounds, and video or other messages (electronic messages)* of users.

Telecom users' metadata shall be stored for three years from the completion of relevant activities. The storage period for Internet users is one year from the completion of relevant activities.

Any information distributor who enables Internet users to encrypt e-messages is obliged to provide relevant authorities in the field of information security with a key for decoding such correspondence. Violation of this obligation entails administrative liability in the form of a fine ranging from RUB 3,000 to RUB 5,000 (from EUR 45 to EUR 80) for citizens; from RUB 30,000 to RUB 50,000 (from EUR 450 to EUR 800) for officials; and from RUB 800,000 to RUB 1,000,000 (from EUR 1,250 to EUR 15,550) for legal entities.

On **1 July 2018**, the list of information subject to storage in Russia will be supplemented to add text messages, voice data, images, sounds, video and other messages of Internet users. Telecom operators and information distributors will be obliged to store such information for a period of up to six months from the moment such information is completely received, transmitted, delivered and (or) processed. The rules, terms and volume of storage are to be adopted by the Russian Government before 1 July 2018.

From 1 January 2017, foreign entities are obliged to pay VAT in the amount of 15.25% for provision of e-services. Foreign entities must register with the Federal Tax Service through their taxpayer's account not later than the 25th day of the month following the end of the fiscal quarter.

Foreign entities that provide e-services to persons (excluding individual entrepreneurs) must register with the Federal Tax Service and should pay VAT in the amount of 15.25% of the proceeds received for provision of such services.

E-services include, *inter alia*:³

- granting rights to use computer software (including computer games) and databases via the Internet, including the provision of remote access, updates and additional functional options;
- advertising services on the Internet;

¹ The term 'organiser of information distribution through the Internet' applies to persons (entities) that maintain information systems and (or) software designed and (or) used for the receipt, transmission, delivery and processing of Internet users' electronic communications – article 10.1 of Federal Law No. 149, dated 27 July 2006, 'On Information, Information Technologies and Protection of Information'.

² These amendments were made by Federal Law No. 374-FZ, dated 6 July 2016, 'On Amending the Federal Law "On Combating Terrorism" and Other Legislative Acts of the Russian Federation in terms of Additional Measures on Counteracting Terrorism and Maintaining Public Safety'.

³ An exhaustive list is provided in Article 2 of Federal Law No. 244-FZ, dated 3 July 2016, 'On Amending the First and Second Parts of the Russian Tax Code'.



- services related to publishing online offers of goods (services), or the purchasing of proprietary rights;
- providing technical, organisational, informational and other opportunities online by means of information technologies and systems for e-business (including providing real-time online platforms);
- providing services for website administration;
- granting rights to use e-books (electronic editions) and other electronic publications, as well as informational and educational materials, graphic depictions, musical works with or without text, and audiovisual works via the Internet.

Foreign entities may register through their taxpayers' accounts on the Federal Tax Service official website, <http://www.nalog.ru/>.

Terms have been established for the public procurement of products originating from a foreign state, as have the requirements for contractual bids to supply goods.

Russian Government Regulation No. 968, dated 26 September 2016, 'On Restrictions and Terms of Access of Different Radio-electronic Goods Originating from Foreign States for the Purposes of Public and Municipal Procurement' sets out: (1) a list of goods subject to additional restrictions and terms of access for the purposes of public and municipal procurement; (2) requirements for the wording of the bid; (3) grounds on which goods may be classified as manufactured in Russia or in foreign states that are members of the Eurasian Economic Union.

Radio-electronic goods subject to restrictions under this regulation include communication devices, data storage media, projectors, monitors, scanners, printers, ATMs, tape recorders, television cameras, and more.

COURT DECISIONS

LinkedIn.com has been blocked in Russia due to violation of Russian personal data laws. The LinkedIn Case is the first precedent since the amendments to the Federal Laws 'On Personal Data' and 'On Information, Information Technologies and the Protection of Information' came into force in September 2015.⁴

Tagansky District Court ruled that linkedin.com activities violated Russian personal data and privacy laws. The decision was upheld by the Moscow City Court. The website linkedin.com was included on the register of violators of personal data rights and blocked.

The court's decision was based on the following:

- LinkedIn Corporation collects information on Russian citizens, and uses and transfers such information, including via linkedin.com. Contrary to Russian law, LinkedIn Corporation performed the recording, systematisation, accumulation, storage, amendment (updates and changes), and extraction of personal data using databases located outside Russian territory.
- According to the confidentiality policy located on linkedin.com, LinkedIn Corporation collects and processes third parties' personal data. However, these third parties are not subject to the terms and conditions of LinkedIn. Thus, consent from the third parties is absent, in violation of Russian law.

⁴ Federal Law No. 242-FZ, dated 21 July 2014, 'On Amending Russian Laws by Specifying the Rules for Personal Data Processing in Informational and Telecommunication Networks'.



- Unlawful collection and processing of personal data constitutes a breach of privacy.

Amendments to the Federal Law 'On Personal Data' came into force on 1 September 2015. These amendments: (1) established a procedure for blocking the websites of violators of personal data laws; (2) created an automated information system called the 'Register of Personal Data Rights'; and (3) introduced a so-called 'personal data localisation rule'. The Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor, <http://eng.rkn.gov.ru/>) regularly monitors online resources for compliance with Russian personal data laws.

BILLS

An attempt to regulate audiovisual service providers' activities and to restrict foreign participation: a bill on audiovisual service providers' activities and restriction of foreign participation was brought before the State Duma (Bill No. 37671-7). The bill has passed the first reading in the State Duma.

This bill introduced the term 'audiovisual service provider', defined as an entity that generates and (or) arranges for the distribution online of audiovisual products. Audiovisual products include movies, films, other audiovisual works and (or) TV channels, TV programmes and video programmes. The bill also sets out criteria for classifying a website as an audiovisual service, such as the criterion of traffic rankings among Russian users.

Foreign states, international organisations and organisations under their control, foreign legal entities, Russian legal entities with foreign capital in an amount above 20%, foreign citizens, stateless individuals, and Russian citizens with citizenship in a foreign state may not be audiovisual service providers.

Introduction of new types of software for the purposes of public and municipal procurement. Two bills have been brought before the State Duma, but a first reading has not been scheduled (Bills No. 1187178-6 and 1187187-6).

The proposals introduce new terms, 'proprietary (closed) software' and 'public domain software', and impose a requirement to prove public domain software and associated services cannot be procured from a Russian entity in the course of software procurement under 44-FZ and 223-FZ.⁵

The new terms are defined as follows:

- **Public domain software** – software with an open source code which is distributed under open licences and under a special licence agreement, under which the user is vested with the right to install, launch, freely use, analyse, distribute and modify the software at his own discretion for any lawful purpose.
- **Proprietary (closed) software** – software to which the rights are held by the developer or another copyright holder, with an exclusive right to use, modify, copy and distribute this software by technical means or by the granting of licences, and including an absolute or partial prohibition against copying, modifying and distributing the software product under any circumstances.

*Authors: Pavel Sadovsky, Counsel, Head of Intellectual Property / TMT Practice,
Maria Demina, Associate, Intellectual Property / TMT Practice*

⁵ Federal Law No. 44-FZ, dated 5 April 2013, 'On the Contractual System for the Public and Municipal Procurement of Goods, Work and Services'; Federal Law No. 223-FZ, dated 18 July 2011, 'On Procurement of Goods, Work and Services by Certain Types of Legal Entities'.



Key Contacts

**Pavel SADOVSKY**

Counsel, Head of
Intellectual Property / TMT Practice

pavel_sadovsky@epam.ru

+7 495 935 8010

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