

Russia Practice

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Law on audio-visual services in Russia: Regulation of the activity of streaming services

New changes to the Federal Law "On Information, Information Technologies, and on the Protection of Information" (the "Information Law") enter into force on 1 July 2017. These changes are intended to regulate the activity of streaming services. The law extends not only to Russian streaming services, and therefore this brief overview may also be of interest to the owners of foreign sites.

Who falls under the purview of the changes?

The law affects online video services and other audio-visual resources which are understood to mean websites, software, and information systems organizing or creating the distribution of audio-visual works on the Internet, and which meet the following criteria:

- the service operates for a fee or in return for watching advertising aimed at Russian consumers, and
- the service is used by at least one hundred thousand visitors located in the Russian Federation per day.

Russia's mass media and internet regulator, Roskomnadzor, will be responsible for classifying specific services as audio-visual services subject to the new regulations, by establishing a register of audio-visual services. To create this register, Roskomnadzor will request information from the owners of the audio-visual service; information should be provided within 10 days from the date of receipt of the request.

The draft methodology has been developed to determine the number of users of such services. Their daily number will be determined by Roskomnadzor on the basis of:

- publicly available information published on the information resource;
- information received as result of the use of information systems and/or software;
- information provided by the owners of audio-visual services.

The law establishes a number of entities to which it will not apply. These include Internet media, search engines, and also resources where audio-visual productions are posted primarily by users. However, the Law does not specify the meaning of the term "primarily by users", and it is expected that Roskomnadzor will provide this specification. It is likely that in practice the Law makes this exception primarily for social networks or video hosting sites.

Therefore, the Law will be oriented first and foremost to streaming services. Gaming services are apparently not covered by the new Law, as they are not audio-visual services.

Evidently, the Law extends primarily to Russian online video services. At the same time however, proceeding from the wording shown above, the Law will also have effect with respect to foreign resources if they meet the criteria indicated above. To this end, the Law will rely on possible links to Russia (a criterion already familiar in Russian law) in the company's activity, specifically whether its activity is aimed at users located within the Russian Federation.

What actions must be taken to comply with the new rules?

The Law mandates that owners of audio-visual services must discharge certain public legal obligations:

- not to allow audio-visual services to be used to commit crimes, disclose legally protected secrets, or to distribute materials that contain obscenities or pornographic images, or which promote violence and cruelty;
- to mark the information product with the corresponding mark and/or textual warning of restrictions on its distribution to children; this classification must be made by the owner of the audio-visual service if it has not previously been done;
- not to allow the distribution of unregistered television channels or television programs;
- to install the software recommended by Roskomnadzor to establish the number of users of the service;
- to promptly eliminate violations of the laws of the Russian Federation as identified by Roskomnadzor.

Liability

In parallel with the changes to the Information Law, new provisions were made to the Code of Administrative Offenses, corresponding to the obligations indicated above. Violations of these provisions are subject to a fine of RUB 500,000 to RUB 3,000,000. At the same time, one should remember that through the courts Roskomnadzor has the right to restrict access to websites in the Russian Federation; such sanctions may be applied to foreign companies.

Foreign investment in an audio-visual service

The Law establishes that the owner of an audio-visual service may only be (1) a Russian legal entity or (2) a citizen of Russia. Accordingly, a foreign company providing such services in Russia must create a Russian legal entity.

However, as noted above, the definition of the owner of an audio-visual service given earlier in the Law indicates that the owner may also be a foreign legal entity. Thus, in our view the Law does not give an unequivocal answer even for such a fundamental question as to whether a foreign company can be the owner of an audio-visual service.

Even more confusing is the wording of the Law in respect of the possibility of a foreign company participating in the authorized capital of the owner of an audio-visual service. According to the Law, a foreign legal entity (or a Russian legal entity with foreign ownership of more than 20 per cent) that owns an information resource distributing audio-visual works over the Internet, and which has less than 50 per cent of its audience in Russia out of the total number of users, may freely participate in the capital of a Russian owner of an audio-visual service in an amount of up to 20 per cent. If this limit is exceeded, the ownership stake must be approved by a special government commission.

Therefore, any foreign legal entity that does not own an information resource distributing audio-visual works over the Internet may freely participate in the capital of a Russian owner of an audio-visual service without limitation.

Conclusion

In passing a law regulating the activity of streaming services, Russia's legislators are attempting to control the activity of audio-visual services distributing series, documentaries, films, etc. over the net. The body that will exercise control is Roskomnadzor. However, the Law's provisions on foreign participation in the activity of audio-visual services is fairly contradictory, so companies should approach the new regulations with caution, study the relevant legal framework, and await pronouncements and queries of Roskomnadzor and the approval of the regulations on the government commission, its membership, and operating procedure, in order to have the opportunity to make further conclusions and forecasts.



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