

Legal Alert

ANALYSIS OF FEDERAL LAW NO. 236-FZ "ON THE ACTIVITIES OF FOREIGN ENTITIES ON THE INTERNET TELECOMMUNICATIONS NETWORK IN THE TERRITORY OF THE RUSSIAN FEDERATION"

On 1 July 2021, the Federal Law No. 236-FZ "On the Activities of Foreign Entities on the Internet Telecommunications Network in the Territory of the Russian Federation" (hereinafter the "**Law**") entered into force.

The purpose of the Law is to create equal conditions for the activities of Russian and foreign persons and entities on the territory of the Russian Federation. Thus, this Law applies to foreign legal entities, foreign organizations that are not legal entities, foreign citizens and stateless persons operating on the Internet on the territory of the Russian Federation (hereinafter referred to as "**Foreign Entity(ies)**"). Basic condition for applying the Law is daily attendance of an online resource by more than **500 thousand users** from the territory of the Russian Federation.

This condition seems to be applicable to any online resource of Foreign Entity, including websites and pages on websites in the Internet, software, hosting services, pages on social networks and mobile apps. This list is open source. The Law names such resources as "Information Resources of a Foreign Entity (hereinafter the "Information Resource").

Pursuant to the Law, such Foreign Entity must:

- 1) post on the Information Resource an electronic form for sending applications from Russian persons and entities, in accordance with the requirements of the Russian Internet and data privacy regulator (the "Roskomnadzor")
- 2) register an account on the official website of Roskomnadzor and use it to interact with state bodies of the Russian Federation;
- 3) from January 1, 2022, create a branch, or open a representative office, or establish a Russian legal entity, if it does not exist, and ensure that such branch, office or legal entity performs the following functions in the Russian Federation:
 - a. receiving and considering appeals from Russian citizens and any entities;
 - b. execution of court decisions, decisions (requirements) of state bodies of the Russian Federation;
 - c. representing the interests of a Foreign Entity in courts;
 - d. taking measures on the territory of the Russian Federation to restrict access to information or to delete information disseminated in violation of the legislation of the Russian Federation, if such a duty is provided for by the legislation of the Russian Federation on information, information technology and information protection.

Roskomnadzor monitors Information Resources and approves the methodology for determining the number of users per day, and also reserves the right to request information from Foreign Entity necessary to maintain a list of Foreign Entities to whom, in the opinion of Roskomnadzor, this Law is applicable (hereinafter the "List"). These Foreign Entities are obliged to provide the requested information no later than within 10 days from the date of receipt of the request. In addition, Roskomnadzor may send a request to the hosting provider about the need to provide data to identify the owner of the Information Resource, to which an answer must be provided within 3 business days.

Roskomnadzor monitors the performance by a Foreign Entity of its obligations set forth by the mentioned Law.

Therefore, a Foreign Entity must install one of communication technology suggested by Roskomnadzor and designed to determine the number of users of an Information Resource.

If the daily number of users from the Russian Federation accessing a Foreign Entity's Information Resource is below 500,000 users per day over a certain period of time, information about such Foreign Entity may be removed from the List.

As of the date of publication of this article, the List includes 13 Foreign Entities.

Restrictive and enforcement measures:

- 1) informing the Information Resource's users of violation of Russian laws;
- 2) ban on advertising a Foreign Entity and/or its Information Resource as an object of advertisement;
- 3) ban on placing advertisements on a Foreign Entity's Information Resource;
- 4) restricting money transfers from individuals and businesses to a Foreign Entity in the territory of the Russian Federation;
- 5) ban on appearing in search results;
- 6) ban on collection and cross-border transfer of personal data;
- 7) partial limitation of access to a Foreign Entity's Information Resource;
- 8) full ban on access to a Foreign Entity's Information Resource.

In addition to this Law, Internet activities of Foreign Entities in the territory of the Russian Federation are also regulated by other Russian federal laws and regulatory acts, including the following:

- the Federal Law No. 149-FZ “On Information, Informational Technologies and Data Protection” dated 27 July 2006;
- the Russian Government Decree No. 1837 “On Approval of Website Account Rules, Including Rules to be Followed by Foreign Legal Entities, Unincorporated Foreign Organizations, Foreign Nationals, and Stateless Persons that Operate on the Internet Telecommunications Network in the Territory of the Russian Federation in Having Accounts Registered and in Communicating with Government Agencies of the Russian Federation Using Such Accounts, and Approval of a List of Such Government Agencies” dated 27 October 2021;
- the Russian Government Decree No. 1836 “On Approval of a Methodology for Identifying Hosting Providers and Other Persons Who Host Information Resources on the Internet and Whose Users are Located in the Territory of the Russian Federation, Advertising System Operators, and Organizers of Dissemination of Information on the Internet” dated 27 October 2021;
- the Russian Government Decree No. 1835 “On Approval of the Rules to be Followed by the Federal Service for Supervision of Communications, Information Technology, and Mass Media in Contracting with Russian Legal Entities, Self-Employed Entrepreneurs, Foreign Legal Entities, Unincorporated Foreign Organizations, Foreign Nationals, and Stateless Persons to Confirm Performance of Operations to Render Services Involving Transfers of Funds, Including Electronic Funds, and/or Receipt of Payments on Behalf of Foreign Legal Entities, Unincorporated Foreign Organizations, Foreign Nationals, and Stateless Persons Conducting Operations on the Internet in the Territory of the Russian Federation, that are on the List of Persons Subject to Restrictions on Transfers of Funds, Including Electronic Funds, and Receipt of Payments from Individuals and Legal Entities on Their Behalf” dated 27 October 2021;
- the Order of Roskomnadzor No. 130 “On Approval of a Procedure for Determining a Daily Number of Users of Information Resources” dated 16 July 2021 (registered with the Russian Ministry of Justice on 22 July 2021, No. 64342);
- the Order of Roskomnadzor No. 129 “On Approval of a Procedure for Publishing a List of Foreign Entities Operating on the Internet in the Territory of the Russian Federation on the Official Website of the Federal Service for Supervision of Communications, Information Technology and Mass Media” dated 16 July 2021 (registered with the Russian Ministry of Justice on 22 July 2021, No. 64341);
- the Order of Roskomnadzor No. 159 “On Approval of a Procedure for the Federal Service for Supervision of Communications, Information Technology and Mass Media to Notify Search Engine Operators, Who Publish Internet Advertisements Aimed at Attracting Attention of Users Located in Russia, of a Request to Inform Users of a Foreign Entity’s Information Resource of Violation of Russian Law by the Foreign Entity Carrying Out Operations on the Internet in Russia” dated 13 August 2021 (registered with the Russian Ministry of Justice on 8 September 2021, No. 64941);
- the Order of Roskomnadzor No. 156 “On Approval of Requirements for the Electronic Form of Applications by Russian Individuals and Entities” dated 13 August 2021 (registered with the Russian Ministry of Justice on 8 September 2021, No. 64938);
- the Order of Roskomnadzor No. 157 “On Approval of Requirements for the Contents of Information on a Breach of Russian Law by a Foreign Legal Entity, Foreign Unincorporated Entity, Foreign National, or a Stateless Person Carrying Out Activities on the Internet in the Territory of the Russian Federation, for the Purposes of Informing the

26 November 2021

Users of Such Foreign Entity's Information Resource" dated 13 August 2021 (registered with the Russian Ministry of Justice on 8 September 2021, No. 64940);

- the Order of Roskomnadzor No. 158 "On Approval of a Procedure for the Federal Service for Supervision of Communications, Information Technology and Mass Media to Notify Search Engine Operators, Who Publish Internet Advertisements Aimed at Attracting Attention of Users Located in Russia, of a Request to Block a Foreign Entity's Information Resource from Search Results" dated 13 August 2021 (registered with the Russian Ministry of Justice on 8 September 2021, No. 64939).

We monitor the developments of legislation in the sphere of intellectual property, information technology and information security, as well as personal data protection, and advise our Russian and foreign clients on all cross-border aspects of assignment of rights and activities in the Russian Federation taking into account all amendments and respective court practice.

We always aim to be one step ahead by offering our client the most efficient legal tools and actions above all possible scenarios.

We are always delighted to offer our services to new clients.

If you have any questions or should you need legal support, please contact us as follows:

YOUR CONTACTS AT RGP:



Maria Samartseva

Counsel

Head of IP Practice

+7 495 139 6513

msamartseva@rgp.legal

Rybalkin, Gotsunyan & Partners