

Client Update

New Regulation of Online Cinemas in Russia

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On May 1, 2017, Federal Law No. 87-FZ on Amendments to the Federal Law on Information, Information Technologies and Protection of Information and Certain Laws of the Russian Federation (“Law No. 87”) was adopted. Law No. 87 is mainly targeted at providers which stream videos via over-the-top (OTT)¹ platforms (online-cinemas)² and other providers distributing digital videos to Russian customers. It is not targeted at:

- providers which allow users to post their own videos;³
- search engines⁴ and
- network mass media.⁵

Law No. 87 directly affects such businesses by restricting foreign participation and imposing new obligations on their owners. Law No. 87 comes into force on July 1, 2017.

The main provisions of Law No. 87 are described in more detail below.

ONLINE-CINEMA AS AUDIOVISUAL RESOURCE

As of July 1, 2017, an audiovisual resource will have to be included in the register of audiovisual resources (the “Register”) maintained by the Federal Service for

¹ OTT content is delivered over the Internet without the involvement of a multiple-system operator in the control over or distribution of the content.

² E.g., Netflix, iVI, MegaFon.TV.

³ E.g., YouTube, RuTube.

⁴ E.g., Google, Yandex.

⁵ E.g., Tvrain.ru.

Oversight in the Sphere of Communications, Information Technologies and Mass Media (“Roskomnadzor”).

Online-cinema will qualify as an audiovisual resource if it is a website, webpage, information system or software which is used (i) to form and/or organize the online distribution of fee-based audiovisual products,⁶ or (ii) for viewing advertisements, if such advertisements are targeted at consumers resident in Russia, provided that more than 100,000 Internet users resident in Russia access such online-cinema daily.

An online-cinema will not qualify as an audiovisual resource if it is a network mass media or an information resource providing access mainly to content posted by users.

If fewer than 100,000 Internet users access an audiovisual resource daily over a period of three months, its owner can apply to Roskomnadzor for its removal from the Register. If this threshold is not met during six consequent months, Roskomnadzor will exclude it from the Register on its own.

RESTRICTIONS ON FOREIGN PARTICIPATION IN ONLINE-CINEMAS

Only a Russian company or a Russian citizen without foreign citizenship can own online-cinema which qualifies as an audiovisual resource (“AR”):

- foreign⁷ participation in a Russian company which owns AR is restricted as follows: a 20% stake⁸ in the charter capital of the AR owner for Foreigners who own audiovisual distribution products resource for which Russian subscribers constitute *more* than 50% of its total audience; or
- subject to governmental commission clearance - a more than 20% stake in the charter capital of the AR owner for Foreigners who own audiovisual distribution products resource for which Russian subscribers constitute *less* than 50% of its total audience; the governmental commission will only approve the Foreigner’s acquisition of ownership, control or management of

⁶ According to Article 1263 of the Civil Code of the Russian Federation, an audiovisual product is a product consisting of a fixed series of interconnected images (with or without sound) and intended for visual and acoustic (if applicable) perception with respective technical equipment. Audiovisual products include films, TV and video films and other similar products.

⁷ A foreign participant is: a foreign state; an international organization; an entity controlled by a foreign state or international organization; a foreign company; a Russian company with more than 20% foreign participation; a foreign citizen; a stateless person or a Russian citizen with citizenship of another state; and affiliates of persons listed above (each - a “Foreigner” and together - “Foreigners”).

⁸ Including ownership, management or control over such stake.

more than 20% of the charter capital of the AR owner if it promotes the development of the market of audiovisual resources in Russia.

DUTIES OF AN OWNER OF AUDIOVISUAL RESOURCES

An AR owner must:

- not use the AR for committing a crime, for the distribution of information constituting a protected secret (e.g., a state secret), distribution of materials encouraging terrorist attacks or publicly justifying them, other extremist materials, materials encouraging pornography, cruelty or violence, and materials containing taboo language;
- classify information intended for children before the start of its distribution and label it accordingly;
- comply with restrictions and prohibitions provided by legislation on elections and referenda;
- comply with requirements for the distribution of mass media⁹;
- avoid broadcasting TV channels or TV programs not registered as mass media in Russia;
- provide e-mail addresses or web-forms and make available its name and address for legal communication purposes; and
- install one of the types of software offered by Roskomnadzor for calculating the number of subscribers to the AR.

If an AR posts information that is prohibited for distribution in Russia, Roskomnadzor will issue a compliance order to its owner. If the owner repeatedly, within a year, fails to comply with Roskomnadzor's compliance order or fails to provide documents confirming compliance with restrictions for foreign participation or to comply with these restrictions, Roskomnadzor will apply to the court to restrict access to the AR and may subsequently block it. An AR owner (if it is a company) may also be subject to a fine of up to RUB 3,000,000 (approx. USD 52,500), and its officers up to RUB 700,000 (approx. USD 12,246) (depending on the particular violation).

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⁹ Such requirements are established by the Law of the Russian Federation No. 2124-1 on Mass Media dated December 27, 1991 and, *inter alia*, provide for the obligation to give output details for each program.

Please do not hesitate to contact us with any questions.