

# Regulation of audiovisual services

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## Introduction

On 1 July 2017 the Federal Law of 1 May 2017 on the Amendment of the Federal Law on Information, Information Technologies and Data Protection and Certain Legislative Acts (the Audiovisual Services Law) took effect.<sup>(1)</sup> The law introduced an innovative legal regime for the operation of streaming and video on demand (VOD) services in Russia. More specifically, it introduced Article 10.5 into the Federal Law on Information, Information Technologies and Data Protection of 27 July 2006 (the Data Protection Law), as amended, which:

- defines 'audiovisual services';
- imposes special obligations on audiovisual service owners; and
- introduces penalties for non-compliance with the law.

Notably, neither the Audiovisual Services Law nor Article 10.5 of the Data Protection Law distinguish between the governance of streamed videos and VOD services. Therefore, the relevant legal provisions will be applied *de facto* to all online cinemas functioning in Russia.

## Concept and definition

According to Article 10.5(1) of the Data Protection Law, an 'audiovisual service' is a website, webpage, IT system or piece of software that:

- is used for collecting or organising a set of audiovisual works;
- can be accessed for a fee (ie, subscription based) or in return for watching certain commercials (ie, advertising based);
- is targeted at customers in Russia; and
- is accessed on a daily basis by more than 100,000 internet users in Russia.

Pursuant to Article 10.5(16) of the Data Protection Law, the following information resources are exempt from regulation and are therefore not deemed to be audiovisual services under the law:

- registered online media products;
- search engines; and
- user-generated content models.

## Foreign investment and ownership

An audiovisual service can be owned by a Russian business entity or a Russian citizen who is not a citizen of another state. The Audiovisual Services Law sets out a restriction on foreign ownership of an audiovisual service in Russia. Specifically, unless otherwise provided by an international treaty, a

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foreign company or person or a Russian company with a foreign share participation of more than 20% may own, manage or directly or indirectly control more than 20% of the shares in the equity capital of the owner of the audiovisual service that is accessed by less than 50% of all internet users located in Russia, provided that the special commission of the Russian government has authorised such ownership, management or control. The responsible government commission must authorise such a foreign investment or participation if it will promote the development of the national audiovisual services market.

### **Registration and de-registration**

Roskomnadzor, the national IT regulator, maintains the audiovisual services register.

Under the Audiovisual Service Law and Article 10.5(2) of the Data Protection Law, Roskomnadzor can:

- organise the monitoring of online resources;
- determine the methods for calculating the number of users of online resources on a daily basis;
- ask owners of audiovisual services for the information necessary to maintain the register. Such information must be provided to Roskomnadzor within 10 days from receiving the corresponding request.

If an online resource located by Roskomnadzor in the course of its monitoring process meets the abovementioned criteria for audiovisual services, Roskomnadzor must:

- recognise the online resource as an audiovisual service and record it in the audiovisual services register;
- determine the hosting provider or other party allowing for the deployment of the audiovisual service on the Internet;
- send an electronic notification (in Russian and English) to the hosting provider or other party allowing for the deployment of the audiovisual service on the Internet requiring them to provide the necessary information regarding the audiovisual service owner's identity; and
- record the date and time of the notification dispatch in the corresponding IT system.

Within three working days of receiving the abovementioned notification, the hosting provider or other party allowing for the audiovisual service's deployment on the Internet must provide the information necessary to identify the audiovisual service owner. As soon as such information has been received, Roskomnadzor will send another notification to the audiovisual service owner for recordation of the online resource in the register. In response, the audiovisual service owner must provide Roskomnadzor with all of the necessary documents to meet the foreign investment and ownership requirements within two months. Failure to comply with this obligation may result in the audiovisual service being blocked in Russia on the basis of the effective court decision.

Where an audiovisual service is accessed by less than 100,000 users per day over three months, it may be excluded from the register (ie, de-registered) on the audiovisual service owner's request. An audiovisual service can also be de-registered without the owner's request if it was accessed by less than 100,000 users per day over six months.

### **Principal obligations, content marking and filtering, liability and blockage**

The Audiovisual Service Law and Article 10.5(1) of the Data Protection Law impose the following obligations on audiovisual services:

- Audiovisual services cannot be used to commit crimes or disseminate state or other privileged or proprietary information or prohibited content (eg, terrorist or extremist promotional materials, pornography, materials promoting violence or cruelty or obscene materials). Non-compliance with this obligation may result in an administrative fine of up to Rb1 million.
- Audiovisual service providers must comply with the special age marking requirements for video content (in particular, by selecting '+0', '+6', '+12', '+16', '+18' or 'prohibited for minors').

Non-compliance with this obligation may result in an administrative fine of up to Rb500,000.

- Audiovisual service providers must comply with the restrictions and bans imposed by the national referendum and election legislation. In particular, they must prevent the dissemination of political advertising during so-called 'campaign silence' days.
- Audiovisual service providers must comply with the national legislation on the dissemination of mass media and the prevention of the dissemination of unregistered TV channels or programmes. Non-compliance with this obligation may result in an administrative fine of up to Rb700,000.
- Audiovisual service providers must provide an appropriate contact email and the full name of the audiovisual service owner.
- Audiovisual service providers must install software provided by Roskomnadzor in order to determine the number of users accessing an audiovisual service.

Where the dissemination of prohibited content is detected, Roskomnadzor can file a notice on the audiovisual service owner ordering the immediate cessation of the infringement. Non-compliance with such a notice may result in an administrative fine of up to Rb1 million. Repeated non-compliance may result in an increased administrative fine of up to Rb3 million.

In addition, Roskomnadzor can file a lawsuit with a competent court seeking the restriction of access to an infringing audiovisual service in Russia in cases of:

- repeated non-compliance (within one year) with an order by Roskomnadzor to cease an infringement established in the effective ruling of an administrative case; and
- non-compliance with foreign investment and ownership requirements.

Failure to comply with these obligations and the applicable legal requirements may result in the infringing audiovisual service being blocked. In any event, where an audiovisual service fails to comply with requirements set out by law, it will incur administrative, criminal and other liabilities.

## **Comment**

Online cinemas are one of the unique IT concepts that have recently received legal attention and special regulation in Russia. The Audiovisual Service Law's enactment will undoubtedly boost the development of the national market of streaming technologies and VOD services, as well as the whole online entertainment industry in the future. However, operators of such platforms should prepare for monitoring and random checks by Roskomnadzor and bring the distribution of their online media content in line with the effective legal requirements in Russia as soon as possible.

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## **Endnotes**

(1) 87-FZ.

(2) 149-FZ.

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