

February 3 2023

Recent developments in regulation of online advertising in Russia

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- › [Introduction](#)
- › [Online advertising marking](#)
- › [ID for online advertising](#)
- › [Reporting obligation](#)
- › [Liability issues](#)

Introduction

The Russian advertising regulatory landscape has seen significant developments in recent months, following the introduction of new requirements for online advertising.

From 1 September 2022, article 18.1 of the Federal Law of 13 March 2006 N 38-FZ became effective. Under this update, new compliance obligations for advertising participants arose.

The advertising watchdog – the Federal Anti-Trust Authority (FAS), as well as the internet technology regulator, the Federal Service for Supervision of Communications, Information Technology and Mass Media (RKN) – prepared relevant guidelines to help navigate the new requirements. Further, effective from 9 January 2023, new specific by-laws requirements relevant for on-line advertising come into force.

This article analyses the key points in the new online advertising regulations taking into account the regulatory guidelines that are relevant for marketing strategies in Russia.

Online advertising marking

Since 1 September 2022, it is mandatory to accompany online advertising for the Russian market with the denomination of "advertising" (in Russian), as well as with the legal name of the advertiser and/or with the reference to their website, which must provide information about the advertiser.

An exception is made for advertising in television or radio programmes that are broadcasted online.

In its guidance letter of 3 October 2022, No. KT/90922/22, the FAS specifically notes that "advertising" (in Russian) must be used and that variations of it (eg, "sponsored content" etc.) are not permissible.

Since the FAS, as a general rule, does not consider the advertiser's own website as advertising, then the marking requirement must not apply to the advertiser's website – except for cases when the information is clearly "advertising" that requires individual assessment.

ID for online advertising

Before publication, each online advertising content must be assigned with an identification number (ID). Conducting online advertising without the assigned ID constitutes a breach.

The ID requirement does not apply to emails and push-notifications for existing consumers or the advertiser's own goods or services (or goods and services of affiliated parties).

The new norms provide for creation of special entities, such as "advertising data operators" (ADO). The main role of ADOs is to assign IDs for advertising.

The ADOs, duly authorised by the RKN, are published in a [list](#).

As clarified by the RKN of 3 November 2022 N 191 (effective since 9 January 2023), ID placement is carried out by adding the ID in the form of a sequence of bytes or a set of alphanumeric text based on Latin letters by attaching the ID to the index of the website page online in the form of "https://site.ru/?erid=base58 (protobuf)", where "site.ru" is the name of the website, and "erid" is the name of the advertising identifier that is transmitted to the server via a link.

In some formats, it is impossible to include an ID as described above – in those cases the ID must be placed:

- at the beginning of the text block;
- on top of the text-graphic block;
- at the beginning and/or on top of the video clip in the form of a mark "erid: xxx", where "erid" is the name of the advertising identifier, and "xxx" is a set of alphanumeric text based on Latin letters.

The ID must be available for visualisation, including through the use of software tools.

Reporting obligation

Another role of the ADO is to ensure transfer of advertising data to the RKN for further regulatory compliance, including for further review by the FAS and tax authority.

In this regard, advertisers and advertiser distributors will need to disclose the chain of online advertising distribution, including:

- the names of the parties participating in online advertising distribution;
- their registration (tax) numbers;

- information on advertising contracts; and
- samples of the advertising content.

The specific list of information for disclosure is approved by the government in their decree of 30 May 2022 N 1362-p.

Liability issues

The breach of the new requirements will be subject to administrative fines, such as up to 500,000 rubles (\$7,000) or less, depending on the circumstances.

However, given that the changes in regulatory requirements resulted in the necessity for businesses to adapt, there is currently no wide pool of administrative cases for breaches.

It must be noted that popular advertising distribution channels such as advertising via bloggers or influencers on social networks is not excluded from online advertising marking requirements, which requires a careful approach toward this type of advertising.

Nevertheless, come spring 2023, the situation may have changed, resulting a number of cases on the matter. Thus, it is recommended that any current advertising policies are adapted to the new online advertising requirements.

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