

Russia Practice

September 2017

New legal risks arising from the use of VPN technologies

Federal Law No. 276 dated 29 July 2017 which prohibits the use of special software or services if they enable users to gain access to websites blocked in Russia, enters into force on 1 November 2017.

This law has triggered numerous questions, in particular from foreign companies. Some companies believe that the law will make it difficult or completely impossible to communicate with their Russian subsidiaries through VPN technologies.

In view of this fact, a more detailed study of the law is recommended.

Substance of the law

The law prohibits the owners of specialist software, information networks, website, and also corresponding equipment (collectively “**VPN Technologies**”) from providing technologies that make it possible to circumvent the ban on access to websites blocked in Russia.

Consequently, VPN Technologies are not prohibited as such: only the use of these technologies to provide access to websites blocked in Russia is prohibited.

VPN Technologies may be understood to mean, *inter alia*:

- virtual private networks (VPNs);
- anonymous proxy servers;
- certain types of routers;
- other software or technical equipment that performs similar functions.

The law targets the owners of such VPN Technologies, but not their users. Operators of search engines disseminating advertising that targets Russian consumers over the Internet are also subject to the law. Such search engines should stop providing links to blocked websites.

How will the law work?

In connection with the adoption of this law, Roskomnadzor will initially identify all the owners of VPN Technologies.

In so doing, Roskomnadzor will contact hosting providers and cooperate with the law enforcement authorities.

Roskomnadzor will then send notices in Russian and English to the owners of VPN Technologies on the need to connect to a special information system in the Internet which contains information on the websites banned in Russia.

Owners of VPN Technologies are required to connect to this system and restrict access to the websites indicated in the system.

The law stipulates the adoption of a wide range of bylaws, which will clarify certain issues. At present such bylaws (some of them) only exist in draft form. Accordingly, a detailed analysis of such bylaws is not worthwhile.

Liability for non-compliance with the law

If an owner of VPN technologies does not comply with the law, then its website may be blocked in Russia.

The law does not stipulate any other penalties.

However, if the owner of the VPN Technologies subsequently ensures compliance with the law, it will once again be granted access to Russian users.

Exception

The law includes an exception to the general rule.

For example, owners of VPN Technologies who

- previously determined the user community of such VPN Technologies and
- use such VPN Technologies for technological purposes for the performance of their activity

are permitted access to websites blocked in Russia.

In connection with this fact, we would like to point out that the wording of this exception looks fairly ambiguous, as neither this law, nor other laws (or bylaws) contain any interpretation of the term “technological purposes”.

Accordingly, such “technological purposes” could be understood to mean a fairly wide range of factors. In view of such positions, this “flexible” wording is even handier for the owners of VPN Technologies.

It is worth noting here that at the draft law stage this exception had been worded more clearly and included a single criterion: use of VPN Technologies by individuals employed by the owner of such VPN Technologies.

Recommendations

As this law has still not entered into force, one cannot talk about any judicial practice. Moreover, the law in question will be clarified and supplemented by bylaws, which will be adopted by the competent authorities after the law has already entered into force.

At the same time, we would like to point out the following: As a rule, companies do not develop their own VPN Technologies, but instead procure them from developers (suppliers). Consequently, if you use VPN Technologies that are owned by a third party, there is a risk that Roskomnadzor’s notice might be sent to this third party and might be ignored. As a result, this VPN Technology would be blocked for Russia.



Accordingly, we recommend that you check the relevant legal relations with the suppliers of the VPN Technologies, and where possible compel the owners of such VPN Technologies to comply with corresponding Russian legislation.



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