

Main accents. Industry consensus

The Runet in 2012: Legislation

Special edition for the Conference
«RUNET 2012. Year in review»

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PREAMBLE: 2012 TRENDS

Monitoring Russian and international legislation concerning Internet technology and related fields is the responsibility of RAEC's Commission on Legal Affairs.

The Committee is convinced that the year 2012 was marked by an increase of both state regulation and attention to the Internet and various issues related to its development on behalf of legislators and executive authorities.

A few initiatives to regulate the following fields have been put forward, i.e.: protecting children from 'harmful' information: intellectual property and copyright on the Internet, limiting online media responsibility for comments left by users, fighting extremism and libel on the Internet, filtration of the Internet in order to restrict user access to prohibited content.

We must note on the sporadic nature of many legal initiatives, and the high speed of their passing through the various levels of approval; while many other issues that we see as more urgent take much longer time and harder work to be reviewed and approved.

In 2012, RAEC took part in work related to the following issues:

- Part Four of the Civil Code of the Russian Federation
- Amendments to the Federal Law no. 436 «On protecting children from information harmful to their health and development», in part of improving the procedure of information assessment and abolishment of compulsory labelling of Internet resources;
- Preparing the Government Decree no. 1101 (specifying Internet content filtration procedure provided by by Article 15.1 of the Federal Law no. 149 and Article 46 of the federal Law no. 126);
- Improving legal regulation related to counteracting extremism (act drafted by Communications Ministry);
- Phrasing official position on the Federal Law no. 152 «On Personal Data» and suggestions for improving the system of personal data protection.

Federal Law no. 436

«On protecting children from information harmful for their health and development»

Current status:

- In force since September 01, 2010

Relevant industry achievements in 2012:

Passed in late 2010, the law sets the criteria for classifying information (i.e. on the Internet), access to which must be restricted for children; by a few age groups. The law provides for an expert assessment of sources of information resulting in their labelling with special marks related to various age groups.

RAEC takes favourable view of: cooperation with the Ministry for Communications and the Federal Service for Supervision in the Sphere of Communications, Information Technology and Media; related to amending the law «On protecting children from information harmful to their health and development»; preparing initiatives related to adapting free licenses to the national legislation; suggestions aimed at improving legal regulation in part of counteracting extremism. We also support initiatives to reform the laws concerning personal data, in line with the current reform taking place in Europe.

RAEC sees as negative the following events and tendencies of the year:

amendments to Federal Laws no. 149 «On information, information technology and protecting information, and no. 126 «On communications», introducing filtration by IP addresses in the Russian segment of the Internet; as well as the final version of Government Decree no. 1101, specifying the mechanism of filtration provided by said laws. These amendments were not coordinated with technical or legal industry experts and need to be changed, taking into account technological aspects of the Web, the need for public supervision over blocking of sites, as well as the existing practices of law implementation.

In the coming year 2013, the following issues will remain relevant:

- Implementation of Federal Law no. 139 and related bylaws in the light of technological changes in the light of technological changes in the network addressing system.
- Regulation of personal data in its national and international aspects.
- Regulation in the intellectual property field.
- Postal and courier services.
- Investigation of cyber crimes, related law-enforcement practices and evidential base issues.
- Open government and open data.
- Regulation of cloud services.
- Regulation of electronic payments.

RAEC plans to participate in all work and provide expertise and support on all of these directions.

The law also describes the responsibility of a person organising access to the Internet to implement organisational, technical and programming measures to protect children from inappropriate information.

In July 2012, a number of amendments suggested by RAEC were made to the law: exceptions were made in part of resource labelling rule (the law now only applies to resources registered as online media); expert assessment procedures were changed; implementing filtration measures, provided by Article 14, was made responsibility of persons organising access, not of service providers.

Federal Law no. 436

«On protecting children from information harmful for their health and development»

As result of cooperation between RAEC's Internet Media Committee and Roskombadzor, recommendations were drafted and approved on identifying the concept of «media specialising in spreading information of public and political relevance»; recommendations related to information product symbol on websites, etc.

RAEC's position

Correct and efficient implementation of the law is impossible without making a number of separate changes to the law. For this purpose, we suggest that an interdepartmental working group be created, to include representative of relevant state institutions, Internet industry and mass media.

It is also important to take into account the industry's experience of self-regulation:

- RAEC manifesto «Russian Internet in the 21 century: children's safety»

Federal Law no 139

«On amending the Federal Law «On protecting children from information harmful for their health and development» and other laws of the Russian federation»

Current status:

- In force since November 01, 2012

Case history. RAEC's position:

development», disbanding the requirement for compulsory age labelling, and transferring the obligation to filtrate the Internet in places accessed by children from operators to "persons organising Internet access».

Articles 3 and 4 of the law amend the Federal Laws no. 126 "On communication» and no. 149 "On information, information technology and protecting information» that specify the procedure for removal and blocking access to illegal content on the Internet by hosting providers, i.e. by IP address.

The procedure provided by the law has a number of conceptual drawbacks and systemic contradictions. The new Article 15.1 of the Law "On information, information technology and protecting information», providing for creation of so-called 'black lists» of sites and blocking of resources by IP address comes in direct contradiction with Article 3.1 of the same Law, that states that legal regulation of relations in the field of information, information technology and protection, is based on the principle of "freedom to seek, obtain, pass, produce and distribute information using any legal means»; because when blocking sites by their IP address, an operator blocks access to all information hosted on the same address.

Thus situations arise when legal rights of law-abiding Internet site owners are violated, as their sites are often blocked because of excessive rigidity of the procedure provided by Law no. 139.

Furthermore, the very procedure of expert assessment of information with its subsequent classification as inappropriate or illegal arises much criticism. The prospects of law implementation arouse even more doubt, especially in the light of advancement of dynamic addresses and IPv6 protocol, the incompleteness of hosting provider base (i.e. international providers) and the possibility that a number of different resources are located on a single IP address.

- A number of educational projects organised in partnership with RAEC members, e.g. www.i-deti.org
- Series of conferences, events and projects where the issue is discussed by experts, i.e. representatives of the industry, state authorities and the civil society.

2013 action plan

- Cooperation with Roskonnadzor in order to optimise procedures related to online mass media
- Adoption of the amendments to the law proposed by RAEC
- Enhancing the role of self-regulation

We deem it necessary to formalise the principle that an Internet resource cannot be blocked in case that blocking may infringe the citizens' right to legally and freely search, obtain, produce and distribute information; in the Government Decree no. 1101 (specifies the procedures provided by Federal Law no. 139) the

Related self-regulation initiatives:

- Cooperation agreements between Hosting Providers and Registrars Commission and the Federal Drug Control Service; the Sochi 2014 Olympic Games Steering Committee;
- Formation of RAEC member electronic address database for notifications from Roskonnadzor.

2013 Action plan

- Cooperation with Roskonnadzor related to by-laws and optimisation of procedures for cooperation with hosting providers, site owners and communication operators;
- Adoption of the amendments to the law and related bylaws suggested by RAEC, i.e. amendments requiring operators to take the necessary measures preventing restriction of access to legal information; and reinforcing the principle of unacceptability of blocking access to such information; and regulating implementation of Federal Law no. 139 in working days (as opposed to calendar days).
- Further arguing the position of the industry, the demands of the expert community and RAEC, as well as the suggestions to create a toll of public monitoring of the law's implementation.
- Clarifying the industry's position on RAEC non-participation in the work of Register of banned sites provided by the Federal Law no. 139.

Draft Law no. 47538-6/1

«On amending parts one, two, three and four of the Civil Code of the Russian Federation»

The Draft Law arose as result of implementation of Presidential Decree no. 1108 «On improving the Civil Code of the Russian Federation» of July 18 2008.

In the Decree, the President stated the following aims of improving the nation's civil legislation:

- further advancement of basic principles of civil legislation of the Russian Federation, in line with the current level of market relations;
- reflection of law-enforcement practices and court interpretations of the Civil Code in the Code itself;
- the Civil Code of the Russian Federation should approach the principles for regulation of corresponding relations in the European Union;
- recent positive experience in modernising civil codes in some European nations should be taken into account;
- supporting uniformity of regulation of civil relationships in members of the Commonwealth of Independent Countries;
- ensuring stability of the civil laws of the Russian Federation.

Later on, the President also gave instructions, i.e. on Part Four of the Civil Code that regulates intellectual property rights. As result of the President's meeting with industry representatives in april 2011, he issued an instruction to prepare a list of draft amendments to Russian laws, aimed at providing authors with an possibility to open unlimited access to their intellectual property based on free licensing schemes (Creative Commons, GNU FDL, etc.).

Current status:

- Moved on the floor in the State Duma on 3 March 2012.
- Approved in the first reading.
- Second reading postponed till Spring 2013.
- The draft law may be split in several parts.

RAEC's position:

As result of a year worth of work in 2011 and 2012, with participation of RAEC, rights holders, Skolkovo, the Ministry of Culture, the Ministry for Communications, the Presidential Research Centre for Private Rights, and other relevant ministries, authorities and organisations, a compromise version of Part Four of the draft law was published on the website of the relevant State Duma committee.

The text implements, in particular, Mr. Medvedev's instruction related to adapting the national laws to the use of free licences similar to Creative Commons and GNU FDL. The compromise version also provides for liability of information brokers in case of copyright violations on the Internet (Article 1253.1).

However, the situation with Articles 150 through 152 causes some concern. The current edition of the draft law contains an addition to Article 152 of the Civil Code (Honour and business reputation protection), providing for liability for distributing any false information on a citizen. The article can thus be used to hold owners of media portals and databases liable for any mistakes or misprints in their published material, some of them being a compilation of data received from numerous sources. While we fully uphold the very right of a citizen to have their honour and reputation protected, i.e. on the Internet, we believe that the suggested changes to the law are unbalanced, untimely and potentially harmful for the development of the Russian segment of the Internet.

Related self-regulation initiatives:

- RAEC manifesto «Russian Internet in the 21st century: copyright»

2013 action plan

- Cooperation with the State Duma Committee on Civil, Criminal, Arbitral, and Procedural Legislation
- Developing constructive dialogue related to copyright protection and digital content monetisation between rights holders and representatives of the Internet industry under the auspices of RAEC Committee on Media Content
- Advocacy of RAEC's amendments to the draft law: i.e. amendments limiting liability of information brokers and setting the procedure for their reaction to written complaints and addresses from rights owners.
- Supporting the position of the Research Centre for Private Rights.
- Continued advocacy of RAEC and industry position on the matter.

Criminal Code of the Russian Federation

Current status:

- On November 29 2012, a number of amendments to the Criminal Code were approved, adding Articles 159.1 through 159.6 to the Code (Federal Law no. 207).

RAEC's position:

The new articles pronounce credit, allowance, banking card, insurance and computer information fraud as all separate types of crime, and provide for criminal liability in cases of deliberate non-compliance with contract obligations.

The amendments also update the current Criminal Code article that provides for liability in cases of falsifying evidence or results of investigations, with a new, fourth part, providing for liability of investigators in cases of evidence forgery with the aim to prosecute an innocent person or cause harm to their honour and/or business reputation.

Federal Law no. 152 «On Personal Data»

Current status;

- In force since 2007.

RAEC's position

Current laws on personal data does not take into account the modern level of advancement of the Internet, significantly slowing down the development of electronic commerce and cloud services in the Russian Federation.

We believe it expedient to take the following steps: ratify the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and make the necessary corresponding changes in the federal Law no. 125 (in particular, create an independent body overseeing the state of an individual's rights with regards to personal data processing), make changes in other laws in compliance with Federal Law 152.

In order to implement the above stated changes, we suggest that creation of an interdepartmental working group be considered. The

In general, RAEC welcomes the amendments. However, parts 3 and 6, in the light of Articles 272 and 273 of the Criminal Code lead to ambiguous interpretations of liability for cyber crimes resulting in major damages. The contradictions between Articles 272-273 and Article 159 must be rectified.

2013 action plan

- Cooperation with the Council of the Federation on cyber crime issues
- Proposing amendments to Articles 159 and 272-273 of the Code, in cooperation with the expert community
- Continued advocacy of RAEC's position on amendments to Chapter 28 of the Criminal Code

group should include representatives of the industry, information security experts, representatives of Communications Ministry, the Ministry for Economic Development, the Federal Security Service, the Federal Service for Technology and Export Control and Roskomnadzor.

2013 action plan

- Cooperation with Roskomnadzor as part of work of Personal Data Consultative Council
- Cooperation with Communications Ministry, the Ministry for Economic Development, the Federal Security Service, the Federal Service for Technology and Export Control
- Work with the expert community on suggesting amendments to the Federal Law no. 152
- Continued advocacy of RAEC's position on the matter to make it heard by the state authorities

Counteracting Extremism

On amendments to some legislative acts of the Russian Federation with regard to improving legal regulation of counteracting extremist activities (act drafter by the Ministry of Communications)

Current status:

- The draft is currently being discussed with the Internet industry and Federal Government bodies

RAEC's position:

The draft act provides for amending the Administrative Code of Russian Federation, as well as the laws "On Mass Media", "On Counteracting Extremist Activities", "On Information". The draft differentiates between promotion and public demonstration of prohibited extremist symbols, with exceptions made for demonstration with scientific, critical, academic and artistic purposes, given such demonstration is not promoting respective extremist ideas. The draft

also specifies the conditions under which extremist materials and storage equipment can be confiscated; improving the procedure of warning media of inappropriate extremist content.

RAEC experts believe the draft act will help optimise and improve the current law-enforcement practices, make the law more flexible and corresponding to today's state of technological advancement, reduce the risks of administrative liability for online media.

2013 action plan

- Cooperation with Communications Ministry, participation in working groups on improving the draft act