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A Legal Perspective on Third Party Network Access

By Carly L. Huth

Organizations need to have well defined control over vendors' access to their networks, as illustrated by a recent large data breach. The costs of data breaches have been shown to greatly increase due to third party errors, including vendors and business partners. However, access by third parties is often essential, or at the very least preferred, as it can greatly increase the efficiency of business transactions. Beyond the risks of the costs associated with a data breach, legal obligations also impose security requirements for an organization's vendors. For example, the Gramm-Leach-Bliley Act imposes [Read more](#)

E-Discovery in the Asia-Pacific Region: Diverse Approaches

By Andrew Guy, Maureen M. Japha and Edward H. Rippey

Corporations conduct business in an ever-expanding number of nations. In an increasingly litigious world, understanding foreign e-discovery laws is essential. If a U.S. District Court orders a party to disclose documents held abroad—which is within the court's power—a party might risk violating foreign law. To zealously represent their clients, attorneys must be able to navigate through these different legal systems. The diversity of e-discovery law is particularly true in the Asia-Pacific (APAC) region. Each APAC nation takes a distinctive approach to discovery. Some nations have enacted laws [Read more](#)

Identity Policy and Lex Informatica: Emerging Approaches

By Timothy Reiniger and Stephen Mason

This article describes the emerging application of Lex Informatica to identity policy in the information society. We conclude that, in the machine-space of the digital environment, the concept of the 'creditworthiness' of human actors developed in the Law Merchant is a useful historical and legal model for enabling trust in Lex Informatica. In the global network information society, it is crucially important that individuals be given the evidentiary means to assert their informational rights in a system of assured value and in a similar manner that exists with trust, based on various forms of credit exchange today. [Read more](#)

Problems for Internet Business and Users Caused by New Russian Legislation

By Mikhail S. Zhuravlev and Tatiana A. Brazhnik

Russian lawmakers have paid close attention to the dissemination of information on the Internet since 2008. So it is not surprising that during last two years legislators enacted probably a record number of laws concerning the Internet and introducing different mechanisms of blocking websites. The latest amendments have raised a heated debate among scholars, users and businesses. A recent conference in Moscow brought together respected specialists to discuss the most arguable legal issues and their influence on e-commerce, the game industry and Internet users. [Read more](#)

The FTC's Authority to Regulate Data Security under Scrutiny

By Charlene A. Brownlee

The FTC initiated an enforcement action against Wyndham Worldwide Corporation, a hotel group, in June 2012 for "unfair and deceptive acts and practices" arising from alleged data breaches which compromised thousands of consumers' payment card and personal information. The FTC contended that Wyndham's "failure to implement reasonable and appropriate security measures" caused the breach. Rather than settling the allegations with the FTC and entering into a consent order, Wyndham filed a motion to dismiss the FTC's lawsuit, challenging the FTC's statutory authority under Section 5 of the FTC [Read more](#)

2014 (3Q) Information Law Updates: Cases, Statutes, and Standards

By Thomas J. Shaw

In the third quarter of 2014, there have been many developments in domestic and international information law, [Read more](#)

Problems for Internet Business and Users Caused by New Russian Legislation

By *Mikhail S. Zhuravlev and Tatiana A. Brazhnik*



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specialists to discuss the most arguable legal issues and their influence on e-commerce, the game industry and Internet users.

How Russian Legislation Affects the Internet

The amendments to Russian legislation on new requirements for organizers of information dissemination on the Internet and popular bloggers were one of the most discussed issues at the conference. The new legislation came into force on August 1, 2014. However, the mechanisms of its implementation entail a lot of controversial issues.

The representative of Google, Andrey Silin, in his lecture devoted to these amendments tried to highlight the main problems of application of the new legislation, the difficulties that law-enforcing authorities, Internet companies and Internet users can face. As expected, the lecture generated more questions than answers. Indeed, the implementation of the new amendments opens for experts in the field of information law a wide field for discussion and research.

An organizer of information dissemination on the Internet

The greatest ambiguity exists around the issues of determining who have to be treated as the organizers of information dissemination on the Internet. Para. 1. Art. 10.1 of the Federal Law "On Information, Information Technologies and Protection of Information"² defines an organizer of information dissemination on the Internet as "a person responsible for ensuring the functioning of information systems and/or computer software, intended and/or used for receiving, sending, delivering and/or processing electronic messages for the Internet users". This definition is extremely abstract, as it formally covers a huge amount of web-sites providing an opportunity to disseminate and exchange information between the Internet users (for example, web-sites of e-shops with customer

¹ The 3rd International Summer School on Cyber law held by the National Research University Higher School of Economics.

² Federal Law N 149-FZ "On Information, Information Technologies and Protection of Information" dated as of 27.07.2006 (as amended of 05.05.2014)

opinions). The law excludes from its scope only the operators of public information systems, the communication operators acting under the license, as well as the individuals carrying out activities for personal and domestic needs. All other organizers of information dissemination are obliged to comply with a range of certain responsibilities.

First, an organizer of information dissemination on the Internet shall in due time inform Roskomnadzor³ about the beginning of business operation activity.

Second, the organizer must store the information about the facts of reception, transmission, delivery and (or) processing of voice information, writings, images, sounds or other electronic messages of users of the Internet and the information about those users within six months after the end of such activity within the territory of the Russian Federation. In certain cases this information has to be delivered to the relevant government agencies.

This requirement means that the organizer of information dissemination on the Internet is obliged to place the servers in the territory of the Russian Federation to store the necessary information. Moreover, amendments to the Federal Law №152-FZ⁴ include instructions pointing that from September 1, 2016 article 18 will be supplemented with the following rule: "When collecting personal data, including through the information and telecommunication network "Internet", the operator is obliged to provide recording, systematization, accumulation, storage, refinement (updating, alteration), the extraction of personal data of citizens of the Russian Federation with the use of databases residing on the territory of the Russian Federation". Consequently, by 1 September 2016 organizers of information dissemination will have to create data-centres in Russia, and this new duty entails significant financial difficulties for companies whose foreign servers nowadays store large amounts of data about Russian Internet users.

Moreover, as protected data includes the name and mobile phone number and e-mail address, and even social media accounts, such large foreign companies like Apple, Facebook, Google and Microsoft fall within the scope of the law. The same requirements are true for many smaller ones, such as Ebay, PayPal, Booking.com or Reddit, where you have to provide your email address if you want to register. Moreover, even small websites for car rental or shops, sending their goods around the world via international delivery, have to comply. Messengers, like Telegram, keeping copies of all user data in multiple locations around the world, may be subject to blocking upon the application from any person using this service.

Naturally, this raises the question of the limits of jurisdiction of the Russian legislation with respect to the persons and objects. According to the logic of the legislation, these requirements apply to any person (including foreign persons). However, it is unclear the information about what kind of users an

³ Federal service for supervision in the sphere of telecom, information technologies and mass communications

⁴ Federal Law N 152-FZ "On Personal Data Protection" dated as of 27.07.2006 (as amended of 04.06.2004)

organizer of information dissemination on the Internet is obliged to keep on the territory of the Russian Federation. For example, if a foreign user disseminates information in Russian and this information is available on the territory of Russia, this information is very likely to be stored on a server in another country (or even not stored at all, if there is no such requirement). How should foreign organizer of the information dissemination on the Internet comply with the requirement for data storage on the territory of the Russian Federation? The legislation does not contain any clarification on this issue.

Third, the organizers of information dissemination on the Internet are obliged to cooperate with the government authorities (what is more, to keep confidentiality of such cooperation) and meet the hardware and software requirements.

For failure to comply with the new requirements Russian legislation provides measures of liability. In cases of a breach of duty, which is established by court order, Roskomnadzor will send notification to the organizer of information dissemination on the Internet. If, after notification duty is not executed again, the access to information systems of the organizer is limited. It does not specify the mechanism of limitation of access to information systems. Whether to limit access to the IP address of the violator or the URL of a specific web pages - these issues are not specified in the new legislation.

In addition to this, the law provides administrative liability for violation of the established requirements in the form of a fine for individuals - from 1 thousand to 5 thousand roubles; for officials - from 10 thousand to 50 thousand roubles; for legal entities - from 100 thousand to 500 thousand roubles.

Bloggers

Para. 1 Art. 10.2 of the Federal Law "On Information, Information Technologies and Protection of Information" determines that a blogger is "an owner of Internet website and/or website page where publicly accessible information is posted and which is being accessed by more than 3,000 Internet users per day". The law establishes the requirement for the inclusion of persons who meet these criteria in the official register of bloggers. For this purpose there are two options for inclusion in the register: initiative and compulsory.

The initiative procedure of inclusion into the register means the independent installation of a counter of visitors to a site (a web page) and submission of this information to the operator of the register (Roskomnadzor). Compulsory inclusion into the register is carried out by Internet monitoring by Roskomnadzor and notification on the need to provide information about the owner of the site (the web page). Removal from the register may be made independently (if the number of daily users is less than 3000 within three months) or by a decision of Roskomnadzor (if the number of daily users is less than 3000 during six months).

Regardless the fact of inclusion to the register, all bloggers have to comply with a number of requirements which are similar to the requirements for the mass media. In particular, the blogger must:

- post on his website or web-page his surname and initials and e-mail address for sending him legally relevant messages;
- not allow use of a website (web-page) for the purposes of committing a crime, disclosure of state or other secrets protected by law, distribution of materials calling for terrorism or justifying it, other extremist materials, materials that promote pornography, cult of violence and cruelty, and materials containing foul language;
- check validity of posted information in advance and remove posted false information immediately;
- prevent dissemination of information about the private life in a violation of civil legislation;
- comply with requirements and restrictions stipulated by the legislation on referendum and elections;
- comply the legislation on distribution of public information;
- not harm the honor, dignity and goodwill of individuals and goodwill of legal entities;
- not allow use of a website (web-page) in order to conceal or misrepresent publicly significant information or to disseminate false information under the guise of reliable reports;
- prevent dissemination of information with the aim of discrediting individuals or certain categories of individuals on grounds of sex, age, racial or ethnic origin, language, religion, profession, place of residence and work, political beliefs;
- publish the court decision on a website (web-page) if it is so ordered by the decision.

It is assumed, that along with duties the registered bloggers will have a range of rights and guarantees. The legislation stipulates the following rights of bloggers:

- to seek, receive, transmit and distribute the information in any manner in accordance with the legislation of the Russian Federation;
- to post on their website or web page personal judgments and opinions with specifying their name or alias;
- to post or permit to post on their website or web page texts and (or) other materials of other Internet users unless it contradicts the legislation of the Russian Federation;
- to place paid advertising on their website or web page in accordance with the civil law, the Federal Law N 38-FZ "On Advertising" dated as of 13.03.2006.

However, it should be noted that all these "new" rights do not provide bloggers with some new opportunities. Before enacting these amendments, all bloggers fully exercised the right to freedom of

speech and freedom of expression (according to the Constitution of the Russian Federation) and could receive income from placing ads on their websites (it was necessary just to comply with requirements of Civil Code, Tax Code and legislation on advertising). Meanwhile, the new law does not provide any additional guarantees for bloggers like those provided for the mass media.

The application of the new legislation on bloggers raises several problematic issues. Firstly, difficulties arise with the counting of visits to websites and web-pages of bloggers. The regulations prescribe that determining the number of visitors should be carried out by "counting one-time visits of unique users to the website (web-page), ensuring its full load in the browser, viewing or other actions for at least 15 seconds, except the downloading technical pages of servers". There are various counters, based on different principles of counting, in view of what it is required to develop more detailed rules for determining the proper counters and probably to determine a list of recommended counters. The uniqueness of the user is also rather vague concept as it can be either an identified person from any device and any IP-address, or a unique IP-address, or a unique device (one user can have a lot of devices for an access to the website).

Secondly, it is not clear why the legislator extends all requirements only over individuals (it is required to post the name and initials of an individual). Blogs can be published by legal entities also. The nature of the violations committed with the use of individual's blogs has no substantial difference from corporate blogs.

Third, a number of requirements of the legislation are highly uncertain. For example, the requirement of inadmissibility "to conceal or misrepresent publicly significant information" has no corresponding obligation to disclose valid publicly significant information. Also it is unclear what publicly significant information in question is and what liability can be imposed for the concealment or misrepresentation of such information.

In addition, unclear questions remain regarding the legal status of the blog, if, for example, several persons have an access to its editing. The entity of a website (web-page) owner is not elaborated sufficiently in jurisprudence. Large attention should be paid to the issues related to imposing of legal liability for offences committed with the use of a website or a web page. Such violations can be committed by persons who gain unauthorized access to a blog. This raises the issues of ensuring the credibility in evidence and the risks of objective incrimination of a website (web-page) owner.

Anonymity of e-payments

Within the single package of amendments to the current Russian legislation there was also a law, which introduced a compulsory procedure of identification of individuals engaged into any Internet payments with other individuals and legal entities – foreign and Russian. Thus, the amendments to the

Federal Law N 115-FZ⁵ and to the Federal Law "On the National Payment System"⁶ introduce the simplified identification of clients who are natural persons. The new legislation stipulates the conditions and methods for performing such identification which is obligatory for performing a range of e-payments on the Internet.

This law, according to the notice attached to the document, is aiming to reduce the risk of using anonymous means of payment in order to counter the financing of terrorism and legalization of incomes received in a criminal way. These legislative novelties act with some differences for both physical and legal persons.

As for natural persons, the act prohibits the usage of non-personified electronic means of payment for the electronic transfer of money to another natural person. It also prohibits obtaining electronic money transferred from another individual for a person not having passed the simplified identification. However, there is an exception from the rules introduced: the usage of non-personalized electronic means of payment may be performed by the client - a natural person- for the electronic transfer of money to a Russian legal entity, only in case of the balance of electronic money at any time does not exceed 60 thousand rubles, and the total amount of transferred electronic cash does not exceed 200 thousand rubles per month.

In addition, the law provides the procedure of simplified customer identification, which does not require a user to submit personally any passport data to the representative of the operator. Now the client can remotely submit to operator his/her last name, first name, patronymic, series and number of identity document, Individual Insurance Account Number, Individual Taxpayer Number, the number of obligatory medical insurance policy and the mobile phone number. There is also an alternative method of identification- the client can log-in via electronic signature.

It is obvious that the amendments introduced into current legislation will significantly affect the opportunity of the Internet users to use their e-wallets, as well as business opportunities of online stores and other e-commerce websites.

In respect to various legal entities, the amendments contain more stringent measures. Legal entities and individual entrepreneurs have the right to transfer electronic money only to the individuals having passed the identification. Foreign commercial companies also fall within the scope of this act. Thus, currently it is impossible to make an anonymous payment to a legal entity that is a non-resident of the Russian Federation. Consequently, to shop in foreign online stores, the payer will need to undergo a full or simplified identification.

⁵ Federal Law N 115-FZ "On Counteracting Legalization (Laundering) of Income Obtained by Criminal Means and Financing of Terrorism" dated as of 07.08.2001 (as amended of 21.07.2014)

⁶ Federal Law N 161-FZ "On the National Payment System" dated as of 27.06.2011(as amended of 05.05.2014)

The new legislation also extends some requirements over the operators of electronic money. They are obliged to provide credit institutions with possibility to free use of information resources to confirm the identity of the client. In addition, until 1 November 2014 they have to ensure an opportunity for the clients to choose between the available methods of simplified identification.

The most problematic issue of the introduced amendments in relation to e-payments is that the procedure of simplified identification, even though it is now mandatory for all entities, may not be fully realized. To perform a simplified identification, operators of electronic money need to establish relations with the numerous public authorities, the Pension Fund of the Russian Federation and the Federal Fund of Compulsory Medical Insurance to verify the information provided by the client. These operations require large investments of time and money. The law provides the state bodies with a term up to 1 October 2014 for adjusting to the new rules. After November 1, operators of electronic money will be required to provide the client with the choice between all the legal ways of the simplified identification (personal submission of personal documents, delivering the information, the identification by means of electronic signature), and the effect of the amendments will actually begin at the specified time.

Also it should be noted that the industry of online games will suffer significant losses from the enacting of the new legislation, because the majority of payments and transactions in this industry are made by anonymous users. In cases of payment for utility services or purchasing expensive and complex equipment anonymity is not required and can even hamper the operation. Whereas, in the area of online games anonymity and ease of payments are the important marketing issues of every software developer, since a significant part of consumers of their services are minors.

In addition to the requirements of identification of the Internet users in the area of e-payments, the Regulations of the Russian Federation Government dated as of 31.07.2014 No 758 have stipulated the new rule limiting the anonymity of Internet users: "Provision of universal communications service, data transfer and access to the Internet using the points of collective access is carried out by the operator of universal services only after the identification of users. User authentication is performed by an operator of universal communication services through the establishment of surname, name, patronymic (if available) of a user, confirmed with the identity document". Now it will be impossible, for example, to connect to a public access WI-FI point without preliminary identification of the user.

Conclusion

The new regulations concerning the organizers of information dissemination and bloggers are rather abstract. The possibility of broad interpretation of the legislative provisions and their selective usage increase the risks that the new regulation will not be used as a legal, but rather as a political tool. Meanwhile, there is still some hope of making quality crafted sub-legislative regulations which will bring greater clarity and certainty into the regulatory model, limit the scope of the governmental

control over the information exchange participants on the Internet, and specify the procedures of the control. Important roles in this issue should be played by the lawyers in IT-sphere who are able to elaborate valuable advice and constructive proposals on improvement of legal regulation in the area of Internet law and telecommunications law

The most common trend of the Russian information legislation is tightening the requirements for identification of the Internet users. All these changes are enacted in the framework of the so-called anti-terrorist package of amendments. Meanwhile, many of these changes impose serious restrictions on the Internet users and require operators, service providers and Internet companies to bear high costs to comply with new legal requirements. In this regard, the questions of the balance between private and public interests, compliance of the new amendments with the constitutional principles and guarantees are becoming more relevant.

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