

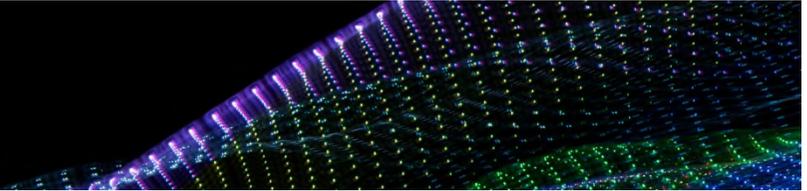
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# **CYBERSECURITY, PERSONAL DATA PROTECTION, AND INTERNET REGULATION IN RUSSIA**

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May 22, 2018

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**SECTION 01**

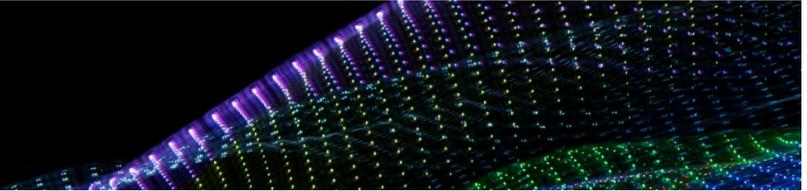
**DATA TRANSFERS IN  
RUSSIA: REGULATORY  
FRAMEWORK AND TRENDS**

# Data privacy regulations in Russia



- Federal Law No. 152-FZ “On Personal Data” of 2006 (“**PD Law**”)
  - based on the EU Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and is conceptually aligned with the GDPR
  - personal data is any information directly or indirectly related to an identified or identifiable individual
  - no concepts of “data controller” and “data processor”
  - concept of “data operator”, a person that organizes or carries out (alone or together with other persons) the processing of personal data and determines the purposes of processing
  - data processing can be delegated to a third party, which will be acting under the authorization or “instruction” of the data operator
- Certain provisions of the Personal Data Law may apply to the data operators that have no legal presence in Russia but target Russian customers, including
  - localization requirement (Russian citizens only)
  - a set of requirements on the legitimate data transfer

# Localization requirement



- Mandatory requirement to use “Russia-based databases” to record, systematize, accumulate, store, update and modify, and retrieve Russian citizens’ personal data
  - purchase or lease servers, which are physically located in Russia, to keep “primary database”
  - engage a local partner to collect Russian citizens’ personal data
- The use of the cloud-based solutions to comply with localization rule is a gray area
- The requirements on personal data localization do not impose any additional restrictions on cross-border transfer of personal data
- Failure to comply with the localization requirement may lead to the blocking of a website or an application for access of the Russia-based IP addresses

**Examples: LinkedIn, Viber**

# Legitimate data transfers requirements

- Data transfer to a third party located in Russia or abroad is permitted, provided that the data operator has:
  - consent of the individual on transfer of data (unless one of the exemptions applies)
  - data transfer agreement with the third party
- Requirements to individuals' consents on data transfer differ depending on where the third party processor is located:
  - jurisdictions that provide "adequate protection" of the rights and interests of individuals - all countries that are signatories to the EU Convention and the countries specifically approved by the Russian Data Protection Authority (Roskomnadzor)
  - jurisdictions that do not provide "adequate protection" of the rights and interests of individuals
- Transfers to the countries that do not provide adequate protection require **"qualified" written consent** of individual, unless one of the exemptions applies

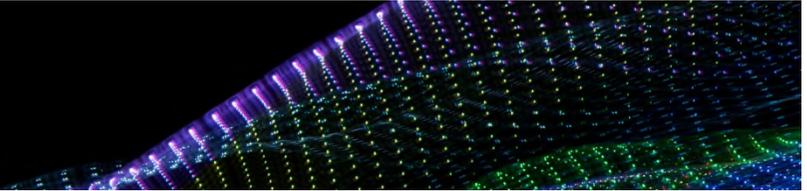
# Individual's consent on data transfer

- Types of consents:
  - general consent (may be obtained by electronic means, including email)
  - “qualified” written consent
- No statutory form of “qualified” written consent, however, according to the PD Law such consent must contain information about:
  - full name and ID number of the individual
  - list of personal data to be transferred
  - data operator details (i.e., full company name, address and state registration number) and details of **all companies that may have access to the transferred data** (whether the data operator's affiliate or third parties)
  - specific purpose of the data transfer, and the processing activities the individual consents to
  - duration of individual's consent, and the method of its withdrawal (e.g., contact details of the data protection officer of the data operator)

# Exemptions from the consent requirement

- Consent of an individual on data transfer (including cross-border transfer) is not required, if
  - data transfer is allowed under an **international treaty** that Russia is a party to
  - data transfer is allowed under applicable laws if necessary for the purposes of protecting the Russian constitutional system; or protecting the national **state defense and state security**, or securing the maintenance of the Russian transportation system, and protecting the interests of individuals, society and the state in the transportation sector from illegal intrusion
  - data transfer is **only** made for performance of an agreement to which an individual is a party to
  - data transfer is required to protect the individual's life, health or other vital interests and it is impossible to obtain prior individual's consent in writing
- **Where possible, obtain explicit consent of individual on the transfer of personal data**

# Data transfer agreement



- Data transfer agreement ( = “data operator’s instruction to a third party”)
- Roskomnadzor has not adopted a standard form of a data transfer agreement
- Roskomnadzor’s advice on the best practices on the data transfer agreements:
  - clear and detailed rules on data processing to be conducted by a processor
  - purposes of processing and express scope of the processing activities (e.g., the right to further transfer the personal data)
  - scope of organizational measures to be taken by a processor
  - scope of security measures to be taken by a processor (e.g., use of certified software or encryption)
  - regular audits by the data operator
  - contractual liability for failure to comply with the PD Law requirements and for violation of the individuals’ privacy rights

# Liability

- There are seven different grounds for administrative liability (under Article 13.11 of the Russian Administrative Offences Code), including the following:

Breach	Administrative liability	
	Administrative warning	Administrative fee range
Failure to comply with the requirements for obtaining the "qualified" written consent of individual	N/A	Up to RUB 75,000 (approximately USD 1,200)
Processing of personal data without legal grounds or in a manner that is incompatible with the purposes of their collection	Yes	Up to RUB 50,000 (approximately USD 800)
Failure to provide an individual with information on the processing of his/her personal data	Yes	Up to RUB 40,000 (approximately USD 650)
Failure to publish or otherwise make publicly available the personal data processing policy or information on its implementation	Yes	Up to RUB 30,000 (approximately USD 485)

**SECTION 02**

**CYBERSECURITY LAWS AND  
INTERNET REGULATIONS:  
YEAR IN REVIEW**

# Security of Critical Information Infrastructure (CII)

- Federal Law No. 187-FZ of July 26, 2017, in effect from January 1, 2018
- Several subordinate legislation (e.g. Government Decrees No. 127, No. 162)
- **CII** - IT systems and telecommunication networks in critical industries: healthcare, science, transport, telecommunications, energy, banking and financial markets, oil & gas, nuclear, military, space, mining, steel, chemicals
- **Key requirements** (apply to owners and operators of the CII facilities)
  - identify and categorize CII facilities, report CII facilities to the authorities
  - take organizational and technical measures to protect CII facilities
  - notify authorities on computer incidents and assist state authorities in detecting, preventing and eliminating the consequences of computer attacks

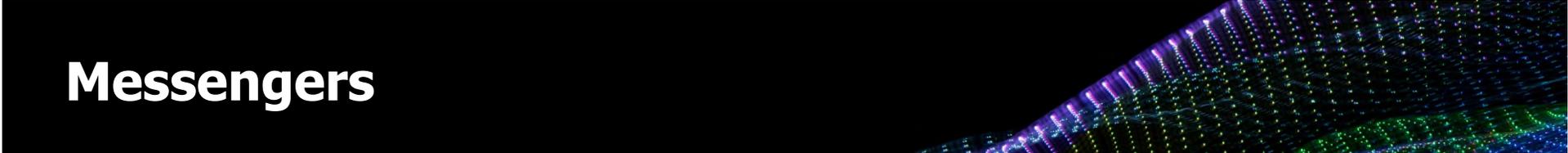
**Examples:** IT system controlling delivery of water and power to households; Air traffic control system in the airport; Blast furnace performance monitoring system at metallurgical plant

# “Organizers of Information Dissemination”

- Federal Law No. 374-FZ of July 6, 2016, in effect from July 2016, some provisions: from July 1, 2018
- **Organizers of information dissemination:** any services that give opportunity for users to leave comments, send and receive messages or otherwise communicate
- **Key requirement:**
  - store certain information about users and, starting July 1, 2018, copies of their messages in Russia
  - share encryption keys with security authorities and provide access to the stored information
- Non-compliant services may be blocked by Roskomnadzor

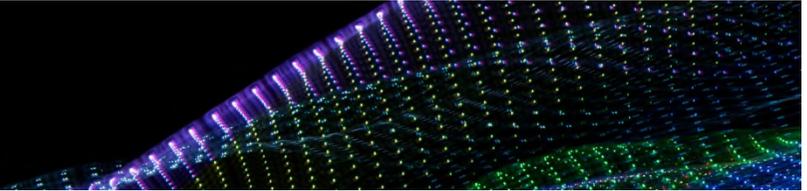
**Examples: Zello, Telegram**

# Messengers



- Federal Law No. 241-FZ of July 29, 2017, in effect from January 1, 2018
- **Messengers:** organizers of information dissemination, which operate services that are designed to exchange electronic messages solely among users of such service
- **Key requirements** (in addition to other requirements applicable to organizers of information dissemination):
  - identify users through mobile phone numbers, AND
  - (for Russia-based messenger services) store this mobile phone identification data in Russia
- Non-compliant messenger services may be blocked by Roskomnadzor

# VPNs and Similar Technologies



- Federal Law No. 276-FZ of July 29, 2017, in effect from November 1, 2017
- New Art. 15<sup>8</sup> of the Information Law
  - VPNs and similar technologies are not prohibited *per se*
  - **ultimate purpose:** block VPNs and similar technologies that would allow access to websites, networks, and other resources prohibited in Russia
  - **key requirement:** VPN services must connect to a platform maintained by Roskomnadzor at <http://276-fz.rkn.gov.ru/> and ensure that access to the websites and resources blocked in Russia is restricted
- Applies to both Russian and non-Russian owners of VPNs
- Non-compliant VPNs and its hosts may be blocked by Roskomnadzor

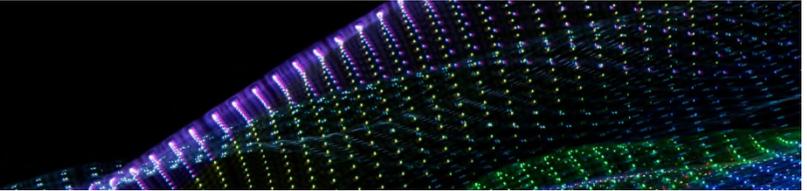
**Examples: Over 50 VPN services blocked in late April – May 2018 in connection with the blocking of Telegram**

# Foreign Agent Mass Media

- Federal Law No. 327-FZ of November 25, 2017, in effect from November 25, 2017
- Amendments to the Information Law and the Mass Media Law
  - apply to all types of media and information resources, including blogs and websites
  - arguably, do not apply to legal entities and mass media registered in Russia
- **Key requirements:**
  - to include a special disclaimer in every publication or post identifying their status
  - maintain separate accounting for funds and property received from foreign sources
  - submit quarterly reports on their funding, and publish activity reports semiannually

**Examples:** list available at <http://minjust.ru/ru/deyatelnost-v-sfere-nekommercheskih-organizacij/reestr-inostrannyh-sredstv-massovoy-informacii>

## Other Initiatives



- New draft law on public networks (No. 223849-7)
  - **Public networks:** any internet platform or resource allowing enrolled users to post and exchange electronic messages, with 100,000+ users in Russia per day
  - **Key requirements:** identify users by their mobile phone numbers; at the request of Roskomnadzor, delete "fake news"; and prevent the posting of materials that promote pornography, violence, cruelty, or contain strong language, etc.
  - approved in the 1<sup>st</sup> hearing on April 12, 2018, but not supported by the President Administration, because already covered in existing regulations
- Draft Infocommunicatons Code (no text available yet)
  - supposed to replace the current web of laws governing telecommunications sphere including the Communications Law, the Information Law and the PD Law

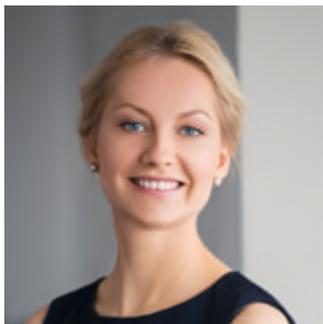
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Ksenia Andreeva specializes in intellectual property (IP) matters. She advises on a wide range of transactional, regulatory, and commercial IP matters as well as disputes and enforcement of IP rights.

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