

# FOREIGN TECH PLATFORMS’ “ONSHORING” LEGISLATION

## IMPACT ON MULTINATIONAL TECHNOLOGY COMPANIES IN RUSSIA

June 2021

<b>Issues &amp; Sectors</b>	ICT, Tech, Internet Control, State Duma Elections
<b>Stakeholders</b>	Presidential Administration, Roscomnadzor, State Duma

On June 17, the State Duma adopted in the final third reading [the legislation](#) introducing “local presence” requirements for foreign tech companies operating in Russia without local representative offices. The respective draft law was submitted to the State Duma on May 21 by a group of MPs and senators, acting under the guidance of the Presidential Administration.

The new law is part of the policy trend of tightening the rules of the game for global technology companies in Russia on the eve of parliamentary elections in September 2021.

The legislation is largely inspired by the Turkish social media law adopted in 2020 and other recent international practices tightening online platform regulation (including the proposed EU Digital Services and Digital Markets Acts, the TikTok case in the US, recent social media legislation in India and elsewhere). International practice is widely referred to by the sponsors of the bill in the State Duma and the regulators, providing cover for political reasons behind the initiative.

The law imposes on global tech companies requirements to set up both a physical presence in Russia (the establishment of a branch office or local legal entity) and “digital residency” (*via an online cabinet in a system to be managed by Roskomnadzor/RKN*).

In any case of non-compliance with the “onshoring” requirements and other key pieces of the Russian tech sector legislation (*data localization, content takedown requirements etc.*), the law presumes a multi-level and diversified system of sanctions, from official notifications of platform's users that the company violates Russian legislation to full-scale blocking.

However, the complexity of proposed sanctions and high level of flexibility in enforcing them by the regulator will probably make any enforcement mostly selective and driven by political reasoning. As a result, various “partial compliance” scenarios and establishment of strategic dialogue with the regulator would be effective in mitigating political risks and reducing the possibility a negative ruling.

The law is potentially applicable to a broad range of multinational companies providing digital services in Russia, but its main targets are clearly social media, video-sharing, messenger and other user-generated content (USG) platforms - specifically those able to have an impact on domestic political activities.

Other companies listed among potential targets (*including mobile games developers, e-commerce outlets, online travel platforms*) seem to be of secondary concern or not affected by the legislation at all.

Once adopted by the State Duma, the law will be considered by the Federation Council and signed by the President in 2-3 weeks or so, to formally take effect by the end of summer 2021. However, the most important “local presence” requirements (*including an obligation for global platforms to open “physical” Rep. offices in Russia*) will only take effect from January 2022. By this time, a long list of subordinate legislation should also be adopted. Hence, the law will become fully effective from early 2022.

**This memo will cover:**

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## BACKGROUND OF THE LEGISLATION

The “local presence” draft law has been under preparation by the Presidential Administration for more than one year. Most of the reasons behind the regulation are driven by domestic political considerations and attempts by Russian policy-makers to secure additional leverage on global social media platforms. The most important specific drivers are as follows:

- › Increasing concern of policy-makers over the potential influence of foreign platforms on political activities in Russia on the eve of parliamentary elections in September 2021.
- › Lack of control over content moderation policies of global platforms and an inability of Russian policy-makers to effectively press platforms over content related issues.
- › The lack of sustainable “contact lines” between the largest platforms and global tech companies, including those with a formal presence in Russia (*Google and Apple have their offices in Moscow, but they are not responsible for content policies of a parent company (in the case of Google) or digital services at large (in the case of Apple), which is the point of increased concern and irritancy for RKN and other Russian policy-makers*).
- › Attempts to increase the transparency of platforms’ business in Russia for the purposes of taxation, control over incomes, etc. was important, but rather a secondary reason.

As a result, the legislation is very much focused on content platforms and social media, although its actual scope of application will be broader.

## SCOPE OF APPLICABILITY OF THE LAW

The law will apply to foreign Internet-based companies with **more than 500,000 daily users in Russia**, which also meet **at least one of the following criteria**:

- › disseminate information in Russian and / or other official and minority languages of Russian Federation,
- › disseminate ads focused on Russian consumers,
- › process data of Russian users,
- › receive payments from Russian citizens and organizations.

Additionally, the law is applicable to:

- › Foreign hosting providers,
- › Foreign “advertising system operators” (*companies such as Google AdWords and advertising clients of Facebook and YouTube*),
- › Foreign “organizers of dissemination of information” (*this term encompasses messengers, email clients and social media - all types of services allowing users to exchange private messages*).

The list of hosting providers, advertising system operators and organizers of dissemination of information, to which the law will apply, will be defined by the Russian tech sector watchdog (*the Federal Service for Supervision of Communications, Information Technology and Mass Media – Roskomnadzor or RKN*) in accordance with the rules to be approved by the Government.

At the same time, the law **will not be applicable to a foreign company if its services** (*including processing of personal data and acceptance of payments*) **are provided by a Russian legal entity**. In such cases it is presumed that the company already operates within the Russian jurisdiction.

On May 24, the Chairman of the State Duma Information Policy Committee Alexander Khinsein [released the list of 20 resources](#) to fall under the effect of the law immediately. This should not be seen as official position of the Presidential Administration or the regulator (*as there is probably no consensus on this among*

*policymakers and Roskomnadzor will have some level of autonomy in the law enforcement), but clearly highlights the priorities in the law enforcement.*

The list announced by Khinstein is based on the daily audience of every platform, including social media (*Facebook, Instagram, TikTok, Twitter*), video-hosting providers (*YouTube, Twitch*), messengers and email clients (*WhatsApp, Telegram, Viber, Gmail*), search engines (*Google, Bing*), hosting providers (*AWS, Cloudflare, etc.*) and e-commerce outlets.

*The law may also be applicable to online travel, mobile and computer gaming services etc., but they will rather form a second-tier priority and are not on the list of immediate targets, given they have less political influence.*

## MAIN “LOCAL PRESENCE” REQUIREMENTS

The law imposes **both physical localization and “digital residency” requirements** on foreign tech companies.

**Physical representation** should be in the form of establishment of a local legal entity, either via a branch office or a Russian legal entity. This local entity shall be responsible for:

- › Interaction with Russian authorities and implementation of their decisions taken in relation to foreign entities,
- › Representing interests of a foreign “parent” company in a Russian judiciary and implementing decisions of Russian courts,
- › Content moderation and content removal at the request of the Russian regulator (*Roskomnadzor*).

**The digital representation** requirement presumes that companies should set up an electronic cabinet in a system to be managed by Roskomnadzor. The “cabinet” (*similar by the VAT office of foreign digital companies used for “Google tax” payment*) should be used for all legally meaningful interactions with Russian authorities and judiciary, including obtaining their requests and sending to them any necessary information.

Within 24 hours of registering an account in Roskomnadzor’s system, the company should notify Roskomnadzor about this, after which the agency will include the company on the *List of Foreign Entities Operating on the Internet in Russia*.

Companies should also introduce feedback forms on their websites for Russian users for receiving information about negative content.

### Localization mechanism

1. Roskomnadzor will monitor online resources based on the methodology for determining the number of their daily users (*the methodology should be introduced by a separate government decree*).
2. Having identified a resource (*platform*) that is subject to regulation based on the daily users’ criteria, Roskomnadzor should request hosting providers to identify the entities controlling this resource.
3. If the resource (*platform*) is owned by a foreign company without a representative office in Russia, Roskomnadzor will include this company in the abovementioned list. After that, it may face sanctions for non-compliance with localization requirements.

## POTENTIAL SANCTIONS FOR NON-COMPLIANCE

The law introduces a multi-level and diversified system of sanctions for non-compliance, to be managed by Roskomnadzor. These sanctions range from search results’ disclaimers notifying platform’s users that the company violates Russian legislation to the partial or full-scale blocking of a platform.

### Measures that can be applied in case of initial non-compliance with localization requirements:

1. disclaimers notifying platform's users that the company violates Russian legislation (*includes mandatory labeling requirements for search engines when demonstrating information*), This requirement plays a role of a warning.
2. ban on the dissemination of company advertisements in any online and media resources,
3. prohibition on the dissemination of advertisements of domestic companies on the online platform,
4. limitation of money transfers and payment acceptance of Russian individuals and legal entities<sup>1</sup>

### Measures that can be applied after 30 days since the day when the decision to impose the abovementioned measures was directed to the foreign entity:

5. prohibition on being demonstrated in search results (*search results filtering*),
6. prohibition on the collection and cross-border transfer of personal data,
7. partial restriction of access to the platform (*traffic throttling*),
8. full-scale blocking.

When commenting on the legislation, First Deputy Head of the Presidential Administration Sergey Kirienko noted that sanctions from this list can be applied step by step, and the most impactful measures (*including fully-fledged blocking*) will be used only as a last resort.

It is important to note that sanctions can be imposed not only for violations of localization requirements but also for non-compliance with other tech legislation, including:

- › failure to comply with content takedown requirements of the regulator and courts (*measures 1-6*),
- › failure to comply with the personal data localization requirements (*all measures*),
- › in the case of alleged “censorship” of Russian media outlets and public persons (*all measures*).
- › Non-compliance with the new requirements set out by the Russian advertising law (*the provision of information to a “single system of Internet advertising”*) - to take effect from September 2022, when the respective amendments to the Advertising Law will come into force.

Thus, restrictive measures can be applied based on the ecosystem specifics of each platform and can vary from case to case.

## **PROSPECTIVE DEVELOPMENTS**

The law comes into force immediately after its official publication. As it has already been adopted by the State Duma, it will pass approval in the Federation Council and be signed into the law by the President by (approximately) the end of June.

The requirement to open physical representative offices in Russia will come into effect on **January 1, 2022**.

- › Thus, given that the preparation of the necessary subordinate legislations may take several months, we expect full-scale enforcement no earlier than in 2022.
- › The requirements for the creation of a personal account in the Roskomnadzor system and feedback forms for Russian citizens and organizations can be applied to global tech companies as early as in Q3-Q4 2021, probably after the general elections in September.

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<sup>1</sup> The respective section is well elaborated and implies that the Central Bank could also be involved in working on the law. Sanctions will also apply to foreign payment services which will continue to accept and process payments of Russian users for foreign platforms

## EXPECTED ENFORCEMENT PRACTICE

As the preparation and adoption of the law is being largely driven by domestic political considerations, we expect that the enforcement practice will also be rather selective and influenced by conjunctural factors:

- › The actual law enforcement will start in January 2022, although prior to this, RKN may use some of the punitive measures mentioned in the legislation to pressurize the largest platforms (*YouTube, Facebook, Twitter*), should higher-level policy-makers see the need for such measures.
- › At the initial stage of enforcement, dialogue with the main targets of the legislation (*Google, Facebook, Apple, TikTok, Twitter*) will be a top priority for RKN. *Secondary targets, especially outside of the social media / USG content segment, will not be on the priority list. More systemic enforcement can be expected from approximately H2 2022.*
- › The law assigns Roskomnadzor with significant flexibility in terms of enforcement. Punitive measures may be applied at any scale, almost to any order of priority and any reason, or not enforced at all. Therefore, we expect that the enforcement will remain rather selective and unsystematic, with RKN and its superiors weighing its punitive steps towards any platform with many political and other factors.
- › The requirements of the law, specifically those related to “physical presence” and localization of Russian-language content moderation in Russia, would be hard to comply with for any platform. Therefore, RKN would position any step towards compliance by global platforms as its significant success (*more progress can be expected from TikTok as a Chinese company*).
- › At the same time, the enforcement of tight measures for non-compliance, such as the advertising ban, would require political approval at a high level and RKN is unlikely to be able to use them regularly.
- › Overall, the factors that influence the enforcement of this law open multiple options of “partial compliance” for global tech companies”, which could be seen by the regulator as progress towards full compliance and help minimizing political risks.

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