

Regulation of online content in the Russian Federation

Legislation and Case Law



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Foreword

Freedom of expression and the limitations thereto have been in the spotlight of European legislators and courts for decades, with trends going in various directions. This right forms one of the main pillars of democratic societies, enshrined in constitutions and international charters and conventions, so it is quite natural that discussion on its restrictions would attract intense attention. Such restrictions are of course allowed under specific circumstances, provided that balancing with other rights makes them legitimate and that the right of fair trial is ensured.

In this context, this analysis of the most recent developments in the Russian Federation by Andrei Richter and Anja Richter deserves particular attention. The authors show how the regulatory, supervisory and sanctioning frameworks have gradually evolved into something quite different from what seemed to be their original purpose, by pointing out the stratification of laws, amendments, interpretative resolutions, court decisions which have amassed over the years since 1991, when the Mass Media Law was adopted in order to eliminate censorship, create private mass media and establish specific rights for journalists.

As long as the Internet was accessed by a limited part of the Russian population – only 2% in 2000 – online content was not included in the scope of content regulation. Things changed when this percentage started to increase (it reached 64% in 2014) and public institutions felt the need to intervene “in order to improve legal regulation in the sphere of mass information”. In 2011, with the adoption of a new Statute that provided for a systematic regulation of online content, a registration procedure was introduced for website owners and the monitoring agency Roskomnadzor was given corresponding competencies. Its role in the field of site-blocking increased significantly in a very short time: in the beginning it was about fighting against the spread of extremist speech, but it has gradually expanded to censor swear words, obscene language and adult content.

With punctual references to the Russian Supreme Court’s interpretative resolutions and legal acts and with very clear descriptions of the various administrative procedures that might lead to the inclusion of a website on Roskomnadzor’s blacklist, the Richters take advantage of their rare access to sources that are mostly available in Russian only. They also provide an overview of the reactions of civil society to the progressively increasing number of blocking procedures of entire websites, including cases where the allegedly illegal content has been limited and clearly identifiable.

Some of the orders issued by Roskomnadzor have indeed been challenged. To give a preview of the variety of outcomes, in a case filed by Google concerning a video posted on YouTube showing a girl using make-up to create the appearance of cut veins, the Moscow Arbitration Court sided with Roskomnadzor in the qualification of this material as suicide information and the video was removed. In a case of use of obscene language in materials posted by the news agency Rosbalt on the Pussy Riot band, after the negative decision by the Moscow City Court, the Supreme Court reviewed the Roskomnadzor decision and declared it disproportionate, and thus void, because it disregarded the context.

Considering the global nature of the Internet, this Russian story gives plenty of material for further reflection. One might wonder how far it is possible and legitimate to proceed on a purely national level, how far a global standard-setting procedure on legitimate restrictions to freedom of speech might go and if this matter might be rather left to self-



regulatory codes, provided that they respect a minimum set of requirements, as is the case for the activities run by the Internet Governance Forum.

What is clear is how vulnerable freedom of expression risks being on the Internet, both because of over-ruling, so that free speech almost disappears, and of under-ruling, that allows almost anything in the name of free speech. Even universal freedoms admit limitations. The question is where to draw the line when exceptions tend to become the rule.

Strasbourg, January 2015

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1. Media law and online media regulation

1.1. The Mass Media Law

The Russian Law “On the Mass Media” (hereafter “Mass Media Law”), a statute signed by President Boris Yeltsin in December 1991, was drafted in such a way that allowed it to govern online content regulation.¹

There were three main aspects to the 1991 law: the elimination of censorship, the creation of private mass media, and the establishment of specific rights for journalists.² The last element was crucial, as it gave journalists the right to access government reports, to interview government officials, and to keep the identities of their sources confidential.³

The Russian Mass Media Law attempts to move the country into the direction of liberalisation, with articles detailing freedom of information, anti-censorship, journalists’ rights and citizens’ rights to obtain information, among others. Despite that, it does not fully abolish government restrictions; on the contrary, such restrictions have grown in scope over the last decade or so. Limitations placed on freedom of the media (Article 4) and the necessary registration requirements (Article 3) are just two examples of such limitations.⁴ And, despite the fact that the law allows for the existence of private media outlets and even foreign-owned ones (until 2016⁵), it nevertheless authorises the continued existence of government-controlled mass media outlets (Article 7).⁶ Moreover, although the Mass Media Law grants journalists various rights, it places limits on these rights with several liabilities, including sanctions and criminal penalties for violating parts of the law; furthermore, in some cases, the government can strip journalists of their accreditation at public offices and shut down media outlets.⁷

Overall, the Mass Media Law has functioned relatively well in Russia and has adequately regulated online media in the age of the Internet. Although the Mass Media Law has gone through a number of amendments over the years, online media remained truly unaffected until only a few years ago. The reason was that in the beginning of the Internet age, Russian online media regulation was not a primary concern of the government.

This could be explained by the statistics. As of June 2000, Russia had just over three million Internet users, accounting for only two percent of its population.⁸ But as of 1 January 2014, that number has jumped to almost 88 million users, accounting for roughly 62% of the country’s population.⁹ The Internet’s economic weight in Russia’s GDP has reached 1,3%.¹⁰

¹ *О средствах массовой информации* (Law of the Russian Federation “On the Mass Media”, No. 2124-I of 27 December 1991), *Rossiiskaia gazeta* (*Ros. Gaz.*), No. 32, 8 February 1992.

² Richter A., *Правовые основы журналистики* (“The Legal Basis of Journalism”), 2009, pp. 49-53.

³ *Idem*.

⁴ Price M., “Law, Force and the Russian Media”, 13 *Cardozo Arts & Ent. L.J.*, 1995, pp. 795, 799-801.

⁵ Richter A., “Act on the limitation of foreign ownership in the media”, IRIS 2014-10/31, European Audiovisual Observatory, 2014, available at: <http://merlin.obs.coe.int/iris/2014/10/article31.en.html>

⁶ *Idem* at p. 802.

⁷ *Idem* at p. 805.

⁸ Internet World Stats, “Russia: Internet Usage and Marketing Report”, available at: www.internetworldstats.com/euro/ru.htm

⁹ Internet World Stats, “Top 20 Countries with the Highest Number of Internet Users”, available at: www.internetworldstats.com/top20.htm; see also, “Freedom on the Net” (2014), available at: <https://freedomhouse.org/report/freedom-net/2014/russia>. Russian official sources give the figure of 56 million users, *Интернет в России: состояние, тенденции и перспективы развития* (“Internet in Russia: Status and Trends of Development”), report of Rospechat (Federal Agency on the Press and Mass Communications) 2014, p. 8, available at: <http://2014.russianinternetforum.ru/upload/runet-today--rif2014.pdf>



1.2. Reform of the Mass Media Law in 2011

The legal milestone in online content regulation was the adoption in 2011 by the Federal Assembly (Parliament) of the Russian Federation of the Federal Statute “On amending some legal acts of the Russian Federation in order to improve legal regulation in the sphere of mass information”.¹¹ About 90% of the Statute amends and expands the Mass Media Law. In several ways the new act was aimed to counteract the liberal Resolution of the Plenary of the Supreme Court of the Russian Federation “On Judicial Practice Related to the Statute of the Russian Federation ‘On the Mass Media’” of 15 June 2010.¹²

The amended Statute provides a systematic regulation of online media. In particular it includes “network publications” as one of the types of mass media and considers a single issue or renewal of a network publication as a form of product of the mass media and providing access to a network publication to be a form of dissemination of the product of a mass media outlet. The Statute describes “network publication” as “any site in the information-telecommunications network of the Internet registered as a mass media outlet”. Thus, the owners (founders) of websites are invited to go through a special registration process established and mandated by the Mass Media Law for print publications, as well as broadcast programmes and stations. After such registration, they and the editorial staff of such websites fall under the legal regime of the Mass Media Law, with its rights and responsibilities. While such registration of a network publication is presumably optional, no editorial office of a mass media outlet may engage in professional activity without such registration.

1.3. Roskomnadzor and Its Warnings

In this way, online “network publications” as described above have come under the competence of Roskomnadzor, the Russian Federal Surveillance Service for Mass Media and Communications, an executive structure within the Ministry of Communications and Mass Media.¹³ As a result, the service has started performing its control functions and finding violations of Art. 4 (“Inadmissibility of abuse of freedom of mass information”) of the Mass Media Law. Its principal instrument in this regard is the issuing of official warnings on such abuse. According to the Mass Media Law, two warnings in the course of one year may lead to a request by Roskomnadzor for a court annulment of a news outlet’s media certificate of registration and its effective shut-down.¹⁴

A significant portion of such written warnings are tied to the spreading of extremist speech. For example, in 2013 Roskomnadzor issued 21 “anti-extremist” warnings to the editorial boards of

¹⁰ *Idem* at p. 58.

¹¹ О внесении изменений в отдельные законодательные акты Российской Федерации в связи с совершенствованием правового регулирования в сфере средств массовой информации (Federal Statute on amending some legal acts of the Russian Federation in order to improve legal regulation in the sphere of mass information), Ros. Gaz., No. 129, 17 June 2011. Most of the provisions of the Statute entered into force on 10 November 2011; see: Richter A., “Regulation of Broadcasting and Internet now Part of Media Statute”, IRIS 2011-7/42, European Audiovisual Observatory, 2011, available at: <http://merlin.obs.coe.int/iris/2011/7/article42.en.html>

¹² See: Richter A., “Supreme Court on Media Law”, IRIS 2010-6/40, European Audiovisual Observatory, 2010, available at: <http://merlin.obs.coe.int/iris/2010/6/article40.en.html> and Nikoltchev S. (ed.), *A Landmark for Mass Media in Russia*, IRIS plus 2011-1, European Audiovisual Observatory, Strasbourg, 2011.

¹³ Roskomnadzor (<http://rkn.gov.ru/eng/>) is the federal body responsible for oversight and surveillance of the media in Russia, including electronic media, see Richter A., “New Rules for Internet”, IRIS 2012-8/36, European Audiovisual Observatory, 2012, available at: <http://merlin.obs.coe.int/iris/2012/8/article36.en.html>

¹⁴ See for example, Richter A., “Warning to Broadcaster Annulled”, IRIS 2009-8/28, European Audiovisual Observatory, 2009, available at: <http://merlin.obs.coe.int/iris/2009/8/article28.en.html>



various publications.¹⁵ The SOVA Centre, a leading Russian NGO that deals with the issues of hate speech, believes that 16 of them lacked proper justification.¹⁶ In this regard it quotes eight warnings issued regarding the publication of the inappropriately banned Pussy Riot video, related to their performance in the Cathedral of Christ the Saviour. These warnings were issued to the websites of newspapers *Argumenty i Fakty* and *Moskovsky Komsomolets*, web portals *polit.ru*, *Piter.TV* and *KM.ru*, to the *Neva24* website, and to the news agencies *Novyi Region* and *regiony.ru*. Five additional warnings for photos of T-shirts with a Pussy Riot image stylised to look like an icon (by artist Artem Loskutov) were received by *grani.ru*, *polit.ru*, *obeschaniya.ru* and web portal *sibkray.ru*; *grani.ru* received the warning twice, for publishing the image on two separate occasions. The attempts by *grani.ru* and *obeschaniya.ru* to challenge the warnings in court were unsuccessful. Khanty-Mansiysk online news agency *muksun.fm* received a warning for publishing on the Internet the article “They do not appear in mosques”, which merely cited the banned Hizb ut-Tahrir book. Interestingly, the author of the article criticised its precepts and quoted from the book in support of his argument.

We see here and will find also below that the legal provisions on anti-extremism raise many concerns in Russian case law. It is worth mentioning that the Venice Commission has found that a number of existing definitions of the Russian anti-extremism law are “too broad, lack clarity and may open the way to different interpretations.”¹⁷

Subsequently, the Mass Media Law was amended again to include a total ban on swearing in the mass media, including on online media outlets.¹⁸ Thus, this is designated another abuse of freedom of the media that may lead to the closure of the media outlet. In December 2013, the Institute of Russian Language at the Russian Academy of Sciences compiled a list of four words and their derivatives that constitute illegal obscene language. Two depict male and female reproductive organs, one describes the process of copulation and the last refers to a promiscuous woman.¹⁹ In the same year, as many as 48 warnings were issued for this type of abuse, most of them directed at the editorial offices of “network publications”.²⁰

1.4. The Rosbalt Case

In at least one of these cases this type of warning for obscene language was successfully challenged in court. On 19 March 2014 the Judicial Collegium on administrative cases of the Supreme Court of

¹⁵ *Предупреждения, вынесенные редакциям СМИ за нарушения ст.4 Закона РФ «о средствах массовой информации» в 2013 г.* (“Warnings Issued to Editorial Offices for Violation of Art. 4 of the Mass Media Law in 2013”), available at: <http://rkn.gov.ru/mass-communications/control-smi/>

¹⁶ Verkhovsky A. (ed.), “Inappropriate enforcement of anti-extremist legislation in Russia in 2013”, 4 June 2014, available at: www.sova-center.ru/en/misuse/reports-analyses/2014/06/d29660/No.ultr005

¹⁷ “Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation”, adopted by the Venice Commission at its 91st Plenary Session, Venice, 15-16 June 2012, Para 31, available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)016-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)016-e)

¹⁸ *О внесении изменений в статью 4 Закона Российской Федерации “О средствах массовой информации” и статью 13.21 Кодекса Российской Федерации об административных правонарушениях* (Federal Law of 5 April 2013 No. 34-FZ “On an amendment to Article 4 of the Statute of the Russian Federation “On the Mass Media” and to Article 13.21 of the Administrative Code”), Ros. Gaz., No. 6052, 9 April 2013, available at: www.rg.ru/2013/04/09/mat-dok.html

¹⁹ *Рекомендации по применению Федерального закона от 05.04.2013 №34-ФЗ «О внесении изменений в статью 4 Закона Российской Федерации «О средствах массовой информации» и статью 13.21 Кодекса Российской Федерации об административных правонарушениях»* (Recommendations on application of the Federal Law of 5 April 2013 No. 34-FZ “On an amendment to Article 4 of the Statute of the Russian Federation “On the Mass Media” and to Article 13.21 of the Administrative Code”), Roskomnadzor, available at: http://rkn.gov.ru/docs/Rekomendacii_po_primeneniju_zakona_o_necenzurnoj_brani1.doc

²⁰ *Предупреждения, вынесенные редакциям СМИ за нарушения ст.4 Закона РФ «о средствах массовой информации» в 2013 г.* (“Warnings Issued to Editorial Offices for Violation of Art. 4 of the Mass Media Law in 2013”), available at: <http://rkn.gov.ru/mass-communications/control-smi/>



the Russian Federation made a resolution on an appeal complaint from JSC “News Agency Rosbalt”.²¹ The Supreme Court looked into the two warnings sent by Roskomnadzor (on 12 and 25 July 2013) to the editorial office of the online news service Rosbalt. Roskomnadzor claimed that Rosbalt had abused media freedom by posting materials that contained obscene language.

The Supreme Court also reviewed the subsequent decision of the Moscow City Court (dated 31 October 2013) to permanently annul Rosbalt’s certificate of registration. In its resolution, the Supreme Court followed the legal finding of the Constitutional Court of the Russian Federation²² by saying that “limitations by law of freedom of speech and the right to disseminate information may not take place in relation to activities or information on the mere grounds of their inconformity with established traditional views, or contradiction with moral and/or religious preferences. Otherwise this would mean a retreat from the constitutional demand of necessity, proportionality and fairness of limitations of human rights...”

The Supreme Court found that the lower courts had refused to look into the *substance* of Roskomnadzor claims, while the warnings of the watchdog had been procedurally faulty.

The Supreme Court found that the sanctions imposed on Rosbalt were disproportionate and disregarded the context of the news stories. The stories, one of them on the Pussy Riot band, did not aim to shock the imagination of the Internet users, but were rather of a socio-political nature. Therefore, the Moscow City Court decision could not be recognised as lawful. The Supreme Court pronounced it null and void and took a new decision that rejected the Roskomnadzor claims.

²¹ *Определение Судебной коллегии по административным делам Верховного суда РФ по делу № 5-АПГ13-57* (Resolution of the Judicial Collegium on administrative cases of the Supreme Court of the Russian Federation on case No. 5-APG13-57), available at: www.supcourt.ru/stor_pdf.php?id=584842

²² Such as those in the resolutions of the Constitutional Court of 30 October 2003 N 15-P, 16 June 2006 N 7-P and 22 June 2010 N 14-P.



2. Online media regulation and international law

Besides pure domestic law, international law also affects every country's national laws. Specifically, various international treaties can legally bind countries to precise norms and regulations. In addition, all countries are expected to comply with customary international law, as it embodies principles that have become the universal norm. The Universal Declaration of Human Rights (UDHR) is one such example of customary international law.²³ Article 19 of the UDHR declares that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."²⁴ The words "through any media" in this phrase allow for the interpretation of the provision in relation to online media.

Additionally, Russia is a party to the International Covenant on Civil and Political Rights (ICCPR)²⁵ and the European Convention on Human Rights (ECHR).²⁶ Both of these international documents protect freedom of speech and freedom of expression and apply to the media. In a similar fashion to the UDHR, Article 19 of the ICCPR asserts that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."²⁷ Although the ICCPR was adopted before the existence of the Internet, these principles nevertheless apply to it. The Human Rights Council, a United Nations charter body, passed a resolution codifying this application: "the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice."²⁸ The resolution was based in part on interpreting Article 19 of the ICCPR.

The ECHR, a legally binding treaty which Russia ratified in 1998, provides for similar rights. Article 10 of the ECHR guarantees the following: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."²⁹ Article 10 of the ECHR resembles Article 19 of the ICCPR and Article 19 of the UDHR. In addition, the ECHR explains that only laws "necessary in a democratic society" can restrict these freedoms.³⁰

²³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at: www.un.org/en/documents/udhr/

²⁴ *Idem*, Article 19.

²⁵ Article 53, International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), Dec. 16, 1966, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (Dec 16, 1966), at 279, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²⁶ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ.T.S. No. 5; 213 U.N.T.S. 221, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

²⁷ International Covenant on Civil and Political Rights, *supra* note 27, at 178.

²⁸ Human Rights Council Res. 20/8, "The Promotion, Protection and Enjoyment of Human Rights on the Internet", 20th Session, 29 June 2012, U.N. Doc. A/HRC/20/L.13 (July 7, 2012), available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=20280

²⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, *supra* note 28, Article 10.

³⁰ Human Rights Watch, "Laws of Attrition: Crackdown on Russia's Civil Society after Putin's Return to the Presidency", 2013, p. 73.



3. Major sources of online content legislation

Beyond the Mass Media Law, three major legal acts have taken part in forming current online media governance in Russia: first, the 2010 Supreme Court Resolution; second, the 2012 Federal Law that amended the Federal Law “On the Protection of Children from Information Harmful to their Health and Development”; and, third, a set of recent amendments to the Federal Law “On Information, Information Technologies and on the Protection of Information”. As a consequence, Russian online content regulation has changed dramatically in less than four years.

3.1. Supreme Court interpretive resolutions

As the Russian Internet community continued to grow exponentially, it became clear that parts of the Mass Media Law could not be applied to the Internet without further clarification from the judicial branch. Such clarification came in 2010, when the Russian Supreme Court published Resolution no. 16 “On Judicial Practice Related to the Statute of the Russian Federation ‘On the Mass Media’”, which resulted in the biggest change to online media governance since 1991.³¹ This Resolution is extremely significant essentially because it is viewed as a highly persuasive recommendation for all of courts and other state bodies.³² In their judicial value such resolutions of the top courts may be equalled to the Second Restatements of Torts in the United States law.³³

To understand the effect of the Resolution, several key parts of it must be explained. First and foremost, the Supreme Court declared that the Mass Media Law applies to online content, a concept that regulatory bodies could only assume prior to 2010.³⁴ In addition, although registration of Internet websites as mass media outlets is not required, the rights and privileges of journalists, such as accreditation and protection of confidential sources, are automatically granted to the websites’ authors upon such registration.³⁵ However, with registration comes accountability, such as an obligation to verify information distributed and for restraint from abuse of the freedom of mass media.

The Resolution’s most powerful impact comes from the Supreme Court’s explanation of the legal responsibility of registered online media websites. In particular, the Supreme Court’s Resolution declares that “regarding comments not subject to preliminary editing (for example, on a forum), rules are applied as established by the Mass Media Law for authors’ works which are broadcast without preliminary taping.”³⁶ According to this explanation, “rules established under Art. 57 of the Mass Media Law³⁷ for television and radio programmes are applicable to cases of dissemination of mass information (in fact, most often in textual format) through

³¹ *Постановление Пленума Верховного Суда РФ от 15 июня 2010 г.* (Resolution of the Plenum of the Supreme Court of the Russian Federation of 15 June 2010), *Бюллетень Верховного Суда РФ [BVS]* (Bulletin of the Supreme Court of the Russian Federation), 2010, No. 16.

³² Richter A., “Russia’s Modern Approach to Media Law” in Nikoltchev S. (ed.), *A Landmark for Mass Media in Russia*, IRIS plus 2011-1, European Audiovisual Observatory, Strasbourg, 2011, pp. 8-9.

³³ Even though Russia is not a common law country, resolutions “on judicial practice” serve as an influential treatise issued by the top court which summarises the general principles for the lower courts.

³⁴ *Idem*, at 11.

³⁵ *Idem*.

³⁶ Richter A., “Comments on the Internet Media Forum: Law and Practice in Russia”, *Social Media Guidebook*, 2013, pp. 55, 56.

³⁷ This article provides for circumstances for exemption of editors, editorial offices and journalists from liability.



telecommunications networks.”³⁸ As a result, those sections of Internet websites that do not require preliminary editing (such as, on a forum) place liability on the author of the comments and not on the editorial office of the website.³⁹ However, if an editorial office receives a notice (injunction) from Roskomnadzor or the prosecutor stating that some specific content on the website violates Article 4 of the Mass Media Law, the editors must promptly edit or remove that content.⁴⁰ If the editors fail to comply with the notice, they may be held liable for the online content in question.⁴¹

Prior to the publication of this Supreme Court Resolution, Roskomnadzor vigorously objected to the part that places liability on the authors instead of the editors, arguing that such regulation could only lead to an expansion of unmonitored extremist materials, pornography, and violence.⁴² As these objections were rejected, Roskomnadzor decided, following the publication of the Resolution, to interpret the Supreme Court’s explanation by adopting the “Procedure for Sending Injunctions on the Impermissibility of Abuse of Free Mass Information to Mass Media Outlets, whose Dissemination is Exercised on Information Telecommunication Networks, Including on the Internet.”⁴³ With this procedure, Roskomnadzor attempted to eliminate some of the freedoms of the Supreme Court Resolution, as the supervisory body called for a stringent policy for editorial offices that did not seem to have a lawful basis.⁴⁴ The key parts of the procedure are as follows: once Roskomnadzor sends a violation notice to the editorial office of an Internet website, the editors have one business day from the time the notice was sent (as opposed to the time it was received) to either edit or remove the online content; if the editors fail to do this in a timely manner, they will receive a warning as per Article 16 of the Mass Media Law.⁴⁵ As a final step, if the injunctions are not addressed by the editors, Roskomnadzor can permanently shut down the Internet website (per Article 16).⁴⁶ In 2011 and 2012 respectively, Roskomnadzor sent 155 and 517 such injunctions to various editors of Internet media outlets.⁴⁷ In 2013 the number of such injunctions dramatically increased to 1,129. Out of these, 579 were for the use of swear words, 379 for extremist speech, and 297 for incitement of ethnic enmity.⁴⁸ According to Roskomnadzor’s data, most of the injunctions resulted in a speedy removal of the online content in question.

Later on other Supreme Court resolutions have made slightly clearer the regulation of online content relating to crimes of terrorism and extremism by providing explanations on the issues in relevant case law.⁴⁹ The Resolution “On Judicial Practice Relating to Criminal Cases on Crimes of an Extremist Nature”⁵⁰ instructs judges that when adjudicating on such cases they should take into account both the safeguarding of the public interest (i.e. as concerns the foundations of the constitutional regime and the integrity and security of the Russian Federation) and the protection of human rights and liberties as defined in the Constitution (freedom of conscience and religion,

³⁸ Richter A., “Comments on the Internet Media Forum: Law and Practice in Russia”, *Social Media Guidebook*, 2013, pp. 55, 56.

³⁹ *Idem*.

⁴⁰ *Idem* at p. 56.

⁴¹ *Idem* at p. 57.

⁴² *Idem* at p. 58.

⁴³ *Idem* at p. 59. The full text of the order is available in Russian on the Roskomnadzor website: http://rkn.gov.ru/docs/doc_537.pdf

⁴⁴ Richter, *supra* note 38, at pp. 59-60.

⁴⁵ *Idem* at p. 60.

⁴⁶ *Idem* at p. 61.

⁴⁷ Richter A., *Правовые основы Интернет-журналистики* (“The Legal Basis of Internet Journalism”), 2014, p. 183.

⁴⁸ *Публичный доклад* (Roskomnadzor Public Report), 2013, p. 72, available at: http://rkn.gov.ru/docs/docP_1154.pdf

⁴⁹ Richter A., “Supreme Court on Extremism and Terrorism-Related Crimes in the Media”, IRIS 2012-3/32, European Audiovisual Observatory, 2012, available at: <http://merlin.obs.coe.int/iris/2012/3/article32.en.html>

⁵⁰ *Постановление «О судебной практике по уголовным делам о преступлениях экстремистской направленности»* (Resolution “On Judicial Practice Relating to Criminal Cases on Crimes of Extremist Nature”) No. 11, 28 June 2011, available at: http://supcourt.ru/Show_pdf.php?ld=7315



freedom of expression, freedom of mass information, the right to seek, receive and impart information by legal means, etc.).

The Resolution interprets what is to be considered as hate speech, the essential element of extremist speech. The crime of hate speech can take place only with actual malice and with the aim to cause hatred and enmity, as well as to denigrate the dignity of a person or a group of persons, if motivated by characteristics such as gender, race, ethnicity, language, origin, attitude to religion, or belonging to a social group.

The issue whether the dissemination of extremist materials presents a crime should be adjudicated based on the intention behind such dissemination. In this regard, the expression of opinions, arguments that use facts of interethnic, inter-denominational and other social relations in a discussion and in texts of scholarly or political nature that do not aim to denigrate the human dignity of groups of persons does not present a crime of hate speech.

The Resolution points to the fact that criticism of political organisations, ideological and religious associations, political, ideological or religious beliefs, ethnic or religious customs *per se* should not be considered hate speech. When determining whether State officials and/or professional politicians have been subject to a denigration of their human dignity or the dignity of a group of people, the judges are directly referred to take into account points 3 and 4 of the Declaration on freedom of political debate in the media of the Council of Europe's Committee of Ministers (2004)⁵¹ and the relevant case law of the European Court of Human Rights. In this regard, the Supreme Court has stated that criticism in the mass media of such persons and of their actions and beliefs *per se* should not be considered in all cases as action aimed at denigrating the dignity of a person or a group of people, as in relation to such persons the limits of admissible criticism are broader than those in relation to other people.

The Resolution "On Some Aspects of Judicial Practice Relating to Criminal Cases on Crimes of a Terrorist Nature" of 9 February 2012⁵² stipulates that judicial "measures to prevent and stop such crimes should be taken in compliance with the rule of law and democratic values, human rights and basic liberties, as well as other provisions of international law."

Both resolutions state that incitement to extremist activities (terrorism) include calls through the Internet, such as the posting of such calls on websites, in blogs or fora, dissemination via bulk e-mail, etc. The crimes are considered complete from the moment of the spreading of such incitement no matter whether they indeed cause citizens to perform extremist activity (acts of terrorism), e.g. from the moment of the provision of online access.

It seems that the effect of the Resolutions on terrorist and extremist crimes has been quite positive. According to the Russian NGO SOVA Centre, in 2013 the number of court verdicts nationwide for inciting hatred by placement of extremist materials, symbols or provocative comments on the Internet continued to grow, exceeding the figure for 2012 by about a third. Out of 134 verdicts issued in 2013 for online xenophobic propaganda, the SOVA Centre recognises 131 verdicts as appropriate. It admits, though, that it was unable in many cases to assess their validity, since, for example, the offending comments had been promptly removed from the Internet. It was also concerned that prosecutors and courts continued to not take into account the level of

⁵¹ Council of Europe, "Declaration on Freedom of Political Debate in the Media", adopted by the Committee of Ministers on 12 February 2004 at the 872nd meeting of the Ministers' Deputies, available at: <https://wcd.coe.int/ViewDoc.jsp?id=118995>

⁵² Постановление «О некоторых вопросах судебной практики по уголовным делам о преступлениях террористической направленности» (Resolution "On Some Aspects of Judicial Practice Relating to Criminal Cases on Crimes of a Terrorist Nature") No. 1, 9 February 2012.



dissemination of particular extremist materials, real audience size, and corresponding degree of social danger.⁵³

In 2013 the SOVA Centre viewed three verdicts for online extremism as inappropriate: to Radik Nurdinov of Bashkortostan for posting an article by Tatar nationalist Vil Mirzayanov, “certainly separatist in its tone, but containing no calls to violence”; to a Pavel Khotulev from Kazan “for speaking out against requirement to study Tatar language in schools”; to an Ivan Moseev “for uncivil remark about Russians” on the *Ekho Severa* website echosevera.ru located in Arkhangelsk. It also disagreed with the verdict (“threat of murder motivated by hatred or enmity”) issued to journalist Elena Polyakova from Klin for an aggressive comment under an article about the activities of the head of the municipal department of education, “since this comment couldn’t be interpreted as a genuine threat”.⁵⁴

3.2. Law on the Protection of Children

A major change to online media regulation came on 1 November 2012, when the Russian State Duma, the lower house of the Russian Parliament, approved a set of amendments to the Federal Law “On the Protection of Children from Information Harmful to their Health and Development.”⁵⁵ Technically speaking, the new law amends the original Federal Law, signed on 29 December 2010.⁵⁶ The 2010 law focused predominantly on content rating, as it required “informational products” to be labelled on the basis of the age of the consumers. According to the law, “informational products” included “mass media, printed materials, audiovisual materials on any material object, computer programmes and databases, as well as information disseminated by means of public performance and on the information telecommunication networks of general access (including the Internet and mobile telephony).”

Most importantly, these and further amendments adopted in 2013 allowed the blacklisting of Internet websites with content of several categories. Those categories include currently information containing explicit language; justifying unlawful conduct; encouraging children to commit acts that endanger their lives and/or health, such as suicide; promoting among children a desire for drug, tobacco or alcohol use, gambling, prostitution and vagrancy; justifying violence to humans and animals; promoting non-traditional sexual relationships and disrespect to parents; pornographic information and information containing personal data of minors who became victims of illegal actions.

Corresponding provisions in the Federal Law “On Information, Information Technologies and on the Protection of Information” allowed for the creation of a Registry of prohibited websites that are to be generally blocked for all users in Russia. The site blocking activity was set to concern the uniform registry of the Internet domain names and/or the universal indexes (locators) to pages of the Internet sites and network addresses of the Internet sites that contain information prohibited from dissemination in the Russian Federation. As the Registry is maintained by Roskomnadzor, no court order is necessary to declare a website in violation of the law.

⁵³ Verkhovsky A. (ed.), “Inappropriate enforcement of anti-extremist legislation in Russia in 2013”, 4 June 2014, available at: www.sova-center.ru/en/misuse/reports-analyses/2014/06/d29660/No.ultr005

⁵⁴ *Idem.*

⁵⁵ *О защите детей от информации, причиняющей вред их здоровью и развитию* (Federal Law of the Russian Federation “On the Protection of Children from Information Harmful to their Health and Development”), *Собрание законодательства Российской Федерации [SZ RF]* (Russian Federation Collection of Legislation) 2010, No. 436-FZ, Article 2.

⁵⁶ Richter A., “Law on the Protection of Minors against Information Detrimental to their Health and Development Adopted”, IRIS 2011-4/34, European Audiovisual Observatory, 2011, available at: <http://merlin.obs.coe.int/iris/2011/4/article34.en.html>



The 2012 amendment further clarifies the proper content labels that are necessary on Internet websites. Shortly after the 2012 law came into force, Roskomnadzor issued an explanatory guide aimed at media outlets.⁵⁷ Roskomnadzor's recommendation serves as an additional clarification of the new law's online content labelling changes. The explanatory guide details how to properly designate the correct age restrictions on Internet websites. The websites' age restrictions must fall within one of the following five categories: (1) children under the age of six; (2) children over the age of six; (3) children over the age of twelve; (4) children over the age of sixteen; or (5) content not for children. The guide further explains that the designated category of the age restriction must appear on the home page of the online website and the content label must adhere to the proper font size and colour.⁵⁸

In online media the pictogram must be placed on the top part of the front page of the website and must not be smaller than 75% of the script of the second-level headings or no smaller of the font size of the main text in bold or not smaller than 20% of the size of the main column on it. In colour it should correspond to or be in contrast to the colour of the title of the online media outlet.

Further, the age restriction listed must comply with the highest level of restrictions accessible on the entire website; to illustrate, if one sentence on one page of a multi-page website can only be viewed by adults, while the rest of the website is for children under six, the label must read "18+" solely because of that one sentence. The guide notes that online news websites are exempted from labelling their websites. Further, readers' comments on online websites do not require labelling.⁵⁹

Several avenues exist to identify websites in general violation of the law. First, certain government agencies can submit websites for the Registry directly to Roskomnadzor. Second, Roskomnadzor updates the Registry following individual court decisions that recognise websites with "illegal content".⁶⁰ Third, it updates the Registry following decisions of federal executive bodies specifically dealing with child pornography, drugs and suicide. Finally, individuals are encouraged to send in grievances about online content to Roskomnadzor directly through a form on its website.⁶¹ On the first day of this website's existence, individuals submitted over 5 thousand such complaints, though most of these were rejected.⁶² Although access to the full list of blocked websites is prohibited, anyone can check if a specific website has been blocked by simply visiting Roskomnadzor's webpage.⁶³

Within almost two years individuals submitted 114,000 complaints to Roskomnadzor.⁶⁴ According to the official report of Roskomnadzor published on 22 December 2014, the Unified Register contains more than 45,700 URLs, 64% of those contained drug use promotion, 15% child

⁵⁷ *Рекомендация по применению Федерального закона «О защите детей от информации, причиняющей вред их здоровью и развитию» от 29 декабря 2010 г., № 436-ФЗ* (Recommendations on the Implementation of the Federal Statute of 29 November 2010 No. 436-FZ "On the Protection of Minors against Information Detrimental to their Health and Development"), available at: www.rg.ru/2012/09/05/informacia-site-dok.html

⁵⁸ Recommendations on the Implementation of the Federal Statute of 29 November 2010 No. 436-FZ, Article 4.

⁵⁹ *Idem*, para 4.

⁶⁰ Richter A., "New Rules for Internet", IRIS 2012-8/36, European Audiovisual Observatory, 2012, available at: <http://merlin.obs.coe.int/iris/2012/8/article36.en.html>

⁶¹ Human Rights Watch, *supra* note 32.

⁶² "Russia Blacklists Over 180 Websites", RIA Novosti, 9 November 2012, available at: <http://en.ria.ru/news/20121109/177323824.html>

⁶³ Unified register of the domain names, website references and network addresses that allow identifying websites containing information circulation of which is forbidden in the Russian Federation, available at: <http://eais.rkn.gov.ru/en/>

⁶⁴ *Интервью Руководителя Роскомнадзора Александра Жарова газете Ведомости* (Interview of the Head of Roskomnadzor Aleksandr Zharov with Vedomosti newspaper), 1 August 2014, available at: <http://rkn.gov.ru/news/rsoc/news26531.htm>



pornography, and 12% promotion of suicide.⁶⁵ Experts at the RosComSvoboda project claim today that this practice has led to the blocking of altogether more than 180,000 sites in Russia.⁶⁶

The list of blocked websites includes the Russian Uncyclopedia (a parody encyclopedia), LiveJournal (a blogging platform provider), Librusec (an online library), YouTube, and Wikipedia, among others.⁶⁷ Most of the websites are only blocked until the prohibited content is removed. For example, Roskomnadzor briefly blocked a popular Russian file-sharing website, RuTracker, until it removed a document titled “Encyclopedia on Suicide” from its database.⁶⁸ Various human rights groups and NGOs have campaigned against the 2012 law; however, the government continues to support it.⁶⁹

In order to block a website, Roskomnadzor follows the specific process outlined in the law.⁷⁰ The process is as follows: Roskomnadzor adds the website in question to the Registry and notifies the relevant hosting provider of the illegal material; within 24 hours the hosting provider must send a request to the owner (administrator) of the information resource (website) asking for the removal of the illegal content. If the owner does not comply within the next 24 hours, the hosting provider has to block access to the entire website and the website remains in Roskomnadzor’s Registry. If the hosting provider neglects to block the website, the access provider has to block access to the concerned Internet address within another 24 hours. If the access provider fails to comply, its license to provide communication services could be withdrawn.

However, if the website owner (or administrator) simply takes down the content once notified, Roskomnadzor will remove the website in question from the Registry. The owner of the website may appeal the ban in court within three months.

On 11 February 2013, YouTube’s owner, Google (Russian branch) filed the first such lawsuit against Roskomnadzor.⁷¹ The lawsuit challenged the decision of Roskomnadzor to permanently restrict access to a YouTube video allegedly in violation with the new law. The video was meant for entertainment purposes and portrayed a girl using makeup to create the appearance of cut veins. However, the supervisory body did not view it as simply entertainment; according to Roskomnadzor, the video was removed because it promoted suicide. In May 2013, the Moscow Arbitration Court sided with Roskomnadzor by ruling to uphold the ban of the YouTube video. In support of its decision, the Court reasoned that the title of the video “How to cut your veins” is exactly of the type of “suicide information” that the 2012 law attempts to restrict.⁷²

It seems relatively easy to see many of the possible negative impacts of this law. First, Roskomnadzor’s Registry does not have clearly defined limits, which could lead to over-blocking of Internet content. A once popular news website, Lenta.ru, described the limits of Roskomnadzor’s Registry as so broad that even the Internet page of the United Russia ruling party could be blocked.⁷³

⁶⁵ Подведены итоги работы Роскомнадзора в 2014 году (“Results of the Activity of Roskomnadzor in 2014 Made Public”), available at: <http://rkn.gov.ru/news/rsoc/news29403.htm>

⁶⁶ See visuals at: <http://visual.rublacklist.net/>

⁶⁷ Indina T., “Runet Transformations Over a Year”, Centre for New Media and Society, 6 October 2013, available at: www.newmediacenter.ru/2013/06/10/runet-transformations-over-a-year-an-overview-of-russian-internet-regulation-policy-in-2012-2013/

⁶⁸ Solopov M., “Поросенок Пётр перепыхал коноплю” (Piglet Peter Grew Cannabis), Gazeta.ru, 13 November 2012, available at: www.gazeta.ru/social/2012/11/13/4850645.shtml

⁶⁹ Indina T., *supra* note 69.

⁷⁰ See the procedure in English at: http://398-fz.rkn.gov.ru/docs/398-FZ_eng.pdf

⁷¹ Razumovskaya O., “YouTube Files Suit Over Russian Content Law”, *Wall Street Journal*, 12 February 2013, available at: www.wsj.com/articles/SB10001424127887324880504578299900516580918

⁷² Richter A., *Правовые основы Интернет-журналистики* (“The Legal Basis of Internet Journalism”, 2014, pp. 359-360.

⁷³ Indina T., *supra* note 69.



In addition, online content in violation may just be one page, one image, or one video, but if it is not promptly removed, Roskomnadzor blocks access to the entire website.

To illustrate the gravity of this issue, one can look to Lurkomore.to, a Russian wiki-based encyclopedia. At the request of the Federal Drug Control Service, an agency authorised to submit websites for review directly to Roskomnadzor, Lurkomore.to was blocked until the website removed two marijuana-related articles. The entire website was blocked for several days directly because of the stringent process of the law. Instead of notifying the owners of Lurkomore.to, who had offices based in Russia, Roskomnadzor, following the above outlined procedure, notified the hosting provider of the website, whose offices were based in Holland. Furthermore, because the notice was sent on a weekend, when the offices in Holland were empty, the hosting provider failed to notify the website owners and thus, the prohibited content was not removed within the time restrictions. As a result, the access provider simply blocked access to the entire website; access remained blocked until the website owners removed the two entries in question.⁷⁴

Moreover, since no court order is necessary to blacklist a website, Roskomnadzor has endless power and limited oversight. Further, the lack of transparency regarding the blacklisted websites restricts individuals' rights to information in violation of the Constitution of the Russian Federation.⁷⁵ Additionally, blocking an entire website (full of completely legal information) could be viewed as another violation of the Constitution.⁷⁶ Specifically, blocking an entire website could be viewed as a violation of the following rights: free speech, freedom of expression, private property and data protection, freedom of information, and secrecy of communication.⁷⁷

3.3. Amendments to the Information Law

3.3.1. The 2013 amendments

On 30 December 2013 President Vladimir Putin signed into law a bill hastily adopted by the State Duma (first reading on 17 December, the second and the third readings on 20 December 2013).⁷⁸ The act amends Article 15 of the Law on Information, Information Technologies and the Protection of Information of 27 July 2006, No. 149-FZ⁷⁹ so as to allow the Prosecutor General and his deputies to order the blocking of websites containing content such as incitement to unsanctioned public protests and to "extremist" activities.

The act introduces the following procedure: without judicial approval the Prosecutor General or one of his deputies (currently there are 15 deputies) sends a written demand to Roskomnadzor. The latter immediately orders the access provider and the hosting provider to take steps that result in the removal of the allegedly illegal content. The act also applies to information hosted abroad; in such cases, the notice is sent in English. The access provider is also required to

⁷⁴ Solopov M., *supra* note 70.

⁷⁵ *Konstitutsiia Rossiiskoi Federatsii [Konst. RF]* (Russian Constitution) Article 29.

⁷⁶ *Idem*.

⁷⁷ *Idem*, Articles 23, 24, 35, 29.

⁷⁸ *О внесении изменений в Федеральный закон «Об информации, информационных технологиях и о защите информации»* (Federal Law "On Amendments to the Federal Law on Information, Information Technologies and Protection of Information", No 398-FZ of 28 December 2013). See its full text in English at: http://398-fz.rkn.gov.ru/docs/398-FZ_eng.pdf

⁷⁹ Richter A., "Blocking Internet Allowed without Court Decision", IRIS 2014-3/40, European Audiovisual Observatory, 2014, available at: <http://merlin.obs.coe.int/iris/2014/3/article40.en.html>



block access to the content upon receipt of the Roskomnadzor order. The act establishes a procedure to resume access to the website when the content is removed.

It is worth noting that, apart from mentioning the relevant article of the Law, the Prosecutor General's Office is not required to inform editorial offices or site owners about its reason for blocking, hindering efforts of the latter to resolve the problem.

The Russian Presidential Council on Civil Society and Human Rights has stated that the law could lead to a serious infringement of constitutional rights and freedoms and could pave the way for the growth of legal nihilism, as well as create only an illusion of fighting extremism. This was noted by the OSCE Representative on Freedom of the Media Dunja Mijatović, who also expressed her concern about the bill on 20 December 2013.⁸⁰

According to the Russian NGO SOVA Centre, extrajudicial blocking of the materials based merely on suspicion of extremism is unacceptable, “since it inevitably leads to arbitrary actions and abuse by the law enforcement and to an attack on freedom of speech. Even if the law enforcement views the materials as hazardous and in need of urgent blocking, they must, nevertheless, act with court approval, which can be issued in an expedited manner, as it is done for search or arrest warrants.”⁸¹

In 2013 alone the SOVA Centre noted 83 cases in which the proper basis for denying access or imposing sanctions was arguably absent. In the course of the year, prosecutors repeatedly demanded that Internet service providers (ISPs) block online libraries (due to individual banned items they contained), websites with inappropriately banned Muslim literature, Jehovah's Witnesses materials or other religious writings, Ingush opposition websites, and non-banned websites of banned organisations.⁸²

On 13 March 2014, incidentally three days before the Crimean secession referendum, the Prosecutor General issued an order to block access to three major opposition websites, Grani.ru, a news site known for its criticism of the Kremlin, particularly the crackdown on and subsequent prosecution of the Bolotnaya protestors in 2012; *Ezhednevny Zhurnal* (Ej.ru), a news and opinion site; and Kasparov.ru, the website of former chess champion turned opposition figure, Gary Kasparov. In this case the owners of the websites were not even provided with an explanation as to which content had violated the law and caused the Prosecutor General to issue the blocking order. Their lawsuits have so far brought only negative results and complaints registered with the European Court of Human Rights.

In the first half of 2014, Roskomnadzor reported blocking of 85 websites for containing “extremist content”, based on orders from the Prosecutor Generals’ office.⁸³

3.3.2. The 2014 amendments

On 22 April 2014 the State Duma again adopted a new set of amendments to the law “On Information, Information Technologies and on the Protection of Information”.⁸⁴ They were signed into law on 5 May and came into effect on 1 August 2014.

⁸⁰ “OSCE representative concerned about amendments to information law in Russia that might limit media freedom”, press release of the OSCE Representative on Freedom of the Media, 20 December 2013, available at: www.osce.org/fom/109885

⁸¹ Verkhovsky A. (ed.), “Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2013” 4 June 2014, available at: www.sova-center.ru/en/misuse/reports-analyses/2014/06/d29660/No.ultr005

⁸² *Idem*.

⁸³ Freedom House, “Freedom on the Net – Russia”, 2014, available at: <https://freedomhouse.org/report/freedom-net/2014/russia>



The new legislation forces owners of open access websites and web pages (now labelled as “bloggers”) visited daily by more than 3000 users to register with the public authorities. It also imposes additional responsibility on them to verify the accuracy and reliability of posted information, follow election law, respect reputation and privacy, refrain from using curse words, etc. Those encumbered with these responsibilities include webpage owners in social networks, blog hosting providers, as well as online forums.

Separate responsibility to cooperate with public authorities, including law-enforcement agencies, and keep personal data lies with the hosting providers. Bloggers’ personal data must disclose real identities and traffic data and must be stored, on Russian territory, for 6 months after the end of relevant online activity.

Penalties for violations include fines of up to 300,000 rubles (at the time of adoption about EUR 7,500) and the blocking of websites and blogs. Roskomnadzor has the task of developing rules for and taking responsibility for the registration.

On 23 April 2014, the OSCE Representative on Freedom of the Media Dunja Mijatović criticised the new legislation: “If enforced the proposed amendments would curb freedom of expression and freedom of social media, as well as seriously inhibit the right of citizens to freely receive and disseminate alternative information and express critical views.”⁸⁵

The exact list of bloggers is not public information, although Roskomnadzor has established a website devoted to these amendments and the issue of the registration of bloggers.⁸⁶ The most recent report by the watchdog agency speaks of 317 bloggers on the list of those with 3000 plus visitors a day.⁸⁷

The law allows both for bloggers to apply for such registration voluntarily and to be registered by Roskomnadzor according to its own procedures. Recently Roskomnadzor started to send persistent emails and tweets recommending that popular journalists and other personalities register of their own will or provide information on the number of their followers.⁸⁸

On 31 July 2014 Prime Minister Dmitry Medvedev signed the Ordinance of the Government that amends the current rules of access to the Internet, effectively banning the availability of this

⁸⁴ *О внесении изменений в Федеральный закон “Об информации, информационных технологиях и о защите информации” и отдельные законодательные акты Российской Федерации по вопросам упорядочения обмена информацией с использованием информационно-телекоммуникационных сетей* (Federal Statute of 5 May 2014 No.97-FZ “On Amendments to the Federal Statute ‘On Information, Information Technologies and on the Protection of Information’ and Specific Legal Acts of the Russian Federation on the Issues of Regulation of Information Exchange with the Use of Telecommunication Networks”) Ros. Gaz., No.101, 7 May 2014, available at: www.rg.ru/2014/05/07/informtech-dok.html

⁸⁵ Press release of the OSCE Representative on Freedom of the Media, “Attempts to Overregulate Internet Undermine Free Speech and Free Media in Russia, Says OSCE Representative”, 23 April 2014, available at: www.osce.org/fom/117950

⁸⁶ This is available at: <http://97-fz.rkn.gov.ru/>

⁸⁷ *Подведены итоги работы Роскомнадзора в 2014 году* (“Results of the Activity of Roskomnadzor in 2014 Made Public”), available at: <http://rkn.gov.ru/news/rsoc/news29403.htm>

⁸⁸ Likhachev N., *Роскомнадзор попросил Урганта, Канделаки и других телезвезд отчитаться о посещаемости своих блогов* (Roskomnadzor asked Urgant, Kandelaki and other TV stars to report on frequency of attendance of their blogs) 12 December 2014, available at: <http://tjournal.ru/paper/rkn-media-celebrities>



service to anonymous users.⁸⁹ The Ordinance formally entered into effect on 13 August 2014, although reports say it is still not effective.⁹⁰

The Ordinance refers to the changes in the laws related to information online adopted in 2014 and demands from those providing access to the Internet at points of collective access, as well as from any other Internet service providers at public spots including Wi-Fi, to demand the identification of the users and to collect and store this data for a six-month period.

⁸⁹ *О внесении изменений в некоторые акты Правительства Российской Федерации в связи с принятием Федерального закона "О внесении изменений в Федеральный закон "Об информации, информационных технологиях и о защите информации" и отдельные законодательные акты Российской Федерации по вопросам упорядочения обмена информацией с использованием информационно-телекоммуникационных сетей"* (On amending certain acts of the Government of the Russian Federation in respect of the adoption of the Federal Law "On Amendments to the Federal Statute 'On Information, Information Technologies and on the Protection of Information' and Specific Legal Acts of the Russian Federation on the Issues of Regulation of Information Exchange with the Use of Telecommunication Networks"), Ordinance of the Government of the Russian Federation of 31 July 2014 No. 758, available at: www.rg.ru/2014/08/05/svyaz-site-dok.html

⁹⁰ For example, see: http://hitech.newsru.com/article/08Aug2014/nofree_wifi



4. Other relevant changes

In addition to the amendments recently adopted to the laws on Information, Information Technologies and the Protection of Information and on the Protection of Children from Information Harmful to their Health and Development, that have transformed the whole system of regulation of online content, some other legal acts have affected certain aspects of the system. This was done mainly through changes to civil law, which were related to privacy and defamation online.

4.1. Defamation Law

On 9 July 2013, the Constitutional Court of the Russian Federation adopted an important Resolution concerning the constitutionality of several paragraphs of Article 152 (“Defamation”) of the 1995 Russian Civil Code.⁹¹

The particular case was raised by a citizen named Krylov, who complained that the Civil Code does not oblige hosting providers to remove defamatory statements made by third parties upon the request of the defamed party.

The complaint arose from decisions of the courts of first and second instances in the Sverdlovsk region of Russia on the lawsuit of Mr Krylov against a regional hosting provider. The plaintiff demanded that the defendant remove remarks posted by an anonymous user on the “Surgutsky forum” website. He wanted his photograph, which accompanied the statement, to be removed as well. The remarks had earlier been found to be of a defamatory nature by the city court of Surgut.

The Sverdlovsk courts noted that the Civil Code provides that the refutation of defamatory statements is to be made by the person who disseminated them or by the mass media outlet that disseminated them. As such a person was not found in the case, the “Surgutsky forum” was not registered as a media outlet and the Internet forum could not be considered as an illegal form of disseminating information, the claims were dismissed.

The Constitutional Court noted with concern that in cases like this the plaintiff can only obtain a court decision on the defamatory and untrue nature of information disseminated online, but has no other means of protection of his honour, dignity or privacy, as would be available in the case of defamation offline. It reviewed the constitutional and legal norms on freedom of expression and the right to protect one’s reputation, as well as relevant national law, international covenants and soft law, such as the Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of

⁹¹ *Постановление Конституционного Суда Российской Федерации по делу о проверке конституционности положений пунктов 1, 5 и 6 статьи 152 Гражданского кодекса Российской Федерации в связи с жалобой гражданина Е.В.Крылова* (Resolution of the Constitutional Court of the Russian Federation on the case of the constitutionality test of paragraphs 1, 5 and 6 of Article 152 of the Civil Code of the Russian Federation in response to the complaint of citizen Ye. V. Krylov), Saint-Petersburg, 9 July 2013, available at: www.rg.ru/2013/07/19/ks-gk-dok.html; See: Richter A, “Privacy Protection, Libel and Defamation Incorporated in New Civil Code”, IRIS 1995-4/13, European Audiovisual Observatory, 1995, available at: <http://merlin.obs.coe.int/iris/1995/4/article13.en.html>; Richter A., “Russian Supreme Court on Defamation”, IRIS 2005-4/32, European Audiovisual Observatory, 2005, available at: <http://merlin.obs.coe.int/iris/2005/4/article32.en.html>



Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information of 1 June 2011.⁹²

The Constitutional Court ruled that the impossibility of finding the person responsible for defamatory statements should not exclude the right of the defamed party to fully protect their reputation, e.g. by restoring the situation that existed prior to the violation of the right.

Such an imposition on the hosting provider of an obligation to remove the (defamatory) information declared by a court of law to be untrue should not, according to the Court, be considered as an excessive burden or as a disproportionate restriction of its rights. The obligation to comply means that the hosting provider should do so as soon as it learns about the relevant court decision that had entered into force. Such an action is not considered as putting the blame on the ISP, but only as a form of protection of reputation. If the relevant court decision is not enforced, then the court may consider imposing on the ISP the burden of paying moral damages to the plaintiff.

These rules relate also to the owners and administrators of websites.

As the norms of the Civil Code neither provide for the possibility to demand that defamatory online statements be removed nor introduce liability for a refusal to do so, they contradict the provision of the Constitution of the Russian Federation (part 2 of Article 45) which says: “Everyone shall be free to protect his rights and freedoms by all means not prohibited by law.”

The Resolution was issued a week after President Vladimir Putin signed into law widespread amendments to the 1995 Civil Code (Part I) of the Russian Federation, including its Article 152.⁹³

In particular, the new version of Article 152 *de facto* reflects the position of the Constitutional Court. In case of infringement of his or her reputation, a person becomes entitled to seek the cessation of dissemination of information, *inter alia* by means of removing the defaming information. This person also has a specific right for the dissemination of a refutation online, in accordance with procedures to be established by a court of law in each particular case.

The case law after 1 October 2013, the day the amendments to the Civil Code entered into force, demonstrates that the option of deleting defaming information from the Internet has not yet gained popularity in Russian courts. Random statistics of cases taken from the largest database of court decisions in Russia, Rospravosudie.com, shows that out of 56 resolutions on lawsuits to protect reputation in general jurisdiction civil courts only 10 record demands to remove defamatory materials and in 9 of those cases the demand was granted. In arbitration (economic) civil courts, out of 20 resolutions on lawsuits to protect reputation, 11 record demands to remove the defamatory material and in 8 cases the demand was granted.⁹⁴

Some of the cases became politicised and thus widely known. For example, a lawsuit was filed in a district court of Moscow by a judge of the city court and his former tutor against the independent newspaper Novaya gazeta. The defendants disseminated in print and online a story according to which the first plaintiff plagiarised his dissertation from the work of his tutor, while the other oversaw this fault.⁹⁵ The court found that the journalists are not authorised to reach

⁹² Organization for Security and Co-operation in Europe, “Joint Declaration on Freedom of Expression and the Internet”, 1 June 2011, available at: www.osce.org/fom/78309

⁹³ *О внесении изменений в подраздел 3 раздела 1 части первой Гражданского кодекса Российской Федерации* (On amending subsection 3 section 1 part 1 of the Civil Code of the Russian Federation), Federal Statute No 142-FZ, 2 July 2013, available at: www.rg.ru/2013/07/05/gk-dok.html; See Richter A., “Resolution of the Supreme Court on Transparency of Justice”, IRIS 2013-8/34, European Audiovisual Observatory, 2013, available at: <http://merlin.obs.coe.int/iris/2013/1/article34.en.html>

⁹⁴ Research conducted by Darya Novatorova of School of Journalism, Lomonosov Moscow State University, 12 December 2014.

⁹⁵ Resolution by Basmany District Court of Moscow on the lawsuit of Yu. Bepalov and D.Gordeyuk to N.Girin and Novaya gazeta publishers, No. 6, December 2013.



conclusions on the conformity of dissertations with the established criteria, therefore their statements in the legal sense may not be considered as corresponding to the truth, while the authorised bodies could not make a judgment, as the limitation period for the official review of defended dissertations had expired. It ruled that the defendants were to pay moral damages of 300,000 rubles (then about EUR 7000), to publish a refutation online and in print, as well as to delete the story from the website of the Novaya gazeta. An appeal before the Moscow City Court confirmed the decision of the district court and the story was effectively removed from the online version of the publication.⁹⁶ On 28 October 2014 the Supreme Court of the Russian Federation annulled the decisions of the lower courts and sent the case to a first instance court in another jurisdiction.⁹⁷

4.2. Privacy and the right to image

The major focus of the amendments to the 1995 Civil Code (Part I) of the Russian Federation (see above) was the development of new legal mechanisms for the protection of non-material values. An important innovation of the Statute was the development of the right to privacy. In addition to the Constitution of the Russian Federation, the new Article 152.2 of the Civil Code declares that the collection, keeping, dissemination and use of information about the private life of a person shall not be allowed without his or her consent. The Civil Code's provisions consider this regulation as emphasising that any use of information about the private life of a person is considered lawful when performed for pressing governmental, social or public needs. In case of infringement of the privacy or right to use of one's image, a person shall be entitled to seek such remedy as the cessation of the dissemination of information, *inter alia* by means of deleting such information. Also new is the right to claim the removal of defamatory information or images of such a person from the Internet.

4.3. Advertising

On 6 July 2012, the State Duma adopted an amendment to the Advertising Law that plays a critical role for online media in Russia.⁹⁸ The amendment is to the 2006 Federal Statute "On Advertising".⁹⁹ It extends the list of the media where advertising of alcohol products is banned (Article 21.2) by adding Internet websites. Since 2011, alcohol products in the Federal Statute "On Advertising" include beer or beer products.

⁹⁶ See page 8 of the pdf version of the newspaper, available at: www.novayagazeta.ru/issues/2013/2108.html

⁹⁷ Верховный суд: «Судами не было установлено, соответствуют ли утверждения о плагиате действительности» (Supreme Court: "Courts Failed to Verify if the Statements of Plagiarism Correspond to Reality"), Novaya gazeta, 28 October 2014, available at: www.novayagazeta.ru/news/1688798.html

⁹⁸ О внесении изменений в статью 21 Федерального закона "О рекламе" и статью 3 Федерального закона "О внесении изменений в Федеральный закон "О государственном регулировании производства и оборота этилового спирта, алкогольной и спиртосодержащей продукции" и отдельные законодательные акты Российской Федерации и признании утратившим силу Федерального закона "Об ограничениях розничной продажи и потребления (распития) пива и напитков, изготавливаемых на его основе" (On amendments to Article 21 of the Federal Statute "On Advertising" and Article 3 of Federal Statute "On amendments to the Federal Statute 'On state regulation of production and turnover of ethyl alcohol, alcohol and alcohol-containing products' and particular legal acts of the Russian Federation" and on invalidation of the Federal Statute "On restrictions of retail sale and consumption of beer and beer-based products"), Federal Statute No.119-FZ, 20 July 2012, Ros. Gaz., No. 166, 23 July 2012, available at: www.rg.ru/2012/07/23/reklama-dok.html

⁹⁹ See Richter A., "New Advertising Statute", IRIS 2006-4/34, European Audiovisual Observatory, 2006, available at: <http://merlin.obs.coe.int/iris/2006/4/article34.en.html>



The amendment means that any placement of alcohol advertising in any form in Runet (the Russian segment of the Internet) or by Russian companies shall be punishable by law, including through the possible blocking of the websites in question.¹⁰⁰ The law entered into force on 23 July 2012.

¹⁰⁰ See Richter A., "New Rules for Internet", IRIS 2012-8/36, European Audiovisual Observatory, 2012, available at: <http://merlin.obs.coe.int/iris/2012/8/article36.en.html>



5. Conclusions

Online content regulation has by and large only begun to appear in Russia in the last four years and has become an important part of national law. Major changes have taken place in the Mass Media Law, the Federal Law “On the Protection of Children from Information Harmful to their Health and Development”, and the Federal Law “On Information, Information Technologies and on the Protection of Information”. An important input in the process was provided by the Supreme Court, which now directs all courts on issues of interpretation of the legislation.

By signing and ratifying international legal documents, Russia is required to respect and promote these rights and freedoms; likewise, the Russian Constitution calls for similar protections. Mass media freedoms are reflected in Article 29 of the Constitution, which envisages the right of each person to freely seek, acquire, transfer, produce, and disseminate information, by any legal method.¹⁰¹ That being said, it is definitely questionable whether these new laws on online media regulation function to protect these freedoms or whether they actually restrict them.

¹⁰¹ Конституция Российской Федерации [Konst. RF] [Constitution] Article 29.



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