

# FOLLOW-UP TO THE COMPARATIVE STUDY ON “BLOCKING, FILTERING AND TAKE-DOWN OF ILLEGAL INTERNET CONTENT”<sup>1</sup>

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## THE RUSSIAN FEDERATION

### 1. Legal Sources

As the Russian Federation has no specific internet-related laws, its regulation of online content is based on a great variety of sources. An intricate legislative system for blocking, filtering and take-down of illegal online content operates under numerous amendments to existing laws as well as subsidiary governmental regulations. This update of the 2015 report on the Russian Federation therefore contains a number of references to previously existing legislation which has only partially been amended in recent developments. Online content remains mostly overseen by one governmental agency, the Federal Service for Supervision of Communication, Information Technologies, and Mass Communications (Roskomnadzor)<sup>2</sup>.

The internet has been actively regulated in Russia since the early 2010s, a period punctuated by the growing impact of online platforms on public opinion in the country, most notably during the 2011-2013<sup>3</sup>.

**The 1993 Constitution of the Russian Federation**<sup>4</sup> has no specific guarantees for online freedom of expression but provides strong general guarantees for this right. Its Article 29 protects freedom of speech and thought, freedom of mass information, the right to express opinions and the right to access information. It also contains an absolute ban on censorship.

Like international standards, the Russian Constitution does not view free speech as an absolute right. However, the right may be limited only by federal laws, and “to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morals, health, the rights and lawful interests of others, and for ensuring the defence and the security of the State”.<sup>5</sup> Additionally, freedom of expression in Russia may be restricted in a state of emergency.<sup>6</sup>

Article 29 of the Constitution specifically bans propaganda, agitation for and the expression of ideas that excite social, racial, national, or religious hatred or enmity. It also prohibits the promotion of social, racial, national, religious, or linguistic supremacy. While recommending that this ban be removed because of its ambiguity, the Venice Commission concluded in 1993

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<sup>1</sup> This report covers developments in legislative framework and practice up until 30 April 2019.

<sup>2</sup> See for details: <http://eng.rkn.gov.ru/about/>.

<sup>3</sup> Protests began in Russia in 2011 in connection with alleged ballot-rigging in parliamentary elections, and continued into 2012 and 2013 as a movement for fair elections. See for details: ‘Russian election: Biggest protests since fall of USSR’ (2011, December 10). *BBC*. <https://www.bbc.com/news/world-europe-16122524>

<sup>4</sup> Constitution of the Russian Federation, adopted by Popular Vote on 12 December 1993. Retrieved from <http://www.constitution.ru/en/10003000-01.htm>

<sup>5</sup> Article 55(3) of the Russian Constitution.

<sup>6</sup> Article 56 of the Russian Constitution.

that the Russian Constitution generally complies with international standards on freedom of expression.<sup>7</sup>

The 2006 **Federal Act “On Information, Information Technologies and Protection of Information”**<sup>8</sup> (Federal Act On Information) is the main act to govern internet content in Russia. It defines the grounds for blocking websites or content removals and regulates almost all relevant procedural issues.

The Federal Act On Information establishes Roskmonadzor’s extensive supervision over media-like services in Russia,<sup>9</sup> including social media and search engine services, news aggregators, messengers, and online audiovisual services.<sup>10</sup> Some of these services are obliged to follow notification procedures, to perform some “journalistic” duties and to undertake surveillance over their users.<sup>11</sup>

Mass media are governed by the 1991 Act **“On Mass Media”**.<sup>12</sup> It defines the freedom of mass communication in wide terms and bans censorship to ensure strong protection for media freedom. However, this terminology and scope of the law have not been fully adjusted to embrace the realm of digital communications.

The Act regulates mass media services registered in such capacity with the Roskomnadzor. Alongside obligatory licensing for online broadcasting, registration has been so far voluntary for website owners in Russia due to the interpretations of the Supreme Court.<sup>13</sup> The Act “On Mass Media” allows for shutdowns of mass media outlets and of online media services alike, in the case of “abuse of the freedom of mass information”. This measure is often applied against dissemination of extremism, obscene speech and personal data of minors in the mass media. However, Article 4 of the Act “On Mass Media” contains a much broader list of potential abuses.

Types of illegal content in Russia are mainly listed in **the Criminal Code of the Russian Federation**,<sup>14</sup> **the Code on Administrative Offences of the Russian Federation**<sup>15</sup> as well as in **the Civil Code of the Russian Federation**, Part 1<sup>16</sup> and Part 4<sup>17</sup> (see Table 1). Most of their

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<sup>7</sup> The European Commission for Democracy through Law. Opinion on the Constitution of the Russian Federation as adopted by Popular Vote on 12 December 1993. Followed by comments from: Prof. N.V. Vitruk. DL(1994)011e-restr. Strasbourg, 24 March 1994. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(1994\)011-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(1994)011-e)

<sup>8</sup> Federal Act of the Russian Federation of 27 July 2006, No. 149-FZ “On Information, Information Technologies and Protection of Information”, [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_61798/](http://www.consultant.ru/document/cons_doc_LAW_61798/)

<sup>9</sup> Duffy, N. (2015). Internet Freedom in Vladimir Putin’s Russia: The Noose Tightens. <https://www.aei.org/wp-content/uploads/2015/01/Internet-freedom-in-Putins-Russia.pdf>; Richter, A., & Richter, A. (2015). Regulation of online content in the Russian Federation: Legislation and case law. IRIS extra, 5–24; Savelyev, A. (2016). “Russia’s New Personal Data Localization Regulations: A Step Forward or a Self-Imposed Sanction?”, Computer Law & Society Review 32, no. 1, pp.128-45; Sherstoboeva, E. (2018). The evolution of a Russian concept of free speech. In M. Price & N. Stremlau (Eds.), Speech and society in turbulent times: Freedom of expression in comparative perspective. Cambridge, UK: Cambridge University Press, 213–236; PEN International (2018). Russia’s Strident Stifling of Free Speech 2012-2018. <https://pen-international.org/app/uploads/PEN-Russia-final.pdf>; Report of Agora International “Internet Freedom 2017: Creeping Criminalisation.” [http://en.agora.legal/fs/a\\_delo2doc/16\\_file\\_AGORA\\_Internet\\_Freedom\\_2017\\_ENG.pdf](http://en.agora.legal/fs/a_delo2doc/16_file_AGORA_Internet_Freedom_2017_ENG.pdf).

<sup>10</sup> Articles 10.1, 10.3, 10.4, 10.5 of the Federal Act On Information.

<sup>11</sup> Please see section 3 for further details.

<sup>12</sup> The Act of the Russian Federation of 27 December 1991, No. 2124-1 “On Mass Media”. [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_1511/](http://www.consultant.ru/document/cons_doc_LAW_1511/)

<sup>13</sup> The decree of the Plenum of the Supreme Court of the Russian Federation of 15 June 2010, No. 16 “On the Practice of Application of the Act of the Russian Federation ‘On Mass Media’ by Courts”. [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_101401/](http://www.consultant.ru/document/cons_doc_LAW_101401/)

<sup>14</sup> Full text of the Criminal Code is available at: <https://www.legislationline.org/documents/section/criminal-codes/country/7>

<sup>15</sup> Full text of the Code of Administrative Offences is available at: [http://www.consultant.ru/document/Cons\\_doc\\_LAW\\_34661/](http://www.consultant.ru/document/Cons_doc_LAW_34661/)

<sup>16</sup> Part 1 of the Civil Code of the Russian Federation: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_5142/](http://www.consultant.ru/document/cons_doc_LAW_5142/)

<sup>17</sup> Part 4 of the Civil Code of the Russian Federation: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_64629/](http://www.consultant.ru/document/cons_doc_LAW_64629/)

provisions are relevant to both offline and online content, but the sanctions are often more severe for the violations on the internet or in the mass media. While the Criminal Code applies to individuals only, the other codes' provisions may also apply to legal entities, including media outlets. Illegal content is also regulated by a number of other laws, most importantly the following:

- 2002 Federal Act "On Counteracting Extremist Activity",<sup>18</sup>
- 2006 Federal Act "On Counteracting Terrorism",<sup>19</sup>
- 2006 Federal Act "On Personal Data",<sup>20</sup>
- 2010 Federal Act "On the Protection of Children from Information Harmful to their Health and Development".<sup>21</sup>

As the previous report noted<sup>22</sup>, Russia has ratified most of the Council of Europe conventions related to illegal internet content, except for the 2001 Convention on Cybercrime.<sup>23</sup> Its ratification could threaten Russia's national sovereignty, as the government suggested.<sup>24</sup>

A significant contribution to the incorporation of the Council of Europe standards on freedom of expression and media freedom in court practice has been made by the Supreme Court of the Russian Federation.<sup>25</sup> Its Plenum<sup>26</sup> issued several decrees instructing lower courts on how to apply unclear legal rules on cases of extremism,<sup>27</sup> defamation,<sup>28</sup> journalism,<sup>29</sup> privacy and the right to the protection of one's image.<sup>30</sup> Repeatedly, the Plenum's decrees specifically addressed freedom of expression online and directly quoted the standards advanced by the Council of Europe and the United Nations (UN). However, the decrees of the Supreme Court's Plenum are non-binding and lower courts may ignore them, unlike the rulings of the

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<sup>18</sup> Federal Act of the Russian Federation of 25 July 2002, No. 114-FZ "On Counteracting Extremist Activity", [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_37867/](http://www.consultant.ru/document/cons_doc_LAW_37867/)

<sup>19</sup> Federal Act of 6 March 2006, No. 35-FZ "On Counteracting Terrorism", [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_58840/](http://www.consultant.ru/document/cons_doc_LAW_58840/)

<sup>20</sup> Federal Act of the Russian Federation of 27 July 2006, No. 152-FZ "On Personal Data", [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_61801/](http://www.consultant.ru/document/cons_doc_LAW_61801/)

<sup>21</sup> Federal Act of the Russian Federation of 29 December 2010, No. 436-FZ "On the Protection of Children from Information Harmful to their Health and Development." [http://www.consultant.ru/document/Cons\\_doc\\_LAW\\_108808/](http://www.consultant.ru/document/Cons_doc_LAW_108808/)

<sup>22</sup> See <https://rm.coe.int/16806554a4>

<sup>23</sup> Chart of signatures and ratifications of Treaty 185, Convention on Cybercrime. [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/signatures?p\\_auth=iKp4JDIL](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/signatures?p_auth=iKp4JDIL)

<sup>24</sup> Director of the Department for New Challenges and Threats Ilya Rogachev's interview with Interfax News Agency, September 28, 2017. The Ministry of Foreign Affairs of the Russian Federation.

[http://www.mid.ru/en/web/guest/foreign\\_policy/international\\_safety/crime/-/asset\\_publisher/3F5lZsLVsx4R/content/id/2879426](http://www.mid.ru/en/web/guest/foreign_policy/international_safety/crime/-/asset_publisher/3F5lZsLVsx4R/content/id/2879426)

<sup>25</sup> Richter, A. (2015). Russia's Supreme Court as media freedom protector. In P. Molnar (Ed.), Free speech and censorship around the globe (pp. 273–298). Budapest: Central European University Press; Sherstoboeva, E. (2018). The evolution of a Russian concept of free speech. In M. Price & N. Strelau (Eds.), Speech and society in turbulent times: Freedom of expression in comparative perspective. Cambridge, UK: Cambridge University Press, 213–236.

<sup>26</sup> The Plenum of the Supreme Court is a body that assembles all Supreme Court judges and issues decrees explaining and interpreting the law to ensure its proper and cohesive application by the lower courts.

<sup>27</sup> Decree of the Plenum of the Supreme Court of 28 June 2011, No. 11 "On Judicial Practice on Extremist Crimes;" Decree of the Plenum of the Supreme Court of 20 September 2018, No. 32 "On Amending the Decree of the Plenum of the Supreme Court of 28 June 2011, No. 11 'On the Judicial Practice on Extremist Crimes'".

<sup>28</sup> Decree of the Plenum of the Supreme Court of 24 February 2005, No. 3 "On the Judicial Practice on Cases on Protection of Honor and Dignity of Citizens, and Business Reputation of Citizens and Legal Entities".

<sup>29</sup> Decree of the Plenum of the Supreme Court of 15 June 2010, No. 16 "On the Practice of Application of the Act of the Russian Federation 'On Mass Media' by Courts".

<sup>30</sup> Decree of the Plenum of the Supreme Court of 23 June 2015, No. 25 "On Application of Certain Provisions of Section I Part 1 of the Civil Code of the Russian Federation by Courts".

Constitutional Court of the Russian Federation. The latter, however, has tended to justify restrictive national laws on online content.<sup>31</sup>

## **2. Legal Framework**

### **2.1 Blocking, filtering and take-down of illegal internet content**

Russian legislation provides nearly no distinctive rules for blocking, filtering and taking down illegal online content. The Federal Act On Information allows for the forced blocking of online resources under a court order, but also in some cases unilaterally by public authorities without court intervention.

Because online blocking, filtering, and take-downs of content restrict freedom of expression, they must meet the criteria outlined in the Russian Constitution, as well as the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>32</sup> In particular, the measures applied must be proportionate to the legitimate aims pursued. Below, the report examines the Russian legal perspective on some of such aims in the context of online blocking, filtering, and take-downs.

#### **2.1.1 Protection of national security, territorial integrity, and public safety**

The Russian vision of national security protection was first outlined in the 2000 Doctrine of Information Safety approved by a presidential decree<sup>33</sup> and was developed further in the 2016 Doctrine, which is also a presidential document.<sup>34</sup> Both doctrines proclaim the need to protect “national interests” from “internal and external informational threats” from both online and offline sources. The doctrines mainly see the threats to national cybersecurity in illegal content, rather than in technical or infrastructural problems, unlike many other Council of Europe member states. In line with this vision, the legal notion of extremism was developed in Russia to serve as one of the most frequent grounds used to justify the blocking, filtering and take-down of internet content.

Extremism is a vague notion covering various types of speech.<sup>35</sup> It includes hate or terror speech as well as speech inciting violence that is explicitly banned according to the Council of

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<sup>31</sup> Sherstoboeva, E. (2018). The evolution of a Russian concept of free speech. In M. Price & N. Stremlau (Eds.), *Speech and society in turbulent times: Freedom of expression in comparative perspective*. Cambridge, UK: Cambridge University Press, 213–236.

<sup>32</sup> Convention for the Protection of Fundamental Rights and Freedoms in Article 10(2) states that any limitation to free speech must (i) be prescribed by law; (ii) pursue a legitimate aim; (iii) be necessary in a democratic society.

<sup>33</sup> Doctrine on Information Safety, adopted by the Decree of the President of the Russian Federation on 9 September 2000, N Pr-1895. [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_28679/](http://www.consultant.ru/document/cons_doc_LAW_28679/)

<sup>34</sup> Doctrine on Information Safety, adopted by the Decree of the President of the Russian Federation on 5 December 2016, No 646. <https://rg.ru/2016/12/06/doktrina-infobezobasnost-site-dok.html>

<sup>35</sup> Article 1 of the Federal Statute “On Counteracting Extremist Activity” defines any of the following activities as extremism: forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation; public justification of terrorism or other terrorist activity; incitement of social, racial, national, or religious strife; propaganda of exclusiveness, superiority, or inferiority of an individual based on his or her social, racial, national, religious, or linguistic identity or religious beliefs; violation of human or citizen’s rights, freedoms, or legitimate interests based on national, religious, or linguistic identity or religious beliefs; preventing citizens from exercising their electoral rights and the right to participate in a referendum or violation of the secrecy of the vote combined with violence or a threat to use violence; interference with the legitimate activity of state authorities, local government bodies, election commissions, public or religious organisations, or other organisations combined with violence or a threat to use violence; committing crimes on motives related to political, ideological, racial, national, or religious hatred or strife, or on motives related to hatred or strife towards any social group; propaganda or public demonstration of Nazi attributes or symbols or attributes and symbols confusingly similar to them, or public demonstration of attributes or symbols of extremist organisations; public calls for carrying out of the activities mentioned above or mass dissemination of knowingly extremist materials as well as their production or storage for the purposes

Europe standards. However, the interpretation of these notions in Russia is somewhat broader and often insufficiently clear. Article 3 of the Federal Act "On Counteracting Terrorism" defines terrorism as not only terrorist practices but also the "ideology of violence," a notion that lacks a legal definition. This statute also bans "propaganda of terrorist ideas; dissemination of materials or information calling for the engagement in terrorist activities; or explaining or justifying the need to commit such activities". Article 205.2 of the Criminal Code describes "public justification of terrorism" widely as a "public statement recognising that the ideology and practice of terrorism are correct and need support and emulation". Article 280.1, which bans public calls for violating territorial integrity, does not further define this notion and has been used to prevent online public debate regarding Crimea.<sup>36</sup>

In Russian law the notion of 'extremism' also encompasses proselytism, desecration of military monuments, libel against public officials and demonstration of the symbols of organisations banned in Russia. Public calls inciting extremist acts also constitute extremism. Russian law also specifically bans "extremist materials" which are broadly defined in the Federal Act "On Counteracting Extremist Activity." They include documents or information that call for committing extremist acts or explain or justify the need to commit them. In other words, the legal notion of extremism in Russia is multi-layered and bans on different types of activity falling under its scope often overlap.

Websites containing extremism may be blocked either upon court rulings or upon the decision of the Prosecutor General or his deputies. Judicial proceedings are initiated by prosecutors, and the judgments are largely based on expert evaluations commissioned by the investigating authorities or the courts themselves. Scholars argue that the experts often lack independence or relevant qualifications to make legal conclusions.<sup>37</sup> Extremist materials are blacklisted by the Ministry of Justice in an online register that includes 4885 online and offline publications as of 30 April 2019.<sup>38</sup>

Scholars claim that, in general, the anti-extremist law tends to be used to safeguard the Russian government from protests and criticism.<sup>39</sup> The UN Human Rights Committee and the Venice Commission recommended that Russian authorities should narrow the definition of extremism,<sup>40</sup> however, the scope of the definition has rather been broadened. The so-called

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of mass dissemination; public libel against federal government officials of the Russian Federation or regional government officials alleging that they have committed the abovementioned criminal acts during the exercise of their official duties; organisation or preparation of the abovementioned activities or calls to commit them; funding the abovementioned activities or providing any other assistance for their organisation, preparation, or execution including providing support for the printing of their materials, offering educational and technical facilities, providing phone communication, or other types of communication and information services.

<sup>36</sup> SOVA Center: The illegal application of anti-extremist legislation in Russia in 2016 (2017, March 23). <https://www.sova-center.ru/misuse/publications/2017/03/d36651/>

<sup>37</sup> Verhovskij, Ledovskih, and Sultanov, *Ostorozhno, extremism! Analiz zakonodatel'stva o protivodejstvii ekstremistskoj dejatel'nosti i praktiki ego primeneniya* [Be Cautious, Extremism! Analysis of the Legislation on Counteracting Extremist Activity and the Practice of Its Application] (2013).

<sup>38</sup> Ministry of Justice of the Russian Federation: The Federal Register of Extremist Materials, <http://minjust.ru/ru/extremist-materials>

<sup>39</sup> Sherstoboeva, E., Pavlenko, V. (2012). Freedom of Expression and Regulation of Extremism in Russia in the Context of the Council of Europe Standards. In: S. Bodrunova (Ed.) *Internet Science: 5th International Conference, INSCI 2018 St. Petersburg, Russia, October 24–26, 2018 Proceedings*, pp. 101–118; Richter, A. (2012). One step beyond hate speech: Post-Soviet regulation of "extremist" and "terrorist" speech in the media. In M. Herz & P. Molnar (Eds.), *The content and context of hate speech: Rethinking regulation and responses* (pp. 290–305). New York: Cambridge University Press; Verhovskij, Ledovskih, & Sultanov, 2013.

<sup>40</sup> European Commission for Democracy through Law, *Opinion on Federal Law of the Russian Federation, "On Combating Extremist Activity,"* adopted by the Venice Commission at its 91 Plenary Session, Venice, 15–16 June, No. 660/ 2011, CDL-AD(2012)016, Strasbourg, 20 June 2012. Retrieved from

2016 ‘Yarovaya law’<sup>41</sup> considerably restricted freedom of speech with the announced purpose of reinforcing measures aimed at counteracting terrorism and ensuring public safety. It also tightened the regulation of internet intermediaries and imposed on them an obligation to carry out surveillance over the online correspondence of internet users. Anonymisers and virtual private networks (VPNs) are also banned in Russia.<sup>42</sup> In 2018, blocking of the messaging service Telegram was ordered by court because of its refusal to give security services access to user’s encrypted messages as provided by law.<sup>43</sup> However, the service is still available for many users in Russia.

The Supreme Court’s Plenum issued a decree in 2011 to clarify the anti-extremist legislation,<sup>44</sup> and later amended this decree in 2018<sup>45</sup> instructing lower courts on the limited liability for reposting or liking extremist materials. As a result, some controversial criminal cases on online extremism have been closed.<sup>46</sup>

Article 15.3 of the Federal Act On Information also allows blocking access to websites or their content directly upon the decision of the Prosecutor General or its deputies if they contain:

- information calling for a mass disorder (that also constitutes extremism) or "for participation in public actions conducted in contravention of established procedures," or
- materials of foreign or international NGOs for which “activities are undesirable” in Russia, or information on getting the access to such materials.

These provisions lack clarity and may be applied fairly excessively. They allow the removal of online information on peaceful rallies or the blocking of access to websites containing such information. They may also be used to suppress criticism of Russian governmental policies coming from foreign or international NGOs.<sup>47</sup> According to the 2015 amendments to Russian law, foreign or international NGOs may be qualified as “undesirable” if their activities “threaten the fundamentals of Russia's constitutional order, national defense or safety”.<sup>48</sup> The evaluation is carried out by the Prosecutor General or its deputies in consultation with Russia's Ministry of Foreign Affairs, and no legal criteria are provided for the Prosecutor’s

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[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(1994\)011-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(1994)011-e); The UN Human Rights Committee’s Concluding Observations on the Seventh Periodic Report of the Russian Federation (CCPR/C/RUS/7), adopted on 28 April 2015. Retrieved from the official website of the Office of the UN High Commissioner for Human Rights (OHCHR): <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhstWB5OJfDOQhMEkiX20XNhfW544vVjDCG9yOfCaGgJ%2b4aMVruPFpyUaMYJvfEOEBQCPHWJdUArBGIBJo5DzI4ZqOZa12FMGUZJqFSjwclY P>

<sup>41</sup> The term ‘Yarovaya law’ refers to a package of two federal laws: Federal Act of 6 July 2016 No. 374-FZ “On Amending the Federal Act of the Russian Federation On Counteraction of Terrorism, and Other Legal Acts of the Russian Federation in the Part Establishing Additional Measures to Counteract Terrorism and Ensure Public Safety”; Federal Act of 6 July 2016 No. 375-FZ “On Amending the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation in the Part Establishing Additional Measures to Counteract Terrorism and Ensure Public Safety”.

<sup>42</sup> Federal Act of 25 November 2017 No. 327-FZ “On Amending Articles 10.4 and 15.3 of the Federal Act of the Russian Federation “On Information, Information Technologies, and Protection of Information” and Article 6 of the Act of the Russian Federation “On Mass Media””.

<sup>43</sup> Russia to block Telegram app over encryption. (2018, 13 April). *BBC*. <https://www.bbc.com/news/technology-43752337>

<sup>44</sup> Decree of the Plenum of the Supreme Court of the Russian Federation of 28 June 2011, No.11 “On the Judicial Practice on Extremist Crimes”.

<sup>45</sup> Decree of the Plenum of the Supreme Court of the Russian Federation of 20 September 2018, No. 32 “On Amending Decree of the Plenum of the Supreme Court of 28 June 2011, No. 11 “On Judicial Practice on Extremist Crimes””.

<sup>46</sup> V Rossii nachinajut zakryvat' ugolovnye dela za posty v internete [In Russia, criminal cases are closing for posts on the Internet.]. (2018, October 7). *Roskomsvoboda*. <https://roskomsvoboda.org/42208/>

<sup>47</sup> OSCE Representative calls on President of Russia to veto the new restrictive law that would have a negative effect on free expression, free media. 20 May 2015. <https://www.osce.org/fom/159081>

<sup>48</sup> Federal Act of 23 May 2015 No. 129-FZ “On Amending Certain Legal Acts of the Russian Federation”.

determinations. The online register of “undesirable organisations” is maintained by the Ministry of Justice and includes 15 organizations (as of 30 April 2019).<sup>49</sup>

In 2019, internet regulation was further amended.. The so-called ‘law on fake news’ (March 2019)<sup>50</sup> authorised Roskomnadzor to request take-down of ‘false information of public interest’ without court order, to be complied with by online media outlets immediately upon receipt. In the case of non-compliance, Roskomnadzor sends a blocking request to the internet service provider, also to be enforced without delay.

The ‘sovereign internet law’ (adopted in April 2019 and in force as of 1 May)<sup>51</sup> provides for measures allowing to route Russian web traffic and data through points controlled by state authorities. It also foresees development of a national Domain Name System and installing network equipment to identify the source of web traffic and also block banned content.

Both 2019 amendments were strongly criticised by observers as contravening standards of freedom of expression, media freedom and privacy protected by the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR).<sup>52</sup>

### **Protection of health and morals**

Article 15.1 of the Federal Act On Information authorizes Roskomnadzor to blacklist websites without a court decision if they contain the following types of content related to protection of health or morals (see Chart 1):

- child sexual abuse materials;
- information about how to produce or use drugs, psychotropic substances or their precursors;
- information about how to commit suicide or calls to commit suicide;
- information about a minor who has suffered as a result of unlawful acts (or inaction);
- information that violates legislation on gambling and lotteries;
- information containing offers on illegal sale of alcoholic products.

Since 2016, Roskomnadzor has been actively blocking access to the web pages of social media groups that promote suicide among minors. Around 14,000 groups and personal webpages dedicated to “death groups” were made unavailable in 2017.<sup>53</sup> In 2016, Russian authorities tightened criminal liability for disseminating information about the methods of committing suicide or calls to commit it<sup>54</sup>.

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<sup>49</sup> The list of foreign and international non-governmental organizations whose activities are deemed undesirable in the Russian Federation: <http://minjust.ru/ru/activity/nko/unwanted>

<sup>50</sup> Federal Act of 18 March 2019 No. 31-FZ “On Amending Article 15.3 of the Federal Act “On Information, Information Technologies and Protection of Information”.

<sup>51</sup> Federal Act of 1 May 2019 No. 90-FZ “On Amending Article 15.3 of the Federal Act “On Information, Information Technologies and Protection of Information”.

<sup>52</sup> See, for instance, Russia: EFJ and IFJ voice concerns over new law on fake news and respect for State. <https://europeanjournalists.org/blog/2019/04/05/russia-efj-and-ifj-voice-concerns-over-new-law-on-fake-news-and-respect-for-state/> ; Human Rights Watch, Joint Statement on Russia's "Sovereign Internet Bill". <https://www.hrw.org/news/2019/04/24/joint-statement-russias-sovereign-internet-bill>

<sup>53</sup> Roskomnadzor blocked about 14 thousand “death groups” in social networks in 2017 (2018, February 6). TASS. <https://tass.ru/ekonomika/4935084>

<sup>54</sup> Federal Act of 7 June 2017 No. 120-FZ “On Amending the Criminal Code of the Russian Federation and Article 151 of the Code of Criminal Procedure of the Russian Federation Regarding the Establishment of Additional Mechanisms of Counteraction to Activities Aimed at Encouraging Children to Suicidal Behavior”.

The Act “On Mass Media” qualifies materials promoting pornography or containing obscene speech as “abuse of freedom of mass information”. In 2014, the Supreme Court ruled<sup>55</sup> in the case of Rosbalt, an online news media outlet, that the Roskomnadzor’s attempt to close Rosbalt for the repeated availability, despite written notifications from the Roskomnadzor, of third party materials containing obscene speech on its platform had been a disproportionate interference. The legal provision that allows the shutdown of online platforms in such circumstances, however, remains in force.

### **2.1.2 Protection of information relating to the state, business or commercial (professional) secrecy**

To prevent abuse of secrecy requirements, Article 29(4) of the Russian Constitution states that the list of information comprising state secrets must be determined by law. However, legal mechanisms to implement this guarantee appear imperfect, and information comprising state secrets tends to be defined by the executive. For instance, in 2015 a presidential decree qualified information on military losses in peacetime during “special operations” as well as in wartime as state secrets.<sup>56</sup> Although activists argued that this decree violated human rights and was linked to the conflict in eastern Ukraine, the Supreme Court ruled on its lawfulness.<sup>57</sup>

Russian regulations provide strong protection against the disclosure of state or other secrets on the internet. Article 7(5) of the Federal Act On Information authorises public authorities to request the takedown of open data if its dissemination can lead to the dissemination of information that constitutes a state secret. Disclosing state secrets is punishable by up to seven years’ imprisonment for persons who access or obtain it in any way, according to Article 283 of the Russian Criminal Code. Its Article 183 provides that disclosure or use of commercial, tax or bank secrets is punishable by up to five years of imprisonment.

### **2.1.3 Protection of the reputation or rights of others (defamation, invasion of privacy)**

Over the last few years, a number of amendments were introduced with the announced aim of the protection of personal data. The 2014 amendments allowed Roskomnadzor to blacklist and block websites that store personal data of Russian nationals outside Russia upon court decisions.<sup>58</sup> The requirement to store this data within the country fails to take into consideration the trans-border nature of the internet and may explicitly contradict Article 12(2) of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data<sup>59</sup> ratified by Russia in May 2013. The Convention explicitly prohibits restricting trans-border flows of personal data for the purpose of privacy protection.

The above requirement of the national law led to the blocking of access to the social media service LinkedIn in 2016.<sup>60</sup> The company refused to comply with this requirement claiming

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<sup>55</sup> Resolution of the Judicial Collegium on Administrative Cases of the Supreme Court of the Russian Federation in the case No. 5-APG13-57 of 19 March 2014. [http://www.supcourt.ru/stor\\_pdf.php?id=584842](http://www.supcourt.ru/stor_pdf.php?id=584842)

<sup>56</sup> Decree of the President of the Russian Federation of 28 May 2015, No. 273 “On Amending the List of Information Relating to State Secrets, approved by Decree of the President of the Russian Federation of 30 November 1995 No. 1203”

<sup>57</sup> Ruling of the Supreme Court of the Russian Federation in the case No. AKPI15-679 of 13 August 2015. [http://vsrf.ru/stor\\_pdf.php?id=1363026](http://vsrf.ru/stor_pdf.php?id=1363026)

<sup>58</sup> Federal Act of 21 July 2014 No. 242-FZ “On Amending Certain Legal Acts of the Russian Federation for Specifying the Order of Personal Data Processing in Information and Telecommunication Networks.”

<sup>59</sup> The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. ETS No. 108, adopted on 28 January 1981. <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108>

<sup>60</sup> Ruling of the Tagansky District Court of the City of Moscow in the case No. 02-3491/2016 of 4 August 2016. <https://www.mos-gorsud.ru/rs/taganskij/cases/docs/content/27b4bb17-652a-4e2f-a101-d3c82bcd2c4>



that this would be technically impossible. Most global online companies, such as Google, Twitter, eBay, and PayPal, have also failed to fulfil this requirement but agreed to do so in the near future. If the upcoming Roskomnadzor's inspection reveals non-compliances, access to their websites may also be blocked.

Russian law specifically prescribes removal from the online space of personal data of minors who have suffered from illegal actions or inactions.<sup>61</sup> While the law provides sufficiently clear criteria for distinguishing such data, it also allows the blocking of access to entire websites. Additionally, enforcement of these legal provisions is carried out by the Roskomnadzor without a court decision.

The so-called 'law on the right to be forgotten' obliges search engine services to remove search results containing false, outdated or illegal information about a person upon request.<sup>62</sup> The statute lacks clear criteria for content removal and disregards the notion of public interest. The biggest Russian search engine service Yandex stated in 2016 that it cannot properly verify information that it has to remove.<sup>63</sup>

Information concerning individuals' private lives is protected by the Constitution<sup>64</sup> and the Civil Code<sup>65</sup>. In the case of publication of such information or images online without the individual's consent, the latter may request removal in court. In this context Russian law pays attention to the notion of public interest as defined by the Plenum of the Supreme Court.<sup>66</sup>

Protection from defamation is also guaranteed in the Russian Constitution<sup>67</sup> and the Civil Code. Article 152 of the Civil Code provides for a range of measures against online publication of information that is untrue and "discrediting to honour, dignity or business reputation". The Code requires that such information be corrected upon requests from those affected by it, unless those who have disseminated such information prove its truthfulness in court. Affected persons may also seek in court monetary compensation, removal of defamatory content, replies to it, as well as the seizure and destruction of the copies of publications containing defamatory materials. Claimants may also request correction of non-discrediting but untrue information if they are able to prove its falseness.

Although the Civil Code provides that content removals may only be executed upon a court decision, the Constitutional Court has ambiguously stated that it would also be consistent with the Constitution to request content removals as preliminary injunctions.<sup>68</sup> The 2018 amendments allowed bailiffs to issue orders to block websites with defamatory information

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<sup>61</sup> Federal Act of 5 April 2013 No. 50-FZ "On Amending Certain Legal Acts of the Russian Federation for Limiting the Dissemination of Information about Minors Who Have Suffered from Illegal Actions (Inactions)." [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_144630/](http://www.consultant.ru/document/cons_doc_LAW_144630/)

<sup>62</sup> Federal Act of 13 July 2015 No. 264-FZ "On Amending the Federal Act "On Information, Information Technologies, and Protection of Information" and Articles 29 and 402 of the Code of Civil Procedure".

<sup>63</sup> Yandex (2016, March 15). O primenenii zakona o prave na zabvenie [On applying the law on the Right to Be Forgotten]. <https://yandex.ru/blog/company/o-primenenii-zakona-o-prave-na-zabvenie>

<sup>64</sup> Articles 23, 24 of the Constitution of the Russian Federation.

<sup>65</sup> Articles 151.1-152.2 of the Civil Code of the Russian Federation.

<sup>66</sup> Decree of the Plenum of the Supreme Court of the Russian Federation of 15 June 2010 No.16 "On the Practice of Application of the Act of the Russian Federation "On Mass Media" by Courts" sees public interest as the society's interest in detecting and disclosing threats to democracy, the rule of law and to civil society, to public safety, and to the environment.

<sup>67</sup> Articles 23, 46 of the Constitution of the Russian Federation.

<sup>68</sup> 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 the Citizen Y. Krylov", Saint-Petersburg, 9 July 2013.

if those who had posted such information do not remove it in the allotted time.<sup>69</sup> Further amendments in 2018 tightened liability for the failure to comply with the court's order to stop the dissemination of information or to provide refutation of the previously disseminated false information.<sup>70</sup>

Scholars argue that legal regulation of defamation in Russia may be used for suppressing online criticism or investigations.<sup>71</sup> Russia is among few European countries that maintain criminal liability for libel and insult of public officials.<sup>72</sup> Additionally, since 2019 online dissemination of information containing 'sheer disrespect' of state, public authorities or national symbols constitutes an administrative offence (disorderly behavior), punishable by fine.<sup>73</sup> Insult of individuals entails administrative sanctions.<sup>74</sup>

### 2.1.5 Protection of intellectual property rights/copyrights

Russian law authorises Roskomnadzor to supervise blocking of any 'pirated' content (except for photographs) or websites containing 'pirated' content, and to blacklist such websites.<sup>75</sup> With regard to copyright, blocking in Russia serves as a preliminary injunction ordered upon applications from copyright holders by the Moscow City Court.<sup>76</sup> Applicants must file their lawsuits in support of the injunctions within two weeks after the orders have been issued.

In addition to 'regular' blocking, Article 15.6 of the Federal Act On Information permits permanent blocking of websites for repeated violations of copyright against the same copyright holder (see Chart 2). In 2015, the Moscow City Court ruled to block the access to the popular torrent website Rutracker.org permanently,<sup>77</sup> although many users still can access it in some way. Since 2017, Article 15.6-1 of the Federal Act On Information has allowed the restriction of access to the copies of websites that had been blocked under the order of the Moscow City Court. The legal definition of such 'mirror' websites is, however, insufficiently clear.

Article 1253.1 of the Civil Code limits the liability of internet intermediaries, providing relatively clear criteria. The degree of responsibility differs for intermediaries that only transmit content and intermediaries that provide hosting services. Overall, regulation of internet intermediaries in Russian law encourages prompt removal of content by private actors (see also Section 3).

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<sup>69</sup> Federal Act of 23 April 2018 No. 102-FZ "On Amending the Federal Act "On Enforcement Proceedings" and Article 15.1 of the Federal Act "On Information, Information Technologies, and Protection of Information". [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_296434/](http://www.consultant.ru/document/cons_doc_LAW_296434/)

<sup>70</sup> Federal Act of 2 October 2018 No. 347-FZ "On Amending the Civil Code of the Russian Federation". [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_307990/](http://www.consultant.ru/document/cons_doc_LAW_307990/)

<sup>71</sup> See, for details, Sherstoboeva E. (2018). Defamation Law in Russia in the context of the Council of Europe Standards on Media Freedom. *Journal of International Media & Entertainment Law*. 2018. Summer/Fall.

<sup>72</sup> Articles 128.1 and 319 of the Criminal Code of the Russian Federation.

<sup>73</sup> Federal Act of 18 March 2019 No.28-FZ "On Amending the Code of Administrative Offences of the Russian Federation" and Federal Act of 18 March 2019 No.30-FZ "On Amending the Federal Act "On Information, Information Technologies, and Protection of Information".

<sup>74</sup> Article 5.61 of the Code of Administrative Offences.

<sup>75</sup> Federal Act of 24 November 2014 No. 364-FZ "On Amending the Federal Act "On Information, Information Technologies, and Protection of Information", as well as the Code of Civil Procedure" [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_171228/](http://www.consultant.ru/document/cons_doc_LAW_171228/)

<sup>76</sup> Article 144.1 of the Code of Civil Procedure. Full text is available at: <http://cis-legislation.com/document.fwx?rgn=3569>

<sup>77</sup> Ruling of the Moscow City Court in the case No. 3-0647/2015 of 9 November 2015. <https://www.mosgorsud.ru/mgs/cases/docs/content/60e7cd6d-7b7b-4bbd-ad44-34e3233bf82a>

According to the 2017 report of Roskomnadzor, the agency received 1,304 injunction orders from the Moscow City Court (see Chart 3) and 133 rulings on permanent blocking of 530 websites, as well as 3,085 applications from copyright holders in relation to 38,805 websites and/or web pages.<sup>78</sup> These numbers are around half as much as in 2016, self-regulatory mechanisms encouraging website owners to remove illegal content upon applications from copyright holders likely having played a role.

### 3. Procedural Aspects

Procedures for blocking access on various grounds differ,<sup>79</sup> which sometimes creates confusion in implementation. Governmental authorities have full discretion over the implementation of blocking procedures. Roskomnadzor is in charge of overseeing blocking procedures and blacklisting illegal websites, except for the blacklisting of extremist materials.<sup>80</sup>

Upon a court's or another state body's<sup>81</sup> decision, Roskomnadzor notifies certain web hosting service providers of the inclusion of the infringing websites in the blacklist. Within one day, the provider informs the website's owner who must immediately remove the infringing content. If the owner fails to comply, the provider must within one day, at its own discretion, either remove the illegal content, or block access to the webpage, or to the entire website containing it. If the provider and/or the website's owner fail to comply with these requirements, Roskomnadzor blacklists the website. Within 24 hours, communication service providers must limit access to the website. An attempt to challenge the constitutionality of blocking entire websites was unsuccessful. The Constitutional Court ruled in December 2015 that this measure is fully consistent with the Russian Constitution and with international standards on the sole ground that it is aimed at prohibiting illegal content.<sup>82</sup>

There is no independent body to appeal to against blacklisting decisions, which could make the procedure more transparent. The period of time within which access to the website must be restored is not always specified. The law does not establish the exact period within which Roskomnadzor must check the accuracy of notification about illegal content removal.<sup>83</sup>

Another issue concerns the technical aspects of blocking IP-addresses. Because websites may share the same IP-addresses with the infringing website, they may also become unavailable as a result of blocking access to the infringing website. Roskomnadzor's attempts to block access to the messaging service Telegram resulted in the unavailability of many online

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<sup>78</sup> Public Report of the Federal Service for Supervision of Communication, Information Technologies, and Mass Communications – 2017. [https://rkn.gov.ru/docs/doc\\_2326.pdf](https://rkn.gov.ru/docs/doc_2326.pdf)

<sup>79</sup> Articles 15.1-15.8 of the Federal Act On information.

<sup>80</sup> Article 15.1 of the Federal Act On information.

<sup>81</sup> E.g., the Prosecutor General or its deputies, the Russian Ministry of Internal Affairs, the Federal Service for Customer Rights and Human Welfare Protection, the Roskomnadzor, the Federal Tax Service, the Federal Service for Alcohol Market Regulation – depending on the type of illegal content.

<sup>82</sup> Resolution of the Constitutional Court of the Russian Federation of 22 December 2015 “On the admissibility of the complaint of the foreign organization Watchtower Bible and Tract Society of New York, Inc., complaining about the violation of its constitutional rights by Article 1, paragraph 3 and Article 13 of the Federal Statute of the Russian Federation ‘On Counteraction of Extremism Activity’” of 17 February 2015 as well as Article 15.1, paragraph 2 part 5 of the Federal Statute of the Russian Federation “On Information, Information Technologies and Protection of Information”.

<sup>83</sup> Article 15.3 of the Federal Act On information.

services that had no connections to the Telegram's case.<sup>84</sup> Over 8 million websites have faced unlawful blocking in Russia because of IP-address blocking, according to the data of the Russian NGO Roskomsvoboda as of 30 April 2018.<sup>85</sup>

Both online and offline mass media services may be shut down if they get two warnings regarding abuse of the freedom of mass information<sup>86</sup> from Roskomnadzor or from the Prosecutor General, and fail to appeal against them in court.<sup>87</sup> Unlike offline mass media services, online platforms can keep operating after being *de jure* shut down. They can disseminate content via their websites. However, they can neither have journalistic rights nor bear journalistic duties. Rosbalt had operated as a non-media website until the Supreme Court reinstated its registration certificate as a mass media service.

Roskomnadzor reconsidered the liberal perspective of the Supreme Court Plenum on limited editorial liability for users' comments and issued an order<sup>88</sup> obliging editorial offices to remove or edit such comments within only one working day after the agency's notice has been sent (though not necessarily received).<sup>89</sup> Otherwise, the outlet may get a warning on abuse of the freedom of mass information. This has prompted some websites to close their forums.<sup>90</sup>

Apart from access blocking and content removals, Russian law also provides for other ways to exercise control over online media-like services, a tendency that has noticeably expanded in the last few years.<sup>91</sup> Most of these services must provide certain data to Roskomnadzor for being included in various registers (e.g., the register of online platforms, the register of news aggregators, the register of audiovisual services, other).<sup>92</sup> The services must also install Roskomnadzor's counters of visits on their websites before starting to operate. The so-called 'law on messengers' of 2017<sup>93</sup> obliges messaging services to stop transmitting messages or providing services within one day upon Roskomnadzor's notice. The 'law on news aggregators' of 2016<sup>94</sup> forces the latter to remove any news item upon Roskomnadzor's request. News aggregators are also obliged to verify the accuracy of the disseminated information.<sup>95</sup> These amendments have been criticised as vaguely worded, which could lead

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<sup>84</sup> Roskomnadzor razblokiroval tri miliona IP-adresov [Roskomnadzor has unblocked three million IP addresses]. (2018, April 28). *RBC*. [https://www.rbc.ru/technology\\_and\\_media/28/04/2018/5ae471089a7947d447cbc915](https://www.rbc.ru/technology_and_media/28/04/2018/5ae471089a7947d447cbc915)

<sup>85</sup> See the official website of Roskomsvoboda at: <https://reestr.rublacklist.net/visual>

<sup>86</sup> Articles 4 and 16 of the Act "On Mass Media," Article 13.15 of the Code of Administrative Offences.

<sup>87</sup> Articles 4 and 16 of the Act "On Mass Media," Article 13.15 of the Code of Administrative Offences.

<sup>88</sup> Order of the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications of 6 July 2010, No. 420 "On Approval of the Order of Filing Complaints on Inadmissibility of Abuses of the Freedom of Mass Information to Mass Media Outlets Disseminated on Information and Telecommunication Networks Including on the Internet".

<sup>89</sup> See, for details, Richter, A., & Richter, A. (2015). Regulation of online content in the Russian Federation: Legislation and case law. *IRIS extra*, 5–24.

<sup>90</sup> Turovsky, D. (2015, August 13). This is how Russian Internet censorship works: A journey into the belly of the beast that is the Kremlin's media watchdog. *Meduza*. <https://meduza.io/en/feature/2015/08/13/this-is-how-russian-internet-censorship-works>

<sup>91</sup> Articles 10.1, 10.3, 10.4, 10.5 of the Federal Act On information.

<sup>92</sup> *Idem*.

<sup>93</sup> Federal Act of 29 July 2017, No. 241-FZ "On Amending Articles 10.1 and 15.4 of the Federal Act "On Information, Information Technologies, and Protection of Information"

<sup>94</sup> Federal Act of 23 June 2016, No. 208-FZ "On Amending the Federal Act on Information, Information Technologies, and the Code of Administrative Offences"

<sup>95</sup> Article 10.4 of the Federal Act On Information.

to a further increase of the already high number of interventions by state authorities in online service providers' activities.<sup>96</sup>

#### **4. General monitoring of the internet**

While some aspects of the limited liability doctrine are applicable, Russian online content moderation law and practice raise substantial issues regarding their compatibility with Council of Europe standards.<sup>97</sup> Contrary to Principle 6 of the Council of Europe Declaration on Freedom of Communication on the internet, the law obliges internet intermediaries to filter actively online content.<sup>98</sup> The trend for “extra-judicial internet censorship” in Russia, which was noted in the previous report, has considerably advanced in recent regulations. Internet monitoring is also carried out by Roskomnadzor, rather than by an independent body. The agency accepts complaints of violations offline and online, including through a special form on its website, and considers them within 30 days.

#### **5. Assessment as to compatibility with the case law of the European Court of Human Rights**

In general, current regulation of online content in Russia differs considerably from the policies formed in Russia in the early 1990s to move towards freedom of speech and media independence.

While strong guarantees for freedom of speech are enshrined in the Russian Constitution, the entirety of applicable rules and regulation lacks concrete legal safeguards. Mechanisms in line with Council of Europe standards to shield online freedom of expression, including the right to access the internet, are lacking and internet intermediaries are rather encouraged to block, filter or take-down swiftly.

Russian laws limiting freedom of expression online are often fairly unclear and unforeseeable, which allows their broad and arbitrary implementation. Additionally, internet regulation in Russia frequently overlooks specific features of the internet; therefore, it is sometimes technically nearly impossible to comply with its requirements. Civil society and the internet industry have very limited participation in the development and revision of relevant laws and policies. Law enforcement lacks independent oversight and is mostly left to the discretion of the executive power. The existing situation complicates law enforcement and provides the executive power with significant discretion in administering legal provisions. Scholars argue that this situation has also been leading to self-censorship.<sup>99</sup>

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<sup>96</sup> The law regulating news aggregators in Russia might negatively affect freedom of information on Internet, OSCE Representative says. 13 June 2016. <https://www.osce.org/fom/246471>

<sup>97</sup> See, for instance, the Declaration of the CoE's Committee of Ministers “On Freedom of Communication on the Internet;” and Recommendation CM/Rec (2011)7 of the CoE's Committee of Ministers to Member-States “On a New Notion of Media.”

<sup>98</sup> Declaration on freedom of communication on the Internet (adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies).

<sup>99</sup> See also, Sherstoboeva, E. (2018). The evolution of a Russian concept of free speech. In M. Price & N. Stremlau (Eds.), *Speech and society in turbulent times: Freedom of expression in comparative perspective*. Cambridge, UK: Cambridge University Press, 213–236; Simons, G., & Strovsky, D. (2006). Censorship in contemporary Russian journalism in the age of the war against terrorism: A historical perspective. *European Journal of Communication*, London, Sage, Volume 2 (2), pp. 189-211; Nisbet, E. C., Kamenchuk, O. and Dal, A. (2017), A Psychological Firewall? Risk Perceptions and Public Support for Online Censorship in Russia. *Social Science Quarterly*, 98: 958-975. doi:[10.1111/ssqu.12435](https://doi.org/10.1111/ssqu.12435); Simons, G. (2015) Russian media and censorship: a means or an end?, *Russian Journal of Communication*, 7:3, 300-312, DOI: [10.1080/19409419.2015.1082438](https://doi.org/10.1080/19409419.2015.1082438); Charles Crabtree, Christopher Fariss and Holger L. Kern (2015). Truth Replaced by Silence: Private Censorship in Russia. [https://wp.nyu.edu/cesspolicon2015/wp-content/uploads/sites/1008/2015/02/Fariss-Russia\\_II.pdf](https://wp.nyu.edu/cesspolicon2015/wp-content/uploads/sites/1008/2015/02/Fariss-Russia_II.pdf).

Internet laws in Russia tend to be over-restrictive with regard to content and to go beyond the legitimate aims underpinning content regulation. The notion of national safety in Russia has a broad and specific legal interpretation. Its protection is excessively prioritised over shielding free speech. Anti-extremist legislation appears to be the most problematic area of Russian online content regulation. Another significant issue is that law can be used as a tool to remove politically sensitive content, in contradiction with Council of Europe standards.<sup>100</sup>

Blocking procedures in Russia and many other legal measures mostly disregard the principle of proportionality developed in the ECtHR case law. Particularly, the Russian legal perspective on blocking of entire websites contrasts the ECtHR's standards formulated on the case of *Ahmet Yildirim v. Turkey*. IP addresses blocking may not only considerably violate the right to freedom of information of users or website owners who have not infringed the law, but it may also be insufficiently effective to stop violations. Regulation of blocking procedures is insufficiently transparent, independent and clear, including with regard to the mechanism of appeals. Website owners and providers have too short a time for content removals.

There are also concerns regarding overregulation of internet intermediaries in Russia, especially of online media-like services.<sup>101</sup>

The Russian Supreme Court's efforts may help to prevent the excessive or arbitrary application of Russian laws. However, due to the non-binding nature of the Court's interpretations, they appear insufficient to fully restore the balance between the protection of freedom of expression and other interests or rights in Russia because of. Nonetheless, it is particularly important to monitor and evaluate Russian judicial and law enforcement practices to explore how relevant internet-related laws and regulations are implemented in the country and to what extent the Supreme Court's perspective is taken into account.

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<sup>100</sup> See, for instance, the ECtHR judgments *Castells v Spain*, no. 11798/85, 23 April 1992; *Janowski v Poland*, no. 25716/94, 21 January 1999; *Sürek v Turkey* (GC), no. 26682/95, 8 July 1999, *Sener v. Turkey*, no. 26680/95, 18 July 2000.

<sup>101</sup> Blocking of Telegram and legal restrictions on social networks will limit freedom of expression in Russia, says OSCE Representative Désir. 13 April 2018. <https://www.osce.org/representative-on-freedom-of-media/377767>

## Appendix

**Table 1.** Types of law violations in the context of online content regulation<sup>102</sup>

<b>Protection of national security, territorial integrity and public safety</b>	
<i><b>The Criminal Code</b></i>	
Excitation of hatred or strife and the abasement of human dignity	<i>Art. 282</i>
Public calls for extremist activities <sup>103</sup>	<i>Art. 280</i>
Public calls for violation of territorial integrity	<i>Art. 280.1</i>
Public calls for terrorist activities, public justification of terrorism or propaganda of terrorism	<i>Art. 205.2</i>
Public calls to initiate an aggressive war	<i>Art. 354</i>
Rehabilitation of Nazism	<i>Art. 354.1</i>
Implementation of activities of foreign or international NGOs against administrative decisions on their qualification as “being undesirable” in Russia	<i>Art. 284.1</i>
<i><b>The Code of Administrative Offences</b></i>	
Production, mass dissemination of extremist materials or the storage of such materials with the intention to distribute them	<i>Art. 20.29</i>
Producing or disseminating media content that incites or justifies extremism; mentioning extremist organisations without saying that they have been banned in Russia	<i>Art. 13.15</i>
Propaganda or public display of the symbols or attributes of Nazi or extremist organisations	<i>Art. 20.3</i>
<b>Content threatening health and morals</b>	
<i><b>The Criminal Code</b></i>	
Illegal manufacture, sale or transfer of narcotic drugs, psychotropic substances	<i>Art. 228.1</i>
Production and dissemination of materials or objects with pornographic images of minors	<i>Art. 242.1</i>
Illegal manufacturing and trafficking of pornographic materials	<i>Art. 242</i>
Insult of religious feelings	<i>Art. 148</i>
Illegal organization and holding of gambling	<i>Art. 171.2</i>
<i><b>The Code of Administrative Offences</b></i>	
Violation of the Russian legislation on the protection of children from information harmful to their health and/or development	<i>Art. 6.17</i>
Propaganda of non-traditional sexual relationships among minors	<i>Art. 6.21</i>
Violation of laws on freedom of conscience, freedom of religion and religious associations	<i>Art. 5.26</i>
Illegal purchase, storage, transportation, production, sale or transfer of precursors of narcotic drugs or psychotropic substances	<i>Art. 6.16.1</i>
Illegal organization and holding of gambling	<i>Art. 14.1.1</i>
<b>Content disclosing secret information</b>	

<sup>102</sup> This list is non-exhaustive and only encompasses the most important types of violations.

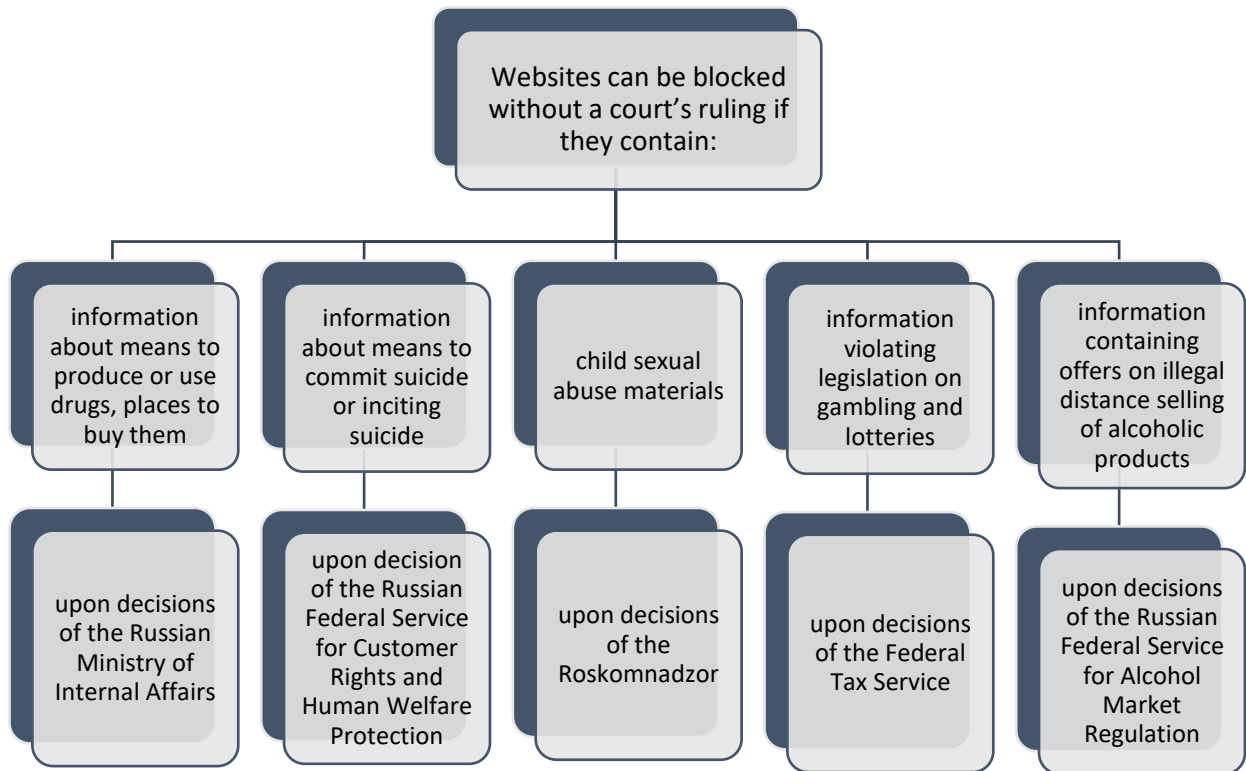
<sup>103</sup> Provisions of Articles 282 and 280 partly overlap.

	<b><i>The Criminal Code</i></b>
Disclosure of a state secret	<i>Art. 283</i>
Illegal receipt and disclosure of information constituting a commercial, tax or bank secret	<i>Art.183</i>
<b>Content threatening the reputation or rights of others</b>	
	<b><i>The Criminal Code</i></b>
Libel	<i>Art. 128.1</i>
Insult of public officials	<i>Art. 319</i>
Libel against judges, prosecutors, investigators, or court bailiffs	<i>Art. 298.1</i>
Violation of privacy	<i>Art. 137</i>
Violation of secrecy of correspondence	<i>Art. 138</i>
	<b><i>The Civil Code</i></b>
Discrediting the honor, dignity, or business reputation	<i>Art.152</i>
Illegal use of a citizen's image without his/her consent	<i>Art. 152.1</i>
Violation of privacy	<i>Art. 152.2</i>
	<b><i>The Code of Administrative Offences</i></b>
Insult	<i>Art. 5.61</i>
<b>Content violating copyright</b>	
	<b><i>The Civil Code</i></b>
Violation of copyright	<i>Part 4<sup>104</sup></i>
	<b><i>The Criminal Code</i></b>
Copyright violation on a large or especially large scale	<i>Art. 146</i>

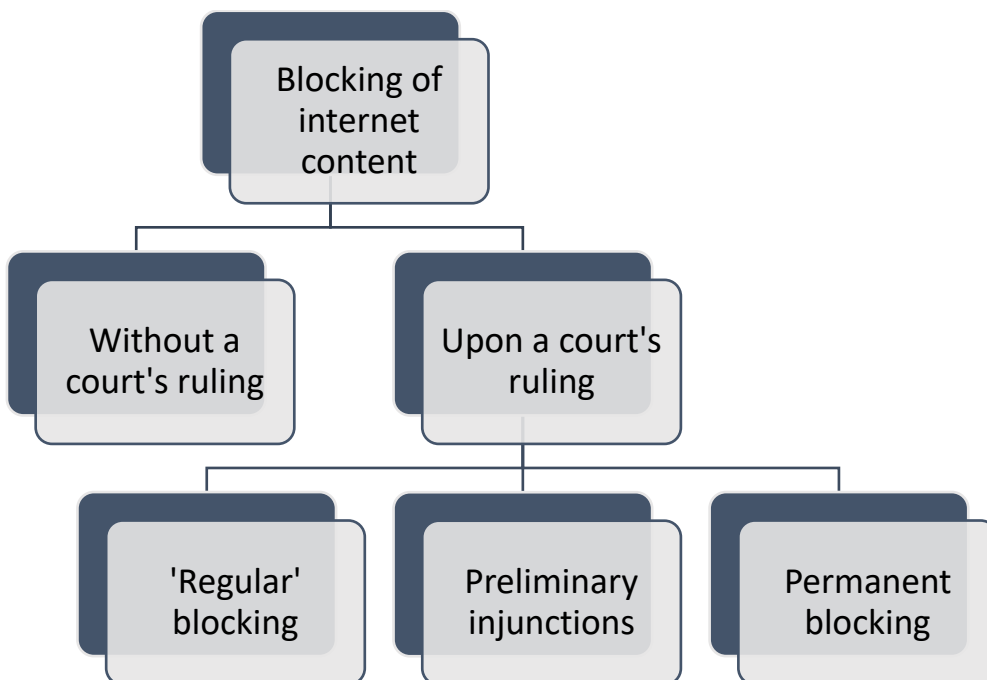
**Chart 1.** Blocking of Internet content threatening health and morals

<sup>104</sup> It also provides for the limited liability of internet intermediaries (Art. 1253.1).





**Chart 2.** Types of online content blocking



**Chart 3.** Copyright objects in the 2017 Moscow City Court rulings

