

LT in Focus

Linked out: decision to block LinkedIn's website sustained by Moscow City Court

In August 2016, Roskomnadzor, the Russian federal agency that regulates the IT and Telecom sector, obtained a court order against LinkedIn from Tagansky District Court of Moscow for failing to comply with the Russian law on protection of personal data.

The decision was upheld yesterday by the City Court of Moscow, which means that LinkedIn will soon be blocked in Russia.

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Why?

Effective 1 September 2015, data operators must process the Russian citizens' personal data using databases physically located in Russia. Companies that do not comply with the data localization law may face a number of consequences, including court-ordered website blocking¹.

The LinkedIn case became a landmark, being the first major test of the data localization law.

It is worth noting that LinkedIn has no official representation in Russia, and it would be fair to assume that the new rules would not apply to LinkedIn as a foreign company.

However, shortly before the new rules were enacted, the Russian Ministry of Communications and Mass Media (Minkomsvyaz) issued a clarification² that any company collecting personal data from the Russian citizens through websites targeting Russia falls under the jurisdiction of the data protection law.

According to Minkomsvyaz, a website is "targeting Russia" if:

- Its domain name is registered in a zone associated with the Russian Federation or its part (.ru, .рф., .su, .москва., moscow etc.);
- The website has a Russian version.

While the first criterion is mandatory, in case of the Russian version at least one of the following conditions needs to be met:

- Payments in RUB supported;
- Contracts entered into through such websites can be performed in Russia;
- Advertisements in Russian linked to the respective website;
- Other clear proofs that the website's owner is targeting the Russian market.

LinkedIn was recognised as targeting the Russian audience. Note the court's logic regarding the domain name: although linkedin.ru automatically redirects to linkedin.com, the court ruled that redirecting makes for use of the .ru domain name.

¹ Federal Law No. 242-FZ of 21.07.2014 (as amended on 31.12.2014) "On Amendments to the Laws of Russia Concerning Personal Data Processing"

² Unofficial clarifications and Q&A on personal data processing and storage <http://minsvyaz.ru/ru/personaldata/#1438546984884>

Dispute background

Roskomnadzor discovered the breach of the localization law requirements by LinkedIn through its "regular monitoring" activities³.

Roskomnadzor sent two requests to LinkedIn, requiring explanations. After receiving their response, Roskomnadzor filed a claim with Tagansky District

Court of Moscow, demanding that LinkedIn.com be blocked in Russia. LinkedIn representatives did not appear at the hearing, which did not prevent the Court from banning the website. LinkedIn responded by filing an appeal with the Moscow City Court. Yesterday the appeal was overruled.

Implications for LinkedIn

The court's ruling takes effect immediately (i.e. on 10 November).

Within three days Roskomnadzor must contact LinkedIn's hosting provider with a cease and desist letter.

If LinkedIn fails to cure the breaches (or the hosting provider does not block the website), the regulator will put the website on the register of violators of personal

data protection laws. After that, telecom operators will have to block website access for their clients.

Once the website is on the data protection offenders' register, Roskomnadzor will be further watching it for regulatory compliance. It may remove the offender from the register either when the court's decision is overruled or if LinkedIn sends a notice that all breaches have been cured.

Industry implications

The legal action against LinkedIn illustrates Roskomnadzor's commitment to enforcing the Russian regulations with foreign internet companies targeting the Russian users.

This case signals to the market that Roskomnadzor is ready to block even major players.

On top of that, the Russian State Duma may soon adopt amendments to the Russian Code of Administrative Offenses that will significantly increase the penalties for breaching the data protection laws. Roskomnadzor intends to use this as an instrument to motivate foreign non-internet companies to comply with the data localization requirements.

What to do?

We recommend that you check if your company complies with the data protection laws. Here is your checklist:

1. Check if your company falls under the jurisdiction of the Russian data protection laws;
2. Find out what personal data are collected, how

they are processed and if they are transferred across the border;

3. Review the existing business processes for compliance with the laws and adjust them if necessary.

We hope you will find the above information timely and useful. Should you have any questions in this regard, Deloitte professionals will be glad to discuss them with you.

³ It should be noted that Roskomnadzor's Administrative Regulations do not list the performance of "systematic monitoring" among its supervisory functions.

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