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# The Legal 500 Country Comparative Guides

## Russia

# TECHNOLOGY

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This country-specific Q&A provides an overview of technology laws and regulations applicable in Russia.

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## RUSSIA TECHNOLOGY



### 1. What is the regulatory regime for technology?

There is no regime in Russia that regulates technology per se. Nevertheless, the legal regulation of various aspects of the subject field includes:

- Federal Law No. 149-FZ of July 27, 2007 «On Information, Information Technologies and the Protection of Information»;
- Federal Law No. 126-FZ of July 7, 2003 «On Communications»
- Civil Code of the Russian Federation Part Four No. 230-FZ of December 18, 2006

### 2. Are communications networks or services regulated?

Yes. The above-mentioned Federal Law No. 126-FZ of July 7, 2003 «On Communications» regulates operation of communication networks and communication facilities, the use of the radio frequency spectrum, as well as telecommunication and postal services on Russian Federation territory.

### 3. If so, what activities are covered and what licences or authorisations are required?

Activities for the provision of paid Communication Services can be carried out only on the basis of a licence.

These communications services include:

- telephony services (both landline and wireless);
- telegraph services;
- radio services (both landline and wireless);
- television services (broadcast and cable)
- communication services for providing communication channels;
- data communication services;

- data communication services for voice data transmission;
- telematic communication services;
- postal services.

Licensing of Communication Services is carried out by the Federal Service for Supervision of Communications, Information Technology and Mass Media (also known as RosComNadzor).

### 4. Is there any specific regulator for the provisions of communications-related services?

Yes. The primary federal regulator of Communications-related Services is the Ministry for Digital Development, Communications and Mass Media (also known as MinComSvyaz).

State supervision in the field of Communications, Information Technology, and mass media, as well as supervision of personal data protection, is carried out by the RosKomNadzor and its territorial bodies. This federal service is accountable to the MinComSvyaz.

### 5. Are they independent of the government control?

No. The Ministry for Digital Development, Communications and Mass Media is an agency of the Russian Government.

### 6. Are platform providers (social media, content sharing, information search engines) regulated?

Currently, a law that directly regulates the activities of such platforms in the Russian Federation has not been adopted. However, there are certain provisions that directly applies to the operation of social media or search engines. The *Law On Information, Information technologies and the protection of information* provides

the definition of information search provider and regulates its obligations regarding advertising links to websites.

### **7. If so, does the reach of the regulator extend outside your jurisdiction?**

Indeed, it can be said so. For example, in some cases a foreign owner of a popular mobile app available in Russia may need to adjust some technical aspects of its operational processes in order to fully comply with specific local regulations.

### **8. Does a telecoms operator need to be domiciled in the country?**

The law does not explicitly specify that a telecom operator needs to be domiciled in the country. However, an overall interpretation of civil law and licensing provisions indicate the need for the telecom operator's presence on Russian territory.

### **9. Are there any restrictions on foreign ownership of telecoms operators?**

The law does not stipulate quantitative restrictions for foreign investors to own shares of telecom operators. In addition, it is possible for foreign investors to participate in the property's privatization of state and municipal unitary communications enterprises.

However, the law defines types of activities that are of strategic importance for the Russian Federation, including some types of communications (e.g., television and radio broadcasting on the territory where half or more of the population of a region lives). In such areas, it is necessary to obtain a preliminary permit for a transaction with a foreign investor, if the share of its participation following the transaction is 25 % or more.

### **10. Are there any regulations covering interconnection between operators?**

The MinComSvyaz defines the interaction procedure for telecommunications networks that form a "National Telecommunications Network of the Russian Federation". The aim is to ensure the rights of the customers to choose a telecommunications operator that provides long-distance and international telephone services with an automatic method of establishing a telephone connection.

- National Telecommunications Network of the

Russian Federation consists of public communication networks, technological networks connected to them, dedicated communication networks, as well as special-purpose communication networks and other networks for transmitting information using electromagnetic systems.

### **11. If so are these different for operators with market power?**

Yes. The Federal Law «On Communications» provides requirements for the procedure of connecting telecommunication networks and their interaction with the telecommunication network of an operator with the market power in the public communication network.

- An operator with a market power in a public communication network is an operator with a share of at least 25% of the installed capacity or with the ability to pass at least 25% of the traffic.

Such operator is obliged to establish identical conditions for connection of telecommunication networks and traffic passage for telecom operators providing similar services, as well as to provide these telecom operators with connection services and traffic passage services on the same terms and of the same quality as for its structural divisions and/or affiliates.

Prices for connection services and traffic services provided by such operators are subject to state regulation and are established by the Government of the Russian Federation.

### **12. What are the principal consumer protection regulations that apply specifically to telecoms services?**

There are no comprehensive consumer protection regulations that apply specifically to telecoms services. But the following laws provide legal protection to the consumers:

- the Civil Code of the Russian Federation;
- the Law of the Russian Federation No. 2300-1 of February 7, 1992 «On Consumer Rights Protection»;
- The Federal Law "On communications".

### **13. What legal protections are offered in relation to the creators of computer**

## software?

In Russia, software is protected by copyright, and is essentially equivalent to works of literature.

Registration of computer software is available in Federal Service for Intellectual Property (Rospatent) (the same as for databases), but this measure is optional and copyright protection attaches from the moment the work is fixed.

## 14. Do you recognise specific intellectual property rights in respect of data/databases?

Yes. Database refers to a collection of independent materials presented in an objective form (articles, calculations, regulations, court decisions, and other similar materials), systematized in such a way that these materials can be found and processed by means of computer.

There are two types of databases that can be protected. One is a creative composite work and protected by copyright. The other type of database is not the result of creative work, but its creation requires significant financial, material, organizational, and other costs. This type of databases can be protected as an object of related rights.

## 15. What key protections exist for personal data?

In the course of personal data processing, operators must ensure accuracy of personal data and limit processing to achieving specific purposes. Operators must refrain from disclosing the personal data to third parties without the consent of an individual, except when provided by law.

If personal data is processed without consent of an individual, the latter may file a complaint with an authorized authority (RosComNadzor). If violation is established, a fine can be imposed. In case of illegal processing of personal data in Internet or in apps, a website (app) can be blocked by the court.

## 16. Are there restrictions on the transfer of personal data overseas?

The Russian Federal Law No. 152-FZ of 27 July, 2006 "On Personal Data" divides countries into 3 groups:

- foreign states which are the parties to the

Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data,

- foreign states providing adequate protection of data, list of such countries is approved by the authorized body for the protection of the personal data subjects' rights (the current list has 22 countries),
- foreign states which do not provide adequate protection (e.g. the USA).

Countries included into first two groups above are considered safe, so there are no restrictions on the transfer of personal data overseas to these countries.

The cross-border transfer of personal data into the territories of the last group of countries may be carried out only in one of the following cases:

1. an individual has given his/her consent to the cross-border transfer;
2. when that is allowed pursuant to international agreements and treaties of the Russian Federation;
3. when that is provided for in federal laws (e.g., for the purposes of national defence and state security);
4. for the purpose of the performance of a contract to which an individual is a party;
5. for the purpose of protection of life, health and other vital interests.

## 17. What is the maximum fine that can be applied for breach of data protection laws?

The maximum fine varies from 6 million rubles to 18 million rubles (approximately from \$85,000 – \$256,000) and is applicable for violation of the localization rules. These fines are capped and do not depend on turnover of a violator.

## 18. What additional protections have been implemented, over and above the GDPR requirements?

Unlike the GDPR which is not applicable in Russia, there is a "localization rule" relating to the personal data of the Russian citizens. The fundamental idea is that databases which process personal data of citizens of the Russian Federation shall be located within the Russian Federation.

The choice of personal data protection means is regulated by law, not by companies as it is in the GDPR.

### 19. Are there any regulatory guidelines or legal restrictions applicable to cloud-based services?

Cloud technologies are widely used both in business and in public sector in Russia, e.g. in the Healthcare system and the Judicial system. But there are no specific laws that would regulate cloud-based services. Therefore, general civil regulation applies.

Also, the essential concept of “cloud computing” (“cloud services”) is provided in the Strategy for the Development of the Information Society in the Russian Federation for 2017 – 2030, approved by the President. This is not a legal regulation, but this indicates that the matter is about to be developed further and, probably, a specific law is to be passed.

### 20. Are there specific requirements for the validity of an electronic signature?

Yes. Electronic signatures are regulated by the Federal Law of the Russian Federation No. 63-FZ “On Electronic Signature” passed in 2011. According to that Law, an electronic signature made on an electronic document is equivalent to a handwritten signature on an ordinary paper document.

The said E-signature Law specifies 2 types of signatures. A simple electronic signature consists of a username and password confirming that an electronic message is sent by a specific person. An enhanced qualified electronic signature is confirmed by a certificate from a certification centre accredited by the Ministry of Communications. The enhanced electronic signature is more highly protected compared to the simple electronic signature, and its validity is subject to control by relevant certification centres.

During verifying E-signature, the following items are to be checked:

1. the contents of an electronic document signed with an E-signature, including visualization of the electronic signature, the number, owner and validity period of the certificate of the electronic signature verification key;
2. information on amendments to the electronic document signed by electronic signature;
3. identifying a person whose electronic signature key was used for signing. E-signatures created pursuant to foreign legislation and international standards are recognized in the Russian Federation.

### 21. In the event of an outsourcing of IT services, would any employees, assets or third party contracts transfer automatically to the outsourcing supplier?

No, this is not to be done automatically. The agreements with the supplier shall regulate such matters. Moreover, a personal data issue may occur, requiring, therefore, obtaining consent to transfer personal data to the third parties.

### 22. If a software program which purports to be a form of A.I. malfunctions, who is liable?

Currently, there is no special law regulating A.I. in Russia.

It is disputable, whether the general rules on civil, criminal and tort law may apply depending on the circumstances of the case. By analogy of law, the Civil Code of the Russian Federation would assume that a guilty person can be the one who has the ownership of artificial intelligence or has created or manufactured it.

Currently, there is no established court practice on this issue, so it is undetermined by legal experts as to how the liability issues can be handled.

### 23. What key laws exist in terms of: (a) obligations as to the maintenance of cybersecurity; (b) and the criminality of hacking/DDOS attacks?

a) There are several legal guidelines in Russia:

- The Federal Law “On the Security”;
- The Federal Law “On Information, Information Technology and Protection of the Information”;
- The Federal Law “On Personal data”;
- The Federal Law “On Security of the Critical Information Infrastructure of the Russian Federation”.

b) The Criminal Code of the Russian Federation contains criminal liability for fraud in the sphere of the Computer Information (article 159.6) and other crimes in this sphere (Chapter 28) such as illegal Access to Computer Information (article 272), Creation, Use, and Dissemination of Harmful Computer Programmes (article 273), Violating the Rules for Operation of the Facilities for Computer Information Storage, Processing and Transmittance and of Information-Telecommunication

Networks (article 274) and Unlawful Impact on Critical Information of the Russian Federation (article 274.1).

#### **24. What technology development will create the most legal change in your jurisdiction?**

The biggest legal changes in legislation will be created by technologies such as Blockchain, Cryptocurrency, Artificial Intelligence (A.I.). The main reason is that these objects have a difficult and complex nature so they need special regulation and legal regime.

It turned out to be more difficult to incorporate digital assets into the current legislation than it was initially assumed. Currently, teams of scientists of various specializations are developing a new legal system – the Digital Code of Russia.

#### **25. Which current legal provision/regime creates the greatest impediment to economic development/ commerce?**

We believe that one of the biggest impediments to economic development/commerce is the tax regime. In modern conditions, the incidence of indirect taxes has a significant impact on the socio-economic processes in society. The main drawback of the Russian tax system is its focus on eliminating the budget deficit by primarily withdrawing the income of enterprises, whereas the tax system should help production, stimulate it, and contribute to development. Thus, there is a high tax burden on the business community. As an example, last year the rate of Value-Added Tax (VAT) increased from 18% to 20%. But recently the government decided to soften the tax regime for IT companies to support the development of digital technology. There is always something to look forward to. Perhaps this new tax regime will be spread to the other spheres.

Personal data localization requirements can also be the factors in slowing economic growth. The process of localization is quite expensive, the fines for violation are also enormous. Perhaps, liberalization of current localization rule approach along with legal developments in cloud services could be of great help for local IT industry.

#### **26. Do you believe your legal system specifically encourages or hinders digital**

#### **services?**

We think that the Russian legal system has no option but to encourage digital services, since Russia uses digital technologies in various areas.

In particular, the judicial system provides an electronic exchange of documents between Russian courts and parties involved in court cases. On-line court sessions, electronic judicial acts signed by judge's E-signature – all that became possible due to active development of digital services. That received another boost during worldwide 2020 Covid pandemic, where Russian courts were closed for physical attendance, but resolved the cases via videoconference with the parties.

As part of the transition to the digital (electronic) economy in this year, the government started the experiment of issuing passports in the form of ID cards with chip and a mobile application.

Finally, the Government decided to soften the tax regime for IT companies. It is planned to reduce insurance premiums from 14% to 7.6%, and income tax – from 20% to 3%, VAT will be abolished for software development on foreign digital platforms, and software developers will be able to receive special subsidies.

#### **27. To what extent is your legal system ready to deal with the legal issues associated with artificial intelligence?**

No legislation specifically regulates A.I. so far. But Russia is doing attempts to deal with this issue. Russian statistics indicate the active pace of the introduction of Artificial Intelligence in industry. In the end of 2017, the Model Convention on Robotics and Artificial Intelligence from the Robopravo Research Center was sent to the legislative body for consideration. The document proposes the rules for the development, creation and use of robots of all categories, regardless of their purpose, degree of danger, mobility, or autonomy.

Currently, the President approved the National Strategy for the Development of Artificial Intelligence for the period until 2030. This decree sets the task of creating a comprehensive regulation of public relations arising in connection with the development and use of Artificial Intelligence technologies, including the development of appropriate ethical rules for human interaction with Artificial Intelligence.

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