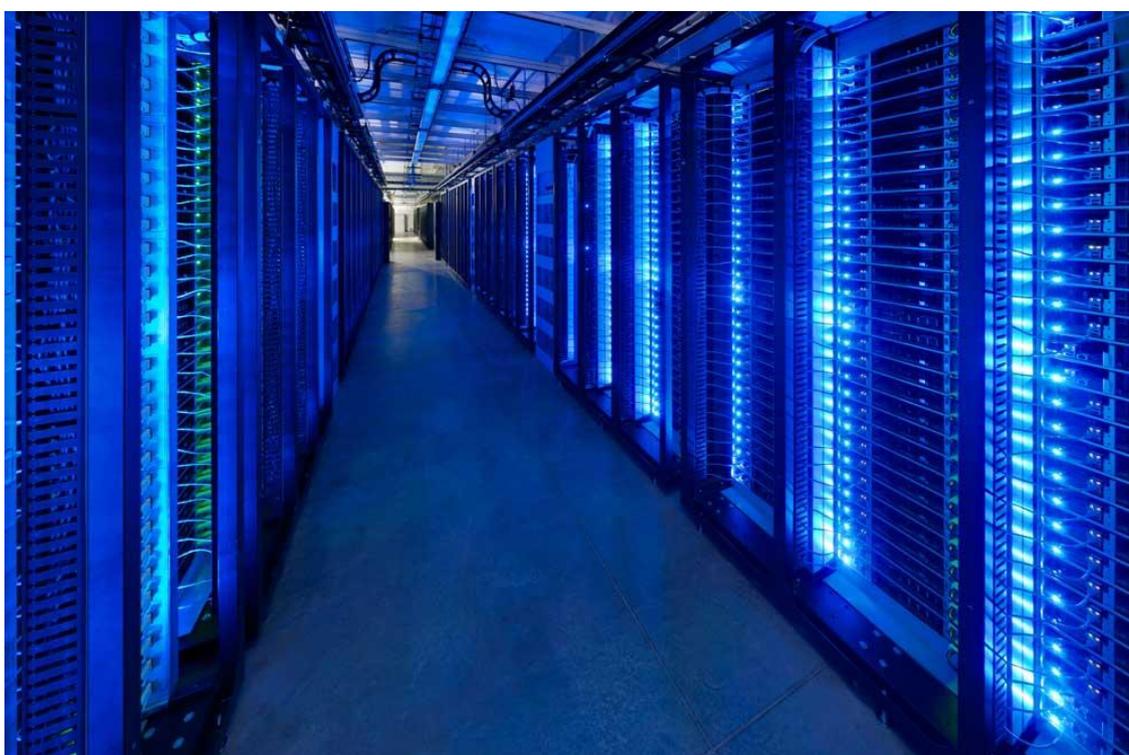




**LOCALIZATION OF PERSONAL DATA PROCESSING IN RUSSIA:  
THE CLARIFICATIONS OF THE MINISTRY OF TELECOM AND MASS  
COMMUNICATIONS**



Starting from 1 September 2015 the requirement established by the Federal Law dated 21 July 2014 No. 242-FZ (the "Law No. 242-FZ") with respect to operators of personal data to provide for recording, classification, collection, storage, clarification (updating, changing), and retrieval of the personal data of citizens of the Russian Federation by using databases located in the territory of Russia, except for certain cases provided by the Federal Law dated 27 July 2006 No. 152-FZ 'On Personal Data' (the "Personal Data Law") comes into force.

The Ministry of Telecom and Mass Communications of the Russian Federation (the Ministry) on the basis of information received from business, scientific society and Russian state authorities prepared and published in August 2015 on its official Internet site the clarifications and answers to the frequently asked questions in connection with this new requirement for localization of storage and certain procedures in the course of personal data processing (the "Clarifications").

An overview of the principal provisions of the Clarifications which according to the Ministry will be useful for ensuring uniformity of the law enforcement practice is provided below.

### **1. To whom does the Law No. 242-FZ apply?**

The Law No. 242-FZ applies to the operators collecting as well as processing subsequently personal data of citizens of the Russian Federation, namely, recording, classifying, storing, clarifying (updating, changing) and retrieving such data.

An operator of personal data (the "operator") under the Personal Data Law is a state authority, municipal authority, legal entity or individual who independently or together with other persons organizes processing and (or) processes personal data as well as determines the goals for processing of personal data, the list of personal data to be processed, actions (operations) performed with personal data.

According to the Clarifications an operator is a person who determines the goals for processing of personal data or takes certain actions for processing of personal data. That said the provisions of the Law No. 242-FZ apply to all operators irrespective of whether or not the processing of personal data is an operator's principal activity and whether or not personal data are processed by an operator by means of information telecommunication networks only.

As the general rule Russian laws, including Personal Data Law, are effective within the territory of the Russian Federation (RF). At the same time if activity is performed in information telecommunication network Internet, such activity, as the Ministry clarified, may be deemed performed in the territory of Russia subject to compliance with special criteria the principal of which is the criteria of targeting the territory of Russia by the activity. An Internet site may be deemed targeting the territory of Russia in the event:

- 1) Its domain name is connected with Russian or a constituent entity of RF (.ru, .рф., .su, .москва., Moscow и.т.п.); and (or)
- 2) There is a Russian language version of the Internet site created by the owner of such site or by another person upon commission of the latter.

That said, in order to determine whether or not an Internet site is targeting the territory of Russia at least one of the following elements should be present in addition:

- the possibility of financial settlements in Russian rubles;
- the possibility of performance of a contract entered into on the Internet site in the territory of Russia (delivery of goods, provision of services or use of digital content);

- advertisement in Russia referring to the Internet site;
- other circumstances which evidence the intention of the Internet site owner to include Russian market in its business strategy.

Therefore Russian laws do not apply to an Internet site only due to the fact that it is available in Russia.

Non-Russian operators are subject to the requirement for localization of certain procedures of personal data processing under the Law No. 242-FZ only if they conduct activity targeting Russia and provided that the exemptions specified in article 18 p. 5 of the Personal Data Law (i.e. processing for achieving the goals under an international treaty) do not cover such activity.

At the same time the Ministry confirmed in the Clarifications that the Law No. 242-FZ does not apply to non-residents of Russia which are present and act in the territory of other countries since activities of such persons are governed by the rules of international law, including the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

## **2. What do personal data and collection of personal data mean?**

The Ministry does not consider it possible to specify in the Clarifications the list of personal data, stating that under the Personal Data Law personal data include any information referring directly or indirectly to a certain individual or an individual that may be identified.

As collection of personal data the Ministry suggests to consider a documented procedure for receipt of personal data by an operator from a subject of personal data, for the purposes of its subsequent processing in accordance with the declared goals of such collection.

An operator thus is not obliged to perform certain procedures in the course of processing of personal data with the use of data bases located in Russia if such data:

- Has been received by the operator accidentally;
- Has been received by the operator – legal entity from another legal entity if such personal data includes contact information of employees or representatives of the latter transferred by them in performance of their legitimate activity.

## **3. Operation of Law No. 242-FZ in time**

The requirements established by the Law No. 242-FZ are not retroactive: recording, systematization, accumulation, storage, updating, retrieval of personal data of Russian citizens in the framework of the collection which will be performed from 1 September 2015 should be performed with the use of databases located in the territory of Russia.

One of the most important clarifications is the following: if personal data of citizens of the Russian Federation was lawfully collected before the date of entry into force of the Law No. 242-FZ (1 September 2015) such data may be kept unchanged abroad.

However, if after the entry into force of the Law no. 242-FZ new personal data will be collected the processing of which will result in such actions such as recording, systematization, accumulation, storage, updating, retrieval, with respect to previously collected personal data as

well, the operator will be obliged to take the relevant actions with the use of databases located in the territory of the Russian Federation, including in relation to the previously collected personal data.

Furthermore, if with respect to a particular set of personal data the requirements of the Law No. 242-FZ have been already complied with, repeated localization of such personal data is not required. In particular, if personal data in the course of collection was recorded in the database located in the territory of Russia, such personal data may be further entered by an employee (representative) of the operator into the electronic database owned thereby and located outside of the Russian Federation.

#### **4. Localization of certain procedure of personal data processing vs. cross-border transfer of personal data**

Since amendments to the Personal Data Law made by the Law No. 242-FZ did not affect the provisions on cross-border transfer of data, personal data of a citizen of the Russian Federation entered into the database in the territory of Russia and updating therein ('primary database') may be further transferred to the databases located outside of Russia ('secondary database') administered by other persons subject to compliance with the provisions on cross-border transfer.

It is not prohibited as well to provide the remote access to databases located in the territory of Russia from the territory of another state.

#### **5. Duplication of databases of personal data abroad**

One of the most pressing issues for multinational companies with branches, representative offices or subsidiaries in Russia in view of the requirements of the Law No. 242-F is whether or not it is possible to store personal data of Russian citizens abroad subject to availability of the duplicate (copy) database of personal data within the territory of the Russian Federation (and vice versa, when the database of personal data located outside of the Russian Federation is a copy (or a part) of the database formed and located in the territory of Russia), or personal data processing in the territory of another state is prohibited.

According to the Clarifications, Russian legislation in force does not provide for division into the 'main' database of personal data and its 'copy'. At the same time, the Personal Data Law as amended by the Law No. 242-FZ does not establish a general prohibition on the processing of personal data of Russia citizens with the use of database located outside of the territory of the Russian Federation. However, according to the Ministry, the processing of personal data of Russian citizens by means of collection, recording, classification, accumulation, storage, updating, retrieval may be performed using the database located outside the territory of the Russian Federation only in the following cases:

- if such activities are covered by the exemptions established by the Law No. 242-FZ from the general requirement for localization (Article 6, part 1, paragraphs 2-4, 8 of the Personal Data Law);
- if such activities are covered by the exemptions and in Russia there are databases used for the personal data processing and containing a large amount of personal data or equal to the amount of personal data located outside the territory of Russia (in the latter case, location of personal data outside the territory of Russia is not allowed if such personal data at the same time is not located within the territory of Russia).

## **6. Localization of the personal data processing in certain cases: employment relations, air transportation, ordering goods and services**

As exceptions to the requirements for collection and localization of certain actions on the personal data processing, the Law No. 242-FZ provides, inter alia, for the cases when personal data processing is required to achieve the objectives stipulated by an international treaty of the Russian Federation or the law, to implement and fulfill the operator's functions, powers and duties imposed by the laws.

In this connection, operators are often in question whether the requirement of the Law No. 242-FZ on the processing of personal data of citizens of the Russian Federation with the use of databases located in the territory of Russia applies to the employer who processes personal data of its employees to comply with Russian employment laws and who is required to process personal data of its employees using the database located outside of Russia due to the work specifics.

The Ministry does not provide a direct answer in the Clarifications stating that a personal data operator individually qualifies its own actions on the personal data processing and provides for its compliance with the laws while arranging (causing the arrangement of) such processing. At the same time, the competent federal authority in the course of its controlling activities verifies the validity of such qualification and arrangement of the processing in a specific situation.

According to the Clarifications, however, the requirements for the processing of personal data of citizens of the Russian Federation with the use of databases located in the territory of Russia do not apply to:

- the activities of Russian and foreign air carriers in terms of the collection and processing of personal data of passengers for booking, execution and issue them flight tickets, baggage receipts and other traffic documents;
- the activities of persons acting on behalf of an air carrier (authorized agent) provided for in paragraph 6 of the General Rules of Air Transportation of Passengers, Baggage, Cargo and Requirements to Servicing Passengers, Shippers, and Consignees approved by the Order Ministry of Transport of Russia No. 82, dated 28 June 2007, as well as activities of other persons in terms of the processing of personal data of passengers solely for booking, execution and issuance of flight tickets, baggage receipts and other traffic documents, if the respective activities of these persons are provided for by Russian legislation or a relevant international treaty,

since such activities are covered by the exemption provided for by Article 6.1.2 of the Personal Data Law.

Furthermore, according to the Ministry, the requirements of the Law No. 242-FZ do not prevent citizens of the Russian Federation from entering their personal data in a convenient format (i.e. on Internet sites of non-Russian providers) and using the services offered outside of Russia (including tourism (booking), goods ordering, banking services, etc.), in accordance with an international treaty or a federal law, or under other exemptions specified by the Law No. 242-FZ.

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Please note that the Clarifications do not have the force of a regulatory legal act and practical application of the requirements of the Law No. 242-FZ will largely depend on the position of

the Federal Supervision Agency for Information Technologies and Communications on the respective issues as the body authorized to monitor compliance with legislation on personal data, as well as of Russian courts when considering respective disputes in connection with bringing operators to liability for breaches.

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Best Regards,

GRATA Law Firm (Moscow)

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