

Newsletter

Mandatory pre-installation of Russian applications

January 27th, 2021

Dear Ladies and Gentlemen,

The introduction of mandatory pre-installation of applications developed by Russian market players, caused by a wave of cases of abuse by global companies of their dominant position in digital markets, is a **significant innovation** in Russian antitrust and consumer protection law.

To reduce the risks of restricting competition and balance the bargaining power of global corporations with small domestic application developers, amendments to the Law dated February 7th 1992 No. 2300-1 "On Protection of Consumer Rights" were adopted on December 2nd 2019, introducing the concept of **mandatory pre-installation of Russian applications** into the existing legislation ("**Law on pre-installation**"). The Law on pre-installation prescribes to pre-install the software of developers from Russia or other member states of the Eurasian Economic Union (Armenia, Belarus, Kazakhstan and Kyrgyzstan) on certain types of devices, before they are sold to consumers.

These provisions were further developed by the Decree of the Russian Government as of November 18th 2020 No. 1867 ("**Decree**"), which approved the list of devices falling within the mandatory pre-installation requirements, the list of categories of applications to be pre-installed, as well as the order for pre-installation.

List of devices

Pre-installation requirements apply to the **three groups of devices**:

- i. **Smartphones and tablets**;
- ii. **Stationary and laptop computers** (excluding tablets) and **system units** with an operating system;
- iii. **Smart TVs**.

The Decree establishes separate lists of classes of applications, subject to obligatory pre-installation, **for each group of devices**.

List of applications for pre-installation

In accordance with the general categories established by the Decree, the Russian Government has approved the **List of Russian software**, by adopting the Regulation as of December 31st 2020 No. 3704-p. The List of Russian software includes the following applications:

- i. **for smartphones and tablets** - Yandex.Browser, Yandex, Yandex.Maps, Yandex.Disk, Mail Mail.ru, ICQ, voice assistant "Marusya", News Mail.ru, OK Live, "VKontakte", "Odnoklassniki", MirPay, Gosuslugi, MyOffice Documents, Kaspersky Internet Security, Applist.ru;
- ii. **for stationary and laptop computers (excluding tablets) and system units with an operating system** - "MyOffice Standard. Home version";
- iii. **for Smart TVs** - Yandex, Wink, IVI, Perviy, KinoPoisk, OKKO, More.tv, PREMIER, Look ("Smotrim"), NTV, START.

Order for pre-installation

Producers of devices (or persons authorized by them) are obliged to ensure pre-installation of applications **from each class**, which is obligatory for the certain type of device.

Pre-installation is based on the following **principles**:

- i. **free of charge (for consumers) and no additional charge** (for producers of devices, persons authorized by them and developers);
- ii. **stability of pre-installed applications** (they should not be deleted when updating devices, nor during their maintenance, nor when devices are returned to factory settings);

- iii. **non-discrimination** (conditions, for using pre-installed software by consumers, have to be not worse than those for the software developed by producer of a device, or copyright-holder, of the operating system).

The following **methods** for pre-installation may be used:

- i. in full to the **hard disk** of a device;
- ii. by placing a **graphic image** of an application on the screen of a device, upon selection of which, consumer downloads this application;
- iii. by placing, when a device is turned on for the first time, of a **dialogue box**, for downloading applications from each obligatory class of applications, for the relevant type of device, which **cannot be skipped**.

The producer of a device (or person authorized by it) may choose **any of the above methods** for pre-installation, **or a combination of them**.

Liability

To introduce liability for failure to comply with the Law on pre-installation, the draft of the amendments to the Code of Administrative Offences of the Russian Federation was adopted, in the **first reading**, by the lower house of the Russian Parliament (State Duma) on December 23rd 2020.

According to the draft, violation of the pre-installation rules may lead to imposition of an **administrative fine** of up to 200 000 Roubles (approx. USD 2 750) for legal entities and up to 50 000 Roubles (approx. USD 685) for a company's officials. However, these figures may change, as a result of considering the bill, in the next two readings, in the State Duma.

Terms of entry into force

According to the Federal Law as of December 22nd 2020 No. 460-FZ, the date of entry of mandatory pre-installation requirements into force was postponed from January 1st 2021 to **April 1st 2021**.

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