ARTICLE 19

DIGITAL RIGHTS IN RUSSIA:

An Analysis of the deterioration to Freedom of Expression Online

2017

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Introduction

Thee Russian government is increasingly curtailing freedom of expression online, seeking to control what is said and published on the Internet through restrictive legislation, surveillance and criminal prosecutions of online dissent. International indices consistently rank Russia close to the bottom for freedom of expression, with online violations playing a significant role in these assessments: 52nd of 65 in the Freedom House Internet Freedom Table[1] and 148th in the 2016 Press Freedom Index prepared by Reporters Without Borders[2].

Restrictions on digital rights in Russia intensified following large scale public demonstrations in 2011-12. The largest of their kind since Vladimir Putin came to power, the protests were sparked by reports of mass electoral fraud disseminated online by election observers and were largely organised using online social networks. This confirmed authorities' fears that the Internet posed a threat to government power, precipitating significant changes to the legal and regulatory framework governing the Internet in Russia, aimed at preventing it from providing a platform for dissent.

The following five case studies look at concrete examples – in an albeit fast-changing environment – of how the right to freedom of expression is being violated online in Russia:

The first case study looks at the blocking of websites calling for an electoral boycott in September 2016. It explores how a series of amendments to Federal Law 149-FZ on Information, IT Technologies and Protection of Information have enabled the blocking of online content without a court decision. Millions of other websites have been blocked without judicial oversight, many for their expression of critical views directed towards the government.

The second case study considers the abuse of anti-extremism legislation to curb political dissent online, examining the high-profile case of Anton Nossik, an Internet expert and opposition activist, who was ordered to pay a substantial fine having been found guilty of incitement to hatred for an online post. Penalties for violating Article 282 (Incitement to Hatred) and Article 280.1 (Public calls for separatism) have increased, and are more frequently applied against those criticising government policy.

The third case study presents how Russia's biggest social network, VKontakte, openly works with the security services to limit dissent. Vkontake provides personal information to authorities regardless of the legitimacy of the requests and without transparency of the process. This facilitates the application of arbitrary criminal charges, encouraging self-censorship on social media.

The fourth case study explores allegations that Kremlin-paid trolls are exploiting Facebook community rules in order to silence voices critical of the Russian government. Journalists and activists who have expressed views critical of the government have had accounts suspended after being unfairly accused of violating community standards.

Finally, the fifth case study looks at the blocking of LinkedIn in Russia, for failing to comply with Federal Law 242-FZ, the so-called 'Personal Data Localisation' Law. This requires any web service processing Russian citizens personal data to store this information on database servers located within the territory of the Russian Federation, providing Russian authorities with easier access to Internet users' personal data.

Some significant changes are outside the scope of this report (and their impact is as yet unknown), but they are important to mention. On 7 July 2016, President Putin signed into law a package of amendments to anti-terror and public safety legislation, collectively known as 'Yarovaya's Law', after the MP who initiated the bill. The United Nations (UN) Special Rapporteurs on Freedom of Expression, Freedom of Assembly and Freedom of Belief have raised concerns that the law 'would significantly limit the ability of ordinary citizens to express political dissent… and would compromise the ability of users in Russia to communicate securely'.[3]

The package targets potential protestors and government opponents, introducing the crime of 'encouraging people to take part in mass disturbances', punishable by five to ten years in prison, as well as increased terms for vaguely defined acts of 'extremism'. It also gives security services sweeping new powers of surveillance over citizens, requiring telecommunications providers to hold records of all phone or online communication for six months (and meta data for three years), to decode all encrypted communication, and to provide any of this information on request. This would build on a pervasive online surveillance system already in operation – the System for Operative Investigative Activities (SORM). This enables the bulk collection of online communications, making it much harder for dissidents to express themselves anonymously and securely online.

Also approved in 2016 (and currently in the process of implementation) was the so-called 'law on news aggregators', according to which owners of Internet search engines with more than one million daily users would be required to check the truthfulness of 'publicly important' information before its dissemination. Sites will have to remove news found to be 'false' by the regulator or face large financial penalties. Dunja Mijatović, then Organization for Security and Co-operation in Europe (OSCE) Special Representative on Freedom of the Media, raised concerns that: 'This law could result in governmental interference of online information and introduce self-censorship in private companies,' reducing the free flow of information online.[4]

The following case studies therefore provide an overview of a deteriorating situation, aimed at increasing awareness and understanding both within Russia and internationally. We also offer recommendations targeted at Russian Internet users, international digital companies active in the country, the Russian government, and the international community at large for how to react to increasing restrictions, and how the situation could be improved.

Recommendations

For Russian Internet Users

Internet users in Russia are increasingly at risk for expressing any political dissent or views online not in line with the government. While there is no way to guarantee users' security in the current deteriorating situation, there are a number of steps Internet users should pay attention to:

Be aware of your digital footprint. Every Internet user leaves information about themselves online: which sites they have visited, what they have posted. This helps companies target personalised advertising but can also be used by governments to build cases against critics. It is possible to increase privacy settings.

Look into basic tools of digital security. It is increasingly important that Internet users are equipped with the tools to securely communicate and observe basic security habits, such as avoiding the use of real names; deleting potentially sensitive correspondence; using secure passwords and password managers; mitigating risks when using smartphones and cell/mobile phones; and deleting chat and browser histories. They should also familiarise themselves with and use extra layers of encryption for communication and storage of data. Many of these tools are free and accessible. The 'Security in a Box' initiative is an excellent source for information and guides on the best software to use (https://securityinabox.org/ru/).

Avoid posting on Russian-based social networks. Prosecution is a lot more likely if posting on Russian-based social networks because of the connections they have with the authorities (as VKontakte does). Try to use platforms with built-in encryption (that have been audited) when writing on any topic that could be seen as politically sensitive. Even then, ensure you are aware of any security vulnerabilities in those platforms: for example, when creating Facebook groups around sensitive issues, make groups private to ensure the contents of conversations remain secure and members are protected. Consider selecting trusted members to participate in events that may be deemed a threat by the authorities rather than sending mass invitations.

Seek legal advice before publishing. If you are a professional journalist or post to a large number of followers on a social network, seek legal advice on texts before publishing in order to minimise the risk of being prosecuted on grounds such as 'incitement of hatred'. Organisations such as the Mass Media Defence Centre[5] provide free advice and consultation.

Don't be indifferent to violations of freedom of expression online. In the current environment there is very little opportunity to change government policy in Russia. Nonetheless, it is important that as many people as possible are aware of the situation and of the risks they face. There are also occasions when a lot of attention succeeds in influencing decisions of the authorities. If someone is prosecuted, share the news among your social network, sign petitions, and lend your support to campaigns against repressive measures and legislation.

Form a group of civil society representatives to engage with digital companies. In order to better assess and react to violations of freedom of expression online companies would benefit from a permanent and structured dialogue with civil society. Activists and internet experts should form a group of representatives who would be able to fulfil this role. They would be able to alert companies when action has been taken against someone when there have been no legitimate grounds to limit their freedom of expression and could give regular apolitical advice on legislative changes and government action affecting freedom of expression.

For International Digital Companies

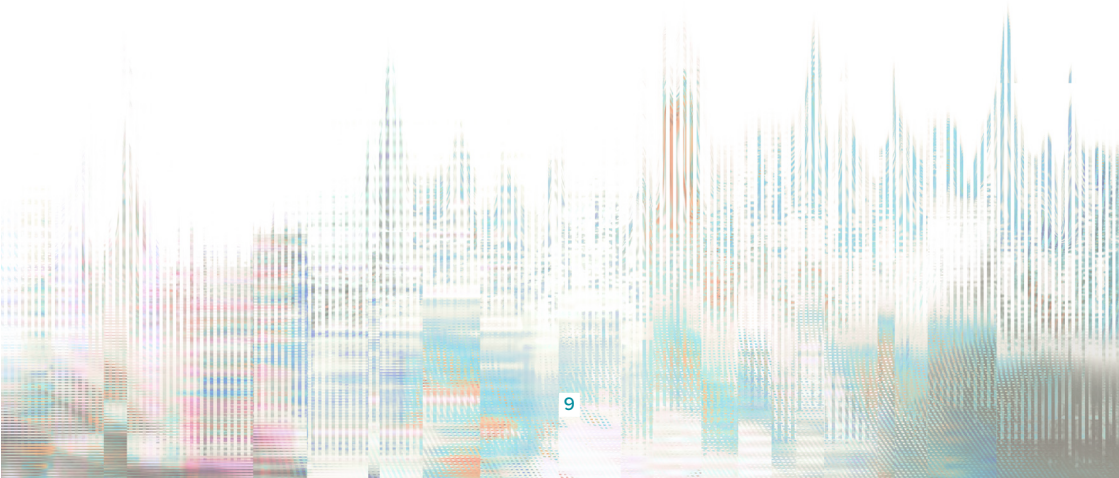
Large international digital companies often openly declare their commitment to freedom of expression online. Through membership of the Global Network Initiative, for example, Facebook has committed to 'minimize the impact of government restrictions on freedom of expression… and protect the freedom of expression rights of their users when confronted with government demands'.[6] Although within some national jurisdictions, such as in Russia, it is becoming increasingly difficult to balance the necessity to abide by local laws while upholding commitments to human rights, it is important to keep looking for creative ways to do so and not submit to pressure to limit freedom of expression.

Continue to resist Russian pressure to transfer all personal data on Russian users to data centres located in the Russian Federation. Given Russia's pervasive online surveillance practices, this would provide Russian authorities with access to individuals' personal data, in violation of international standards on freedom of expression and access to information, limiting the potential for technology to facilitate dissidence and debate online.

Provide more support for Russian-language users. Companies like Facebook do not publicise details of how many moderators it employs, nor what they individually focus on. For Russian-language users, however, who make up a growing market but one in an area with recognised problems with freedom of expression, digital companies should ensure they have enough qualified staff to deal with complaints and reporting. They should have both an understanding of the language and context as well as training in freedom of expression standards, in particular as to what can be seen as legitimate forms of expression.

Engage in permanent dialogue with Russian civil society. Companies should engage in a permanent and structured dialogue with Russian civil society. A group representing civil society would be able to alert companies when action has been taken against someone when there have been no legitimate grounds to limit their freedom of expression and could give regular apolitical advice on legislative changes and government action affecting freedom of expression.

Pro-actively investigate and publicise ways users could get around future restrictions. Wikipedia has previously put links on its pages on how to get around blocks to individual pages on its site. Along these lines, companies should consider ways they could react that would give information to users about alternative modes of access should a legitimate form of expression be blocked in the country.



For the International Community

The international community cannot be indifferent to continuing negative trends in freedom of expression online in Russia. Countries should seek to pro-actively use any leverage to impact the application of repressive legislation and support those affected by it.

Call on the Russian government to change legislation to comply with international human rights standards.

- Federal Law 149-FZ on Information, IT Technologies and Protection of Information should be amended so that the process of blocking websites meets international standards; namely, that any website blocking should be undertaken by an independent court and be limited by requirements of necessity and proportionality.

- Article 282 of the criminal code (incitement of hatred towards a social group) should be amended to build-in safeguards to ensure a direct, immediate, and intentional connection is made between the expression and the likelihood of violence. Other provisions concerning freedom of expression (such as Article 280, on separatism) should be reviewed.

- Federal Law 242-FZ on Personal Data Localisation should be abolished or amended to allow for a compromise, as exists between the US and the European Union, that assures the privacy of Russian citizens without forcing companies to comply, thus weakening their business model and the confidence of Russian Internet users in their services.

Bring up the issue of individual cases of violations of freedom of expression online. In bilateral relations with Russia, representatives of other governments should prioritise bringing up cases where freedom of expression online has been violated. They should also use the opportunity of international fora, such as the UN Human Rights Council and Council of Europe, to emphasise Russia's international obligations to hold it to account.

Provide support to civil society and lawyers working on issues of freedom of expression online. Despite increasing restrictions on external funding to NGOs in Russia, it is vital that support is provided to civil society organisations, activists, and lawyers defending freedom of expression online in Russia. This can be in the form of institutional support, emergency funding in case of prosecution, and capacity building to make their efforts sustainable in the long term, but should above all respond to the needs of civil society.

For the Russian Authorities

As a signatory to documents, including the ICCPR and the European Convention on Human Rights, (ECHR) Russia is committed to upholding international standards of freedom of expression, an important element of which now concerns the Internet. The Russian government should reverse restrictions to freedom of expression online and work to uphold its own human rights commitments.

Stop targeting journalists and activists expressing themselves online. Professional journalists publishing articles or activists reposting comments on social media must have the ability to do so freely and without hindrance if the content is a legitimate form of free expression. The Russian authorities should stop abusing criminal legislation to issue penalties to those expressing themselves online and in that way hinder open debate and discussion.

Reform programmes and legislation that enable bulk collection of communications data. All targeted surveillance must be in accordance with Article 17 of the ICCPR and Article 8 of the ECHR. Mass surveillance (or 'bulk collection') is an inherently disproportionate interference with human rights, and the Russian Federation must ensure it complies with international human rights standards in this regard. Previously the ECtHR has found that 'Russian legal provisions governing interceptions of communications do not provide for adequate and effective guarantees against arbitrariness and the risk of abuse'.[7] Legislation should be amended to ensure it complies with the International Principles on the Application of Human Rights to Online Communications Surveillance.[8] In particular, to respond to concerns raised by the ECtHR, that legislation governing surveillance should, on paper and in practice, require:

- Requests for interception authorisations of individuals include specific details, such as a specific person, telephone number or premises to be surveilled;
- Authorisation of requests are made by an independent judicial authority, on the grounds of a "reasonable suspicion" against the person concerned and with regard to the "necessity" and "proportionality" test. They are subject to review by an independent oversight body;
- Law enforcement or intelligence agencies do not have direct access to telecommunications networks.

The package of measures that come under the so-called Yarovaya Law, which came into force in 2016, should also be withdrawn or substantially amended in order to ensure the privacy of Russian Internet users.

Case 1. The Website Blacklist

Since 2012, the authorities have gradually expanded their capacity to block websites expressing dissenting views and created a legislative and regulatory system to enable this. In 2012, legislation was passed introducing a blacklist of online content banned within Russia. This is maintained and enforced by the communications regulator Roskomnadzor. In March 2017, the blacklist included over two million websites on over 50 thousand domains.[9] The blacklisting and subsequent blocking of websites calling for a boycott of the National Parliamentary Elections to the Duma on 18 September 2016 is emblematic of the powers the authorities now have at their disposal.

The outcome of the national parliamentary elections in September 2016 was never in question: on 19 September, as was widely expected, the ruling United Russia party enjoyed a landslide victory, winning 343 out of 450 seats and gaining a constitutional majority, enabling them to amend Russia's constitution without support from other political parties. Despite the predicted outcome, prior to the elections a lively debate about the campaigns and candidates emerged online. While the authorities were prepared to tolerate some discussion, calls to boycott the elections were deemed a step too far.

The elections took place in an atmosphere of significant mistrust towards the government: according to independent polling organisation Levada, a third of voters did not believe the elections would be free or fair.[10] With the option to vote for 'none of the above' removed in 2006, some social commentators turned to the Internet as a platform to express their disapproval, publishing appeals to voters to boycott the upcoming elections.

Such calls constitute protected speech, as established by a 2004 decision of the UN Human Rights Committee,[11] which found a ban on calls for the boycotting of a non-compulsory vote in Belarus to be in violation of freedom of expression. Just as with every other dimension of political life, the voting system or participation in the election is a legitimate topic for public debate, and boycott calls should be considered to be a legitimate contribution (all the more so since voting is not mandatory in Russia). Ignoring this precedent, the Russian authorities moved to silence all calls for a boycott made online.

Over the course of the months preceding the election, at the request of the Prosecutor General to the Federal Service for Supervision in the Sphere of Telecom, Information Technologies and Mass Communications, better known as Roskomnadzor, four websites that had published the boycott calls (Srywwyborow.blogspot.ru, Activism.win, Politforums.net, and Openrussia.org) were added to its blacklist. As a result of this, access to two of the websites was entirely blocked within Russia, while only the links to the boycott calls themselves were blocked on the other two.

According to a statement published by Roskomnadzor on 8 July 2016,[12] the websites had published 'propaganda material intended to promote the idea of boycotting the State Duma elections' and had additionally attempted 'to coordinate the actions of citizens by organising protest actions in violation of established laws'. According to Roskomnadzor, '[this a]ctivity to disrupt elections to the lower house of parliament undermines the constitutional order of Russia.'

The editors of OpenRussia and Politforums reacted by removing all pages that called for a boycott and were consequently removed from the blacklist; the remaining two sites were not removed. This provoked a strong reaction from the Chair of the Central Election Commission, Ela Pamfilova, who issued a complaint: "I am categorically against bans that go outside remit of the law and allow it to be interpreted as widely as you please."[13] Despite this, blocking access to sites discussing or calling for an election boycott continued. The office of the prosecutor general announced at least five more were to be blacklisted for the same reason in August 2016 (without providing details of which sites these were).[14]

Russia's legislative and regulatory framework on blocking

A number of legal mechanisms underpin the authorities' ability to block and filter websites; since 2012, Russian legislators have consistently amended legislation governing online content, in order to enable Roskomnadzor to block websites at the request of multiple government agencies without judicial oversight.

The legal authority to block websites is derived from Federal Law 149-FZ on Information, IT Technologies and Protection of Information. Since 2010, twenty amendments have expanded the basis on which authorities can block and filter online content.

In 2012, Federal Law 139-FZ was passed, supplementing 149-FZ with a new Article 15, establishing a 'blacklist' of websites: if a site was added to the list, content would be prohibited in Russia, and all internet service providers (ISPs) based in Russia would be obliged to immediately block access to it. The law was initiated by MP Ilya Ponomarev with the intention of protecting children from online abuse by setting three criteria by which sites should be blocked: promotion of suicide, encouraging drug use, and child pornography. On 10 July 2012, however, Wikipedia in Russia shut down for 24 hours in protest, telling readers that this signalled 'the introduction of censorship, which is dangerous for the freedom of knowledge'.[15] It did not take long for the law's area of application to be enormously widened and those fears to be proven correct: within weeks of the law entering into force, alternative online encyclopaedia Lurkmore found itself on the list.[16]

The amendment gave chief responsibility for deciding on website blocking and administering the blacklist to Roskomnadzor. The Ministry of Internal Affairs, Federal Drug Control Agency, and the health and safety regulator, Rospotrebnadzor, were also given power to submit sites for blocking without the need to first obtain a court order. A government decree passed in October 2015 added the Federal Tax Administration to the list of authorised organisations. And in 2014, Federal Law 398 (the so-called 'Lugovoi's Law', after the MP who proposed the legislation) further amended 149-FZ to give the office of the prosecutor general the authority to request website blocking on the basis of wide criteria, including 'incitement to mass riots, extremist activity and participation in mass public events held in violation of the established order'.

In practice, Roskomnadzor updates the blacklist several times a day, and ISPs download it and implement necessary changes. It now takes between several hours and a few days for a blacklisted website to become inaccessible across the country. Apart from citing the relevant article of the law, there is no requirement for Roskomnadzor to justify the blocking to website owners.

In the short time since these restrictions were first introduced, it has been possible to observe how use of the legislative framework has become more severe, and how the law seems to be intentionally interpreted to ban political dissent. Users of LiveJournal, a once popular blogging platform, had previously had accounts banned, but they were able to reverse the measure if they volunteered to delete specified text. This could be considered censorship, but at least the process was based on law and gave users an understanding of what to do to prevent their online material being banned.

In the summer of 2014, however, posts linking to information about a peaceful 'March for Federalisation' in Novosibirsk were blocked, and profile owners found they couldn't unlock their own event page after an order issued by the general prosecutor's office.[17] This was despite organisers emphasising they were not calling for separation from the Russian Federation, which is a criminal offence. In a similar vein a number of opposition media outlets, such as Grani.ru, Ej.ru ('The Daily Journal'), and Kasparov.ru, found themselves being blocked in 2014 after the prosecutor general's office charged them with 'calling for unlawful activity and taking part in mass events held with breaches of public order.' The sites had given wide coverage to anti-government demonstrations as well critical views of Russian intervention in Ukraine. As Yulia Berezovskaya, Grani.ru's director, said at the time: "Grani.ru announces and covers various rallies, both big and small, in depth... We will continue doing this. It's the actions of the regulator that are illegal, not our journalistic activities." Despite launching a court appeal, none of these sites was unblocked.

International standards

Four special mandates on freedom of expression, representing the UN, OSCE, the Organisation of American States, and the African Commission on Human and Peoples' Rights, called blocking 'an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse'.[18] ARTICLE 19's policy brief on blocking and filtering clearly summarises the relevant international standards, demonstrating that blocking can only ever be compatible with international standards on freedom of expression where it has been provided by law and a court has determined that a blocking measure is necessary in order to protect the rights of others[19] The document further stipulates that:

> Any determination on what content should be blocked must be undertaken by a competent judicial authority or body which is independent of any political, commercial, or other unwarranted influences;

> Blocking orders must be strictly limited in scope in line with the requirements of necessity and proportionality under Article 19 (3) ICCPR;

> Lists of blocked websites together with full details regarding the necessity and justification for blocking each individual website should be published;

> An explanation as to why a page has been blocked should also be provided on a page that is substituted for the affected websites; and

> It should be possible to challenge blocking and filtering orders before an independent and impartial tribunal and seek clarification and remedies.[20]

It is clear these standards are not being followed in Russia. The websites calling for an election boycott are not the largest, nor the most influential sites to have been blocked by Roskomnadzor; however, they are included to illustrate the growing confidence of authorities to block legitimate political content and to do so arbitrarily with little or no legal basis.

Case 2. Abusing Hate Speech Laws to Silence Critics

Hate speech legislation is increasingly abused to silence online government critics. An emblematic case concerns Anton Nossik, an Internet expert and opposition activist, who was ordered to pay a substantial fine having been found guilty of incitement to hatred for an online post. While the sentiment expressed in the piece was distasteful, it did not meet the threshold for hate speech under international law. Moreover, the charges seem designed to silence Nossik's political activism, rather than serve the legitimate aim of protecting the rights of others to which hate speech legislation should aspire.

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Anton Nossik is a well-known Internet enthusiast, blogger, and entrepreneur. He is considered one of the founding fathers of the 'Runet', the Russian-language Internet, and writes on a number of platforms, regularly topping the list of most-cited Russian political bloggers. As a civil rights activist, Nossik is closely associated with the Russian liberal opposition, serving as an independent advisor for the 2012 election to the Coordination Council of Russian opposition (established to coordinate opposition groups' protests after a wave of demonstrations in 2011–12).[21] More recently, during summer 2016, he supported the civil movement against the new draconian Internet regulations (Yarovaya's Law), giving a speech against the law at a protest in Moscow on 9 August.

In November 2015, a criminal investigation was opened against Nossik by the Federal Investigative Committee for the publication of a blog post. He was banned from leaving Moscow by investigators and faced a possible two-year prison sentence, having been accused of violating Article 282 of the Russian penal code, 'incitement of hatred towards a social group'.

Nossik stood accused of inciting hatred towards Syrians. On 1 October 2015, he posted a short post on his LiveJournal account in support of the Russian aerial bombing of Syria. He wrote that as an Israeli (Nossik has dual nationality) he is supportive of "anyone" killing "as many Syrians as possible," regardless of whether they belong to ISIS or the anti-Assad opposition. The statement was distasteful and undoubtedly controversial. Its publication sparked a lot of online discussion and attracted significant criticism.

But there is a marked difference between criticism and criminal intention. While distasteful, Nossik's post would not be considered as reaching the threshold of incitement to hatred as prohibited under Article 20(2) of the ICCPR, to which Russia is a party; therefore, it should not be subject to censorship. International standards require that there is a direct, immediate, and intentional connection between the expression of a call to hatred or discrimination and the likelihood of resulting violence, which cannot be discerned in this case.[22]

Nevertheless, on 3 October 2016, after a lengthy trial, Nossik was sentenced to a 500,000 RUB (8,500 USD) fine, later reduced to 300,000 RUB (5,000 USD) on appeal. He has since launched a campaign to abolish Article 282.[23]

Russia's abuse of Article 282The provision invoked against Nossik prohibits incitement of hatred or enmity, as well as humiliation of a person or group on the basis of sex, race, nationality, language, origin, attitude to religion, as well as affiliation to any social group, either in public spaces or through the media. Human rights groups and international observers have long highlighted concerns for the law being, in the words of the UN Committee on the Elimination of Racial Discrimination: "overly broad and vague, allowing for arbitrariness in its application."[24]

The broad and problematic wording of the provision has led to its misuse on multiple occasions. The term 'incitement to hatred' has been left undefined by Russian legislation. There is also no universally accepted definition of another term within the provision, 'social group', a broad understanding increases the number of people under its protection. The term social group has been left open to interpretation by court experts, and in practice this means any social group can be found to fit the charge. For example, courts in Russia have found that the police or people volunteering in support of the police[25] constitute such social groups. However, being a member of a professional group or a public official (such as the police) does not place you in the category of having protected characteristics as recognised under Articles 2(1)/26 of the ICCPR, and so shouldn't be afforded this protection.

The Moscow-based SOVA Center for Information and Analysis has been monitoring the misuse and abuse of anti-extremism legislation in Russia for a number of years, and has found that not only have penalties for incitement to hatred increased but also that the proportion of those charged with online offences continues to increase. It is frequently evoked against those expressing dissent, as a pretext to silence them.

The circumstances of the case against Nossik suggest that this was the motive behind his prosecution. Ilya Remeslo, an employee of a pro-government, non-governmental organisation (NGO), the Civil Society Development Foundation, with no clear connection to Syria himself, filed an allegation against Nossik and later testified in court as the prosecution's main witness. Remeslo is known to have written a number of similar denunciations of opposition activists, including Alexey Navalny and Andrey Piontkovsky. Ironically, Nossik's post (in both its content and tone) was similar to what was being broadcast at the time on state television.

The case of Nossik is just one of many but seems to be emblematic of an increasing trend in Russia to use vaguely worded and broadly applied legislation on incitement to hatred in order to stifle political criticism on the Internet and limit freedom of expression online.

Case 3. VKontakte: The Subordination of the Biggest Russian Social Network

The Russian authorities have unhindered access to user information of the biggest Russian social media network, thus facilitating the application of arbitrary criminal charges, casting a chilling effect on Internet users, and encouraging self-censorship on social media.

VKontakte is by far Russia's most popular social network, with an estimated 46 million daily users. Founded by Pavel Durov in 2006, it instantly took off; however, as the number of users grew, soon outstripping audience figures for the state-owned First Television Channel,[26] Durov came under increasing pressure from authorities to cooperate with them. After refusing to close down opposition pages on the site in 2011,[27] Durov was forced to sell his share in the company in April 2014, and soon after left the country.[28] VKontakte is now part of Mail.ru, a media company owned by Alisher Usmanov, who has close ties with the Kremlin. Under its new ownership, VKontakte has become increasingly intolerant of dissent.

Since Durov's departure, VKontakte has openly worked with the Federal Security Service and other government authorities. Speaking at a bloggers' forum in Kazan in June 2016, Yevgenii Krasnikov, a VKontakte spokesperson, confirmed how close this relationship was: in response to a question about how the company felt about working with the authorities, he said: "I would like to think that our security services, who have the possibility to access any information about our users, use that in the interests of national security."[29] Except this clearly is often not the case.

Service providers should only be required to disclose personal information about their users subject to a court order, which must be in line with the requirements of legality, legitimate aim, necessity, and proportionality under international human rights law.[30] VKontakte, however, discloses any user's personal details at any investigator's request – real names, IP-addresses, phone numbers – and does so without due process to decide on the legal appropriateness of the request, and with a lack of transparency about the process.

VKontakte's cooperation has been useful to prosecutors in court trying to prove that a defendant was responsible for posting content judged to be offensive. Technical information can help identify a personal computer and its location; indeed, armed police squads have arrested people in their homes on the basis of this information.[31] To date, no other social network in Russia cooperates so thoroughly and unquestioningly.

Criminal legislation applied online

Given the government's track record of abusing criminal legislation to silence critics and dissent, this is especially worrying. Users who only shared content rather than create it themselves have also found their reposts classified as 'hate speech', by the vague criteria of Article 282, and then brought to trial.

It is difficult to find the logical process by which people are chosen for prosecution. A politically sensitive post may be reposted ten times and none of these users may come to trial. Or a certain number of them may do so. The charge of 'repost crime' works as a blind hammer; it is not possible to predict who will be prosecuted next. This obliqueness seems to be intentional and casts a chilling effect on the freedom of expression – by putting 20 people behind bars, millions are afraid of sharing political views on social networks. This has the effect of slowing down the distribution of any negative information or views counter to the official government line. The actual risk of getting under this hammer is minimal for a specific user in any specific case; but being aware of this risk leads to second thoughts before sharing some content – a hesitation that often becomes a decision that it would be better not to share.

Among those sentenced to real jail terms for posts on VKontakte are: Andrey Bubeev (from Tver), convicted to two years and three months for reposting a picture of tooth paste with the caption 'Squeeze Russia Out of Yourself' and a text by radical publicist Boris Stomakhin, calling for Crimea to be returned to Ukraine[32] (Stomakhin is serving his third prison term); Maksim Kormelitsky (from Berdsk, Novosibirsk region) convicted to one year and three months for sharing a picture mocking Orthodox Christians taking an ice bath on the occasion of the Epiphany; and Rafis Kashapov (from Kazan) convicted to three years for four posts criticising Putin and his policies in Ukraine.

Bubeev was convicted for a 'public appeal to extremist activity' (Article 280 of the penal code), Kormelitsky for the 'incitation of hatred towards the social group of Orthodox Christians' (Article 282), while Kashapov was convicted for 'separatism and international hatred' (Article 280.1).

There are examples of many others who were given a fine or suspended sentence. Such verdicts impose strong restrictions on activists and Internet users. Convicted, they would be banned from travelling abroad and have trouble finding employment or getting a loan.

International standards

From the standpoint of international standards on freedom of expression, the problem here is twofold. First, in the vast majority of cases, content that is posted online is absolutely legitimate. The situation in Ukraine is just one very visible example where people merely supporting the application of international law, and indeed only disagreeing with official state policy, are targeted by authorities. It is difficult to find grounds for removal of the content let alone criminal prosecution for any of the above examples.

Second, increasingly people are targeted for reposting or sharing, therefore punished for content they did not author. In such cases, since people do not necessarily endorse opinions they bring attention to, even if the content can be justifiably shown to be illegitimate under hate speech definitions, for example, the burden is on the prosecution to prove intent to cause harm. The apparent lack of any effort to try to determine intention is consequently a clear attack on Internet users' freedom of expression.

Across the world social media networks are increasingly important platforms for exchanging information and discussion. The abuse of legislation in Russia in order to target Internet users for their posts or reposts, and the subordination of the biggest social media platform to support their prosecution, encourages self-censorship, and thus becomes a serious limitation to freedom of expression.

Case 4. Exploiting Facebook Rules to Block Users

Unable to control Facebook as it does Russian social media sites, the Russian authorities have sought alternative measures to prevent it from becoming a platform for dissent. Kremlin-paid trolls are suspected of exploiting Facebook community rules in order to silence voices critical of the Russian government.

Ascendency of Facebook as a platform for dissent

Before 2014, blogging platform LiveJournal was the centre of the Russian blogging ecosystem. As Russia increasingly shut down debate within traditional media, the platform became a place for political discussion, especially for the expression of highly critical opinions of the Russian government.

However, as LiveJournal grew in popularity, its independence and the safety of its Russian users in Russia were increasingly called into question. Founded by American software developer and entrepreneur Brad Fitzpatrick, it was acquired by Russian media oligarch Mamut in 2006. Although LiveJournal was quick to state that the company remained registered in San Francisco and subject to US law, a number of LiveJournal users expressed alarm about the interference of Russian authorities.[33] These fears were further compounded in 2009 with the transfer of some product development and design functions to Russia. In 2016, rumours circulated online that LiveJournal's servers had been moved to Russia, providing the Russian authorities with access to personal information on users.[34]

At the same time, LiveJournal users were subject to more overt content restrictions. At the request of the public prosecutor, some of the most popular LiveJournal accounts began to be blocked. Sixty-nine were blocked in 2014 alone,[35] and this number has continued to rise. Among the first to be blocked was opposition leader Alexey Navalny. Access to his blog, known for posts about corruption among politicians and civil servants, was blocked on 13 March 2014. Although it was eventually unblocked in November 2015,[36] Navalny set up a new site to host his content, which he maintains today, as well as posting on Facebook.

LiveJournal consequently lost a lot of credibility, and independent bloggers and journalists started to move towards other social networks that would not pro-actively cooperate with Russian government authorities. Many LiveJournal users switched to Facebook, which, although less popular than its Russian counterpart, VKontakte, has become the focal point for political discussions. Russia's most outspoken government critics, including Navalny, Sergei Parkhomenko, Victor Shenderovich, and Alfred Kokh, post regularly on Facebook and each has several hundred thousand followers. Some of these bloggers are independent journalists who crowdfund their reports and investigations from their subscribers. They also feel secure that individual accounts cannot be closed on Roskomnadzor's orders and believe that to block the entire website would be too politically costly.

Exploiting Facebook's Community Standards

Russian authorities have nonetheless striven to identify and exploit Facebook's vulnerabilities. Their most highly publicised attempt to restrict Facebook content occurred in December 2014, resulting in Facebook removing event pages publicising a planned protest in support of Navalny.

Navalny was facing a 10-year jail term on charges of embezzlement, widely believed to be politically motivated.[37] Following a lengthy trial, the verdict was scheduled to be announced on 15 January 2015. On 19 December 2014, Navalny's supporters posted about several events on Facebook, calling on his supporters to protest in Moscow on the day of the verdict in case he was given a prison sentence. Similar protests were held in July 2013 when he was facing different embezzlement changes and many believe they contributed to an initial 5-year prison term being replaced with a suspended sentence.

However, Facebook blocked the pages advertising the 15 January protests shortly after their creation.[38] Roskomnadzor had included the URLs of the event pages in a list of unlawful content submitted to Facebook on a daily basis, arguing that the events contained calls for 'unauthorised protests', in violation of Russian law.[39] Facebook shut the event pages down in response, without checking if Roskomnadzor's requests were legitimate.

A press storm followed, with *The Washington Post* among others running a story on how Facebook was collaborating with the Kremlin against the opposition.[40] Consequently, new versions of the event page were not brought down.

Many activists and independent journalists are convinced that the Russian authorities have sought to block their access by exploiting Facebook's community standards, which define the content they remove or disable in order to ensure users' safety and to minimise abuse.[41]

In June 2016, satirist and radio host Shenderovich had his account suspended for seven days for alleged breach of Facebook's community standards. On his own blog[42] Shenderovich explained how the post that had allegedly broken Facebook standards was written by him two years earlier describing how he had been victim to a number of anti-Semitic threats but had received no support from the police. By giving an example of one of the racial slurs, he himself was suspended. Journalist and political commentator Parkhomenko's account was suspended in May 2015 for a critical post about the Kremlin's reaction to the investigation into the downing of Malaysian Airlines flight MH17 over Eastern Ukraine, killing all 298 people on board.[43]

In these cases, and many others, journalists and activists have expressed their suspicion that government directed trolls were behind these suspensions. The existence of so-called 'troll farms' in Russia has been investigated and well documented:[44] hundreds (if not thousands) of people are employed to post misinformation and anti-Western comments on the biggest social media platforms, including Twitter, Instagram, and Facebook, as well as on bogus LiveJournal blogs and in the comments sections of online media outlets. Behind hidden IP addresses, trolls receive instructions on who they should target, what issue they should cover, and numerical targets to reach. It is these trolls that many Russians believe were used to look through their profiles for anything that could conceivably be claimed to break Facebook standards, leading to mass complaints that led to their profile suspensions.

Facebook representatives have defended their moderating system. In response to a petition launched by Russian writers, the Director of Policy for the Nordics, Eastern Europe, and Russia, Thomas Myrup Kristensen, wrote that there are well-trained, multilingual teams dealing with requests in global centres, that among these are Russian speakers with understanding of the context, and that there are: "quality control systems in place to ensure that reports are decided on correctly according to the common standards."[45] Also, he said, it did not matter how many times specific content is reported – so a targeted attack by many trolls should not in principle have any more impact.

Nonetheless, doubts remain. For many the identity of those who have been blocked seems like too much of a coincidence. And as Leonid Volkov of the Association for the Protection of the Internet found out in private conversations with Facebook management, there are only a very limited number of moderators for Russian-language content, and there are no tools to monitor their work or check whether their political affiliations or views influence their judgment.

Since their inception a little over a decade ago, social networks have grown extremely quickly, both in the number of users and geographical coverage but also in the role they play in society for communicating and spreading news. Accompanying this rise has been the difficult issue of moderating content. While Facebook has developed community standards and a system of moderators, it is nonetheless vulnerable to exploitation, and their lack of transparency brings their commitment to open discussion under doubt for people who most need the platform. While not bound by international treaties, Facebook should strive to continue improving their policies and practices to meet international standards on freedom of expression.

Case 5. LinkedIn blocked in Russia: an example to others?

A law requiring any personal data on Russian citizens to be held inside Russia is being used as leverage to coerce cooperation from international Internet companies.

On 21 July 2014, the Duma approved Federal Law No. 242-FZ, On Introducing Amendments to Certain Legislative Acts of the Russian Federation (the so-called 'Personal Data Localisation' Law). The Law requires any web service processing Russian citizens' personal data to store this information on database servers located within the territory of the Russian Federation.

Federal Law 242-FZ raises major concerns about protections for Russian citizens' privacy and their ability to exercise the right to freedom of expression, both publicly and in private. Data stored on servers in the Russian Federation would be subject to Russia's SORM, the surveillance system which enables the bulk collection of online communications. Although theoretically security services must still obtain a court order to access this data, a lack of checks and balances in the system combined with a non-independent judiciary means that in practice the system ensures Russian authorities have very easy access to online communications passing through Russian servers.[46]

If personal data currently held by platforms such as Facebook, Twitter, or YouTube, regularly used by Russian citizens to express dissent, were to be transferred to Russia, it would be far more accessible to Russian law enforcement agencies. Consequently, it would be much harder for Russian Internet users to use these platforms to express themselves anonymously online, as the authorities could much more easily get access to real identities. Similarly, messaging within Facebook, Google, or other platforms could be subject to the Russian authorities' pervasive surveillance systems, exerting a chilling effect on freedom of expression.

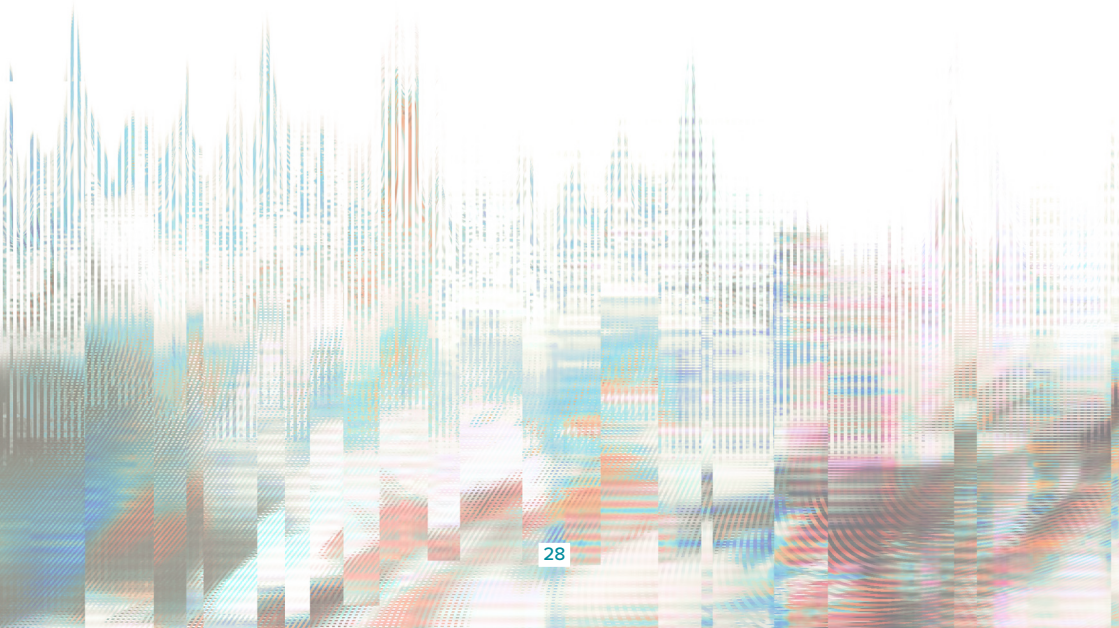
Introduction of Federal Law 242-FZ

Federal Law 242-FZ outlined a one-year transition period ahead of coming fully into force. A deadline was given of 1 September 2015 for Internet companies to comply with the new requirements: to build or to rent a data centre within Russia and to complete transfer of relevant data.

Many in the IT industry expressed their concern about the potential knock-on effect. It was hard to imagine Google or Booking.com building data centres in Russia. Everyday services like Visa and Mastercard or Amadeus (the international airline booking system) would also be affected. It was unthinkable that these could all become unavailable to Russians.

Roskomnadzor softened its approach: nothing would endanger Swift or Amadeus as they did not deal directly with end-customers; for other web services, the regulator would work on a case-by-case basis to fulfil the new legal requirement. The transition period was extended by another three months, to 1 January 2016, and Roskomnadzor reported being 'in talks' with Google, Apple, Facebook, and other major tech vendors about the personal data localisation law.

Nevertheless, even after the passing of the second deadline, few major companies had reported building data processing centres in Russia, with the notable exceptions of Viber, a Belarus-Israeli instant messenger, and Uber.



Blocking of LinkedIn

On 4 August 2016, a little over two years after the Duma approved Federal Law 242-FZ, Moscow's Tagansky Court ruled that LinkedIn, an online professional networking site, should be blocked. The court was upholding a request from Roskomnadzor that the site be added to the Internet blacklist for failing to comply with the requirements of the Personal Data Localisation Law. Soon afterwards, Russian users started reporting that they were unable to access the site. While not that popular in Russia (with approximately 2.4 million users),[47] experts are concerned that LinkedIn has been blocked to send a message to other, more popular websites that this penalty will be enforced if they refuse to comply with Russian legislation.

It is unlikely that LinkedIn was singled out to be blocked by chance while thousands of other companies that have not complied with the law continue to publish unrestricted in Russia. There are specific features about LinkedIn that suggest it was a perfect example to build a case, which could be used as leverage against larger targets.

LinkedIn is a notable brand name, particularly in Europe and the US, where other large international IT companies with a presence in Russia are based. However, it was never particularly popular in Russia, and its banning was unlikely to provoke a popular backlash domestically.

In contrast: "the blanket blocking of Facebook, Google, YouTube or Twitter could spark unwelcome street protests," according to Volkov of the Association for the Protection of the Internet. So the Russian authorities are using LinkedIn as an example to coerce companies to bring their data to Russia: demonstrating what might happen to them if they don't comply, without going so far as blocking them at this stage.

Ominously, this case also led to the first documented banning of a phone app. After a request by Russian authorities, LinkedIn was removed from the Apple and Google app stores. This occurred despite it being far from clear whether this was legally required by the law. Since mobile phones are increasingly the instrument for accessing the Internet: "Apps are the new choke point of free expression," according to Rebecca MacKinnon, Ranking Digital Rights at New America. So this could have set a dangerous precedent.[48]

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