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Personal Data Leaks: Risks, Methods of Protection, Market Expectations

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Leaks: case law



	<p>Laboratory Gemotest LLC Decision of the justice of the peace of the court district No. 281 dated July 08, 2022 in case No. 05-0564/287/2022</p>	<p><i>Part 1 Art. 13.11 of the Code of Administrative Offenses (violations in the processing of personal data)</i></p>	<p>RUB 60,000 fine</p>
<p>Яндекс @Еда</p>	<p>Yandex Eats LLC Decision of the justice of the peace of the court district No. 101 dated April 21, 2022 No. 05-0413 / 101 / 2022 (upheld by the Decision of the Zamoskvoretsky District Court dated June 16, 2022 in case No.12-2028/2022)</p>	<p><i>Part 1 Art. 13.11 of the Code of Administrative Offenses (violations in the processing of personal data)</i></p>	<p>RUB 60,000 fine</p>
<p>Яндекс @Еда</p>	<p>Yandex Eats LLC Decision of the justice of the peace of the court district No. 101 dated August 02, 2022 in case No. 05-0938/101/2022</p>	<p><i>Part 1 Art. 13.11 of the Code of Administrative Offenses (violations in the processing of personal data)</i></p>	<p>RUB 60,000 fine</p>
	<p>Delivery Club LLC Decision of the justice of the peace of the court district No. 351 dated August 18, 2022 in case No. 05-0874/351/2022</p>	<p><i>Part 1 Art. 13.11 of the Code of Administrative Offenses (violations in the processing of personal data)</i></p>	<p>RUB 80,000 fine</p>
	<p>Oriflame Cosmetics LLC Decision of the justice of the peace of the court district No. 365 dated November 15, 2021 in case No. 05-2242/365/2021</p>	<p><i>Part 1 Art. 13.11 of the Code of Administrative Offenses (violations in the processing of personal data)</i></p>	<p>RUB 30,000 fine</p>



Personal data reform from 01 September 2022

(Federal Law No. 266-FZ of 14 July 2022)

Obligation of personal data operators to notify public authorities of a leak

- ✓ Introduction of operators obligation to transfer information about *computer incidents* that resulted in an unlawful transfer (provision, distribution, access) of personal data to the state system for detecting, preventing and eliminating the consequences of computer attacks on information resources of the Russian Federation (GosSOPKA).
- ✓ In the event that the fact of unlawful or accidental transfer (provision, distribution, access) of personal data that led to a violation of the rights of subjects of personal data is established, the operator is obliged to notify Roskomnadzor of the incident (within 24 hours from the moment the incident was detected) and the results of an internal investigation of the identified incident (within 72 hours from the moment of detection of the incident).
- ✓ Roskomnadzor will additionally keep a register of personal data incidents.

Protection measures

Article 18.1 of the Law on Personal Data contains the list of measures necessary to ensure the fulfillment of obligations of the operator (including protection of personal data).



Administrative liability

- ✓ Part 1 of article 13.11 of the Code of Administrative Offenses of Russia (*“Processing personal data in cases not provided for by law”*) (a fine from RUB 60,000 to RUB 100,000)

For repeated violation - a fine from RUB 100,000 to RUB 300,000 (Part 1.1 of article 13.11)

- ✓ Part 2 of article 13.11 of the Code of Administrative Offenses of Russia (*“Processing personal data without written consent, when it is required”*) (a fine from RUB 30,000 to RUB 150,000)



Criminal liability

- ✓ Article 137 of the Criminal Code of Russia (*“Violation of privacy”*)
- ✓ Article 272 of the Criminal Code of Russia (*“Illegal access to computer information”*)
- ✓ Article 273 of the Criminal Code of Russia (*“Creation, use and distribution of malicious computer programs”*)



Civil liability

- ✓ Article 15 of the Law of the Russian Federation of 07 February 1992 No. 2300-1 *“On Protection of Consumer Rights (‘Compensation for moral damage’)*
- ✓ Part 2 Article 22 of the Law on Personal Data (*“Liability for violation of requirements of the law”*)

Potential regulation of leaks

1. Turnover penalties for companies for personal data leaks

It is discussed to make a fixed penalty for the first data leakage if less than 10 thousand of the company's customers suffered from it. In other cases, a turnover penalty in the amount of 1% to 3% of the company's annual turnover.

A company can achieve a reduction in such a fine if it promptly identified the leakage, publicly admitted it, conducted an internal investigation, assisted authorities, and in the course of the investigation it turned out that the leakage was not caused by violation of information security requirements.

2. Financial compensation fund for citizens affected by leaks

It is planned to create a fund of financial compensation for citizens affected by leaks. It is assumed that the fund will be formed from the turnover fines imposed on companies for breaches.



3. Criminal liability for leaks of personal data

A draft law is under development that provides for criminal liability for representatives of companies whose actions led to personal data leaks with grave consequences.



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