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ABOUT ADMINISTRATIVE RESPONSIBILITY FOR VIOLATION LEGISLATION ON CHILDREN PROTECTION FROM INFORMATION HARMFUL TO THEIR HEALTH AND (OR) DEVELOPMENT

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Analyzes the structures of administrative offences entered into the Code on Administrative Offences of the Russian Federation by Federal law No. 252-FL of July 21, 2011 on Making Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal law on the Children Protection from Information Harmful to their Health and Development.

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One of the main objectives of the national policy for children in accordance with part 1 of article 4 of the *Federal Law No. 124-FL of July 24, 1998 "On basic guarantees of children's rights in the Russian Federation"* (in edition from 03.12.2011) [2] is a promotion to the physical, intellectual, mental, spiritual and moral development of children, education in them patriotism and civic consciousness. In order to achieve it article 14 of the Law earmarks as a way to ensure the rights of children in the Russian Federation the protection of children from information, propaganda and agitation damaging their health, moral and mental development.

In accordance with it the bodies of state power of the Russian Federation take measures to protect children from information, propaganda and agitation, harmful to their health, moral and mental development, including from the national, class, social intolerance, the advertising of alcoholic beverages and tobacco products, the propaganda of social, racial, national and religious inequality, and also from the distribution of printed materials, audio and video products, which propagate violence and cruelty, pornography, drug consumption, substance

abuse, antisocial behavior. In order to ensure the health, physical, intellectual, moral, emotional security of children the federal law, the laws of the subjects of the Russian Federation establish standards for distribution of printed materials, audio, video and another products that are not recommended for use by children under the age of 18.

An important step towards strengthening the mechanism of legal protection children from the negative information became the adoption of the Federal Law No. 436-FL from December 29, 2010 “On Protection of Children Against Information That May Be Harmful to Their Health and Development” [3] (hereinafter – the Law on Protection of Children from Information). In terms of content the Law:

- enshrines the definition of key concepts in the field of protection of children from information harmful to their health or development;
- establishes the powers of a federal body of executive power, bodies of State power of the subjects of the Russian Federation in the field of protection of children from information harmful to their health or development;
- defines the types of information harmful to the health or development of children;
- enshrines the categories of information products and rules of its classification;
- establishes the requirements for turnover of information products;
- regulates the procedure for the examination of information products;
- appoints the subjects of supervision and control and their rights in the field of protection of children from information harmful to their health and (or) development.

Taking into account the “revolutionary” nature of the Law on Protection of Children from Information for the Russian legislation parliamentarians have envisaged a considerable temporary reprieve of its entry into force. In accordance with article 23 of the Law on Protection of Children from Information it will happen on September 01, 2012.

In order to implement certain provisions of the Law on Protection of Children from Information and harmonize with it the current legislation of the Russian Federation was adopted the Federal Law No. 252-FL from July 21, 2011 «On Amendments to Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law “On Protection of Children Against Information

That May Be Harmful to Their Health and Development” [4] (hereinafter – the Law on Amendments). Taking into account the obvious fact that the enforcement and implementation the norms of the Law on Protection of Children from Information is impossible without the application of coercive mechanisms, including legal sanctions, the Law on Amendments envisages adding to the Code on Administrative Offences of the RF from December 30, 2001 No. 195 - FL [1] (hereinafter – CAO RF) the complex of norms providing for administrative responsibility for violation of the legislation on protection children from information harmful to their health and (or) development. We would like to dedicate this article to analysis of these norms.

First of all, the Law on Amendments introduces to the CAO RF a new structure of an administrative offence – article 6.17. “Violation of the legislation of the Russian Federation on the protection of children from information harmful to their health or development”. It includes three parts.

Before the beginning of their analysis is necessary to clarify the content of the basic concept of “information harmful to health, and (or) development of children”, which is used in dispositions of all parts of article 6.17 CAO RF, as well as in its title. In accordance with paragraph 7 article 2 of the Law on Protection of Children from Information it is recognized by information (including information contained in information products for children), distribution of which among children is prohibited or restricted in accordance with this Federal Law. As can be seen from the definition, there are the two categories of such information: 1) one, which is totally prohibited for distribution among children, and 2) one, which in general is not prohibited for children, but for which an age limit is introduced. List of types of information falling within each of these categories is established respectively by parts 2 and 3 of article 5 of the Law on Protection of Children from Information.

Part 1 of Article 6.17 CAO RF establishes liability for violation the requirements of distribution among children of information products containing information damaging to their health and (or) development. Under the distribution of information products on the basis of paragraph 12 of article 2 of the Law on Protection of Children from Information should be understood its sale (including subscription), rent, lease, distribute, checkout at Public Libraries, public showing, public performance (including by means of broadcasting or cable TV, events and shows), posting in the information and telecommunication networks (including the Internet) and in mobile radio communication networks.

Themselves requirements of distribution of information products for children containing information damaging to their health and (or) the development

are regulated by chapter 8 of “Requirements for turnover of information products” of the Law on Protection of Children from Information. The possible forms of violation may be: a) distribution among children of information products containing information prohibited for children; b) distribution among children of information products containing information, which is limited to children of certain ages, without the sign of information products; c) demonstration through spectacular event of information products containing information damaging to their health and (or) development, without audio message just before the spectacular event on the inadmissibility or restrictions on the presence at such a demonstration of children of certain age categories, etc.

In order to avoid collision of part 1, article 17 CAO RF with other articles of CAO RF, as well as with the norms of the Criminal Code of the Russian Federation (in particular, article 242 and 242.1 of the Criminal Code of the RF) the disposition of the considered norm contains two clauses: “except as specified in part 2 of article 13.21 of this Code” and “if this action does not contain a criminal offense”. As for part 2 of article 13.21 CAO RF, this new norm is also entered in CAO RF by the Law on Amendments and will be considered by us below.

Part 2 of Article 6.17 CAO RF provides for responsibility for non-use by communications providers, that provide telematic services at collective points of access to the information distributed by information and telecommunication networks (including the “Internet”), technical, software and hardware to protect children from information harmful to their health and (or) development. The obligation of communications providers on the use of such means is established by article 14 of the Law on Protection of Children from Information. Specific requirements concerning the nomenclature and technical characteristics of these protection means are determined by the federal body of executive power authorized by the Government of the Russian Federation. According to information available such a subordinate act has not yet been adopted.

The rules of providing telematic services are approved by the Resolution of the Government of the Russian Federation No. 575 from September 10, 2007 (in edition from 16.02.2008) [5]. First of all, we are talking about the operators providing access to the Internet in the so-called Internet cafes, as well as in points of collective access in educational institutions. However, the definition of “telematic communication services in the collective points of access to information available through information and telecommunication networks” could include also services of wireless access to the Internet, which currently are in many institutions: hotels, shopping malls and business centers, cafes and restaurants and etc.

Part 3 of Article 6.17 CAO RF establishes responsibility for posting in information products for children, including information products, placed in the information and telecommunication networks (including the "Internet"), announcements about bringing children to participate in the creation of information products that are harmful to their health and (or) development. These actions are in violation of one of the additional requirements for the turnover of certain types of information products for children, stipulated by part 1 of article 15 of the Law on Protection of Children from Information. Under information products in this Law are recognized the intended for circulation in the Russian Federation media products, printed materials, audio-visual products on any type of media, programs for computers and databases, as well as the information made available through the spectacular events, information posted in information and telecommunications networks (including the Internet) and networks of mobile radio communication.

Subjects of administrative liability under article 6.17 CAO RF are citizens (part 1 and 3); officials (part 1 and 3); persons carrying out business activity without establishment of a legal entity (part 1 and 2); legal entities (part 1, 2 and 3). As the main type of administrative penalty for all the entities has been established an administrative fine (parts 1-3 of article 6.17 CAO RF), which in the considered article is associated with the confiscation of the subject of an administrative offense. For committing of an administrative offense under part 1 of article 6.17 CAO RF in respect of persons engaged in entrepreneurial activities without forming a legal entity, and legal entities as an alternative to the fine has been established administrative suspension of activity.

In addition to the introduction to CAO RF of the new article 6.17, article 13.21 "Violation of the procedure of manufacturing or distribution of media products" of the current edition of the CAO RF by the Law on Amendments has been added by part 2, which establishes administrative responsibility for violation of the established procedure of distribution among children mass media products, containing information damaging to their health and (or) development. In fact, this offense is a special corpus delicti with respect to the general corpus delicti of an administrative offense stipulated in part 1 of article 6.17 CAO RF. Its hallmark is a subject of an administrative offense, which is a media product (recall, that in part 1, Art. 6.17 CAO RF it is such an information product for which media products is one of its kinds). Thus, for violation of the established procedure of distribution among children media products containing information damaging to their health and (or) development, a person will take responsibility under part 2 of article

13.21 CAO RF, and for the same actions with respect to other types of information products – under part 1 of article 6.17 CAO RF.

Subjects of administrative responsibility in part 2 of article 13.21 CAO RF are: citizens, officials, legal entities. An administrative fine and confiscation of the object of administrative offence are provided for as the types of administrative punishment.

The third novation stipulated by the Law on Amendments is an addition of article 19.5 “Failure to Follow in Due Time a Lawful Direction (Order, Proposal) of a Body (Official) Exercising State Supervision (Control)” of the current edition of the CAO RF with a new corpus delicti of an administrative offense (part 16) with the disposition as follows: failure to follow in due time a lawful direction of a federal body of executive power exercising state supervision and control over the observance of the legislation of the Russian Federation on the protection of children from information harmful to their health and (or) development. In accordance with the resolution of the Government of the Russian Federation No. 859 from December 24, 2011 “On amendments to some acts of the Russian Federation Government, with regard to the distribution of powers of federal executive bodies in the field of protecting children from information harmful to their health and (or) development” [6], federal executive bodies exercising state supervision and control over the observance of the legislation of the Russian Federation on the protection of children from information harmful to their health and (or) development include the following federal agencies of: supervision in the field of Communications, Information technology and Mass communications (Roskomnadzor Rossii – in Russian); supervision in the sphere of education and science (Rosobrnadzor Rossii – in Russian); supervision in the field of consumer rights protection and human welfare (Rospotrebnadzor Rossii – in Russian). The objective side of the analyzed offence consists in the failure to comply in due time a lawful direction of such a body.

Subjects of administrative liability under part 16 of article 19.5 CAO RF are citizens; officials; persons carrying out business activity without establishment of a legal entity; legal entities. As the main type of administrative penalty for all the entities has been established an administrative fine, and in respect of persons engaged in entrepreneurial activities without forming a legal entity and legal entities as an alternative penalty has been established administrative suspension of activity.

Consideration of cases on administrative offences, prescribed by the introduced to the CAO RF articles 6.17, part 2 of article 13.21 and part 16 of article 19.5, is attributed to the competence of judges. The powers for drawing up protocols on these administrative offences are given to officials of the federal body of executive

power exercising state supervision and monitoring of compliance with the legislation of the Russian Federation on the protection of children from information harmful to their health or development. As such bodies, depending on jurisdiction can serve Roskomnadzor Rossii, Rosobrnadzor Rossii or Rospotrebnadzor Rossii (the titles of institutions are in Russian), as was said earlier.

All the considered by us novation to the CAO RF provided for by the Law on Amendments come into force on September 01, 2012, as well as the Basic Law on the Protection of Children from Information.

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