

RUSSIA

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Gaming or gambling: The approach to social casino websites in Russia

Larisa Lysenko and Marina Yufa of ALRUD, discuss the regulatory landscape for social gaming websites in Russia following the issuance of an internal order by the Russian regulator that provides new guidance on the detection of illegal gambling activities on the internet.

It seems quite evident that gaming and gambling are different things despite their common nature - passion - which is an integral part of any human being and is thus easily exploited by game producers.

Unlike pure gaming, gambling presupposes the winning of money, which is one of the oldest human vices which can lead to addiction. With a variety of different online activities currently available, gambling remains one of the leading activities, and maintains a high popularity among people of all ages. At first glance, the issues around morality in regard to gambling seem to be not quite as applicable to social gaming played for fun, commonly through social networks.

In reality, addiction to playing games affect increasing numbers of gamers, irrespective of the game channel, source and results achieved in the game. The potential risk of an easy transfer from pure gaming to gambling means legislators are paying closer attention to social gaming activities.

Gambling is strictly regulated in the majority of jurisdictions all over the world, and Russia is not an exception, where it

is considered illegal. Websites that offer online gambling in Russia are blocked by the Federal Service for Supervision of Communications, Information Technology and Mass Media otherwise known as the Roskomnadzor following a decision by the Tax Service Regulator. Meanwhile, pure gaming websites are freely available on the internet.

In everyday life, where the majority of people do not play slots, go to casinos and perhaps do not know how to play poker, online technologies have become an efficient tool to involve more and more people, including children, in the industry by skillfully blurring the fine line between pure gaming and gambling, and positioning the activity as innocent social gaming.

Over the past decade - since 2007 when the first social casinos appeared on Facebook - such games have brought a huge revenues for the gambling industry and have become one of the industry's most profitable sectors.

The monetisation models of social casinos involve direct income in the form of payments for virtual chips, slots and other goods/privileges that allow

the player to enhance their experience. Therefore, there may be cases where a user spends virtual currency to obtain in-game mechanics and the outcome of the game is the awarding of in-game virtual item or a user may purchase in-game items using real money without any cash-out features.

Therefore, it comes as no surprise that social casinos are on the radar of regulators around the world, including in Russia, which makes developers working in the Russian market wonder whether their products represent gaming or gambling under Russian law and may cause them to evaluate the potential risk that their products may be blocked.

Basics of Russian law

Under Russian law gambling is defined as a risk-based agreement on a prize concluded by two or several participants thereof or with the gambling organiser under the rules established by the gambling organiser.

Proceeding from the literal interpretation of the law, gambling requires two key elements: i) risk/chance - the outcome shall depend on chance rather than skill; and ii) a prize - any form of

monetary funds or other property including proprietary rights, payable or transferable to the participant of gambling upon a positive result. Payment of something as an entrance fee (required just to start a game) is not, however, a criterion of gambling.

Gambling criteria

To avoid misinterpretations and to provide regulators with the specific characteristics of gambling activities, Roskomnadzor has recently published an internal order (issued jointly with the Russian Tax Service), which provides guidance on the detection of illegal gambling activities on the internet.

Namely, the following information/actions are qualified as being gambling:

- Any photo, video, audio, text, graphic information suggesting participation in gambling given that such information attracts user attention to the website where a prize could be received;
- Any information outlining terms for participating in gambling, the method of paying an entry fee, and the ways to get a prize;
- An option on the website to transfer money to get a prize (including by electronic means) as well as receive a prize; and
- Any announcement on the website referring to other websites where it is possible to participate in gambling etc.

Despite the fact that the criteria outlined are not well defined and thus permit differing interpretations, it is clear that gambling involves a prize (cash-out feature) and an entrance fee, though this does not follow from the letter of the law. The guidance is silent on whether virtual wins/currency and privileges obtained for real money (in the absence of a cash-out feature) constitute gambling.

Enforcement

The current approach of the regulator in regards to the definition of 'gambling criteria' as specified above has been confirmed by the relevant court practice, with the courts confirming the regulator's approach to those activities considered gambling.

The Russian register of prohibited websites covers about 70,000 sites. Analysis of the gambling websites that have been blocked shows that all of

them relate to online games with a 'cash-out' function. It is also noteworthy that quite a number of claims for listing gaming websites were submitted by prosecutors (which is admissible under Russian law), who substantiated their claims with reference to the 'cash-out' functions of the websites.

In July 2017, Roskomnadzor blocked the CSGOFast online casino, which did not contain prize awards, but included the possibility of buying in-games features for real money. It appears to be the only case where a social casino has been blocked. We can assume that the targeted group of this social casino website - minors - was decisive when the regulator made its decision.

Nevertheless, regulators still put an emphasis on the 'cash-out' function of websites. If social casino games are blocked, this is often due to formal reasons. Operators of social casinos may also be gambling operators and the user terms of both resources (gaming and gambling) are often identical. That is why the website of a social casino may refer to possible prizes and the conditions of their transfer to the winner. Regulators are likely to rely on formal statements found in the user terms without going deeper into the details of the actual activities provided on the website.

Removing a social casino website from the register of prohibited content

Russian law provides for two options for a website to be removed from the register of prohibited content. The option is via administrative proceedings, where Roskomnadzor will exclude the website from the register based on the application of the website's owner or hosting provider under condition that the 'unwanted' content is deleted. The second option involves court proceedings, with Roskomnadzor excluding the website from the register based on a court decision, which invalidates the Federal Tax Service decision on listing the website in the register. In spite of the availability of the court proceedings option, it is probably preferable to proceed with the administrative option as it is less costly and time consuming.

Amending the user terms to make them more explicit as to the aim of the website, i.e. that it is for pure entertainment,

and does not involve the receipt of money or real prizes (for e.g. additional banners/statements on the website to clarify this) would be sufficient. It is also recommended that it is clearly stated on the website that nothing in the game has a monetary value and that there is no cash-out feature for the virtual items (if any are present in the game).

The administrative procedure is indeed the simpler and quicker option. The owner of the website and/or hosting provider has to submit an application concerning the deletion of the information on gambling and the exclusion of the website from the register, supported by screenshots. It would also be beneficial to include an explanation of the mechanics of the game and an indication of the fact that no 'cash-outs' are allowed (screenshots of the amended user terms and additional banners would provide support for this). Electronic submission of the application is admissible and an applicant can expect feedback from Roskomnadzor within several days.

Key takeaways

It seems that removing social casinos and gambling websites from the register of prohibited content is becoming a problematic issue in Russia, where regulators are quite formalistic. In the majority of cases, attention will be paid to the presence of a cash-out feature and/or an entrance fee. Therefore, one can assume that a social casino could be blocked due to inaccuracies in its user terms as well as in the website design. A simple amendment of the user terms and an indication that nothing in the game involves money may remedy the situation and allow for the de-listing of the resource from the register of prohibited content. However, when it comes to free-to-play games targeting children, these will most likely be considered gambling and the prospects for their developers to position them as social gaming and thus avoid being blocked (or of getting them de-listed from the register) are poor.

Developers should seriously evaluate the compliance risks while offering monetisation models for gaming websites to eliminate situations where the regulator may consider the activity as flirting with the idea of using gaming for gambling purposes.