

Preinstalled Russian software regulation

The background of the top half of the page features a silhouette of a person in profile, looking at a laptop. The person's face and the laptop screen are overlaid with various data visualization elements, including bar charts, line graphs, and circular gauges, all in a light blue color that matches the background. The overall aesthetic is modern and tech-oriented.

The President of Russia has signed a law amending Article 4 of the Russian Federation Law on Consumer Protection. Signed back on December 22, 2020, the law sets forth an obligation to preinstall Russian software (or, after amendments, Eurasian software) on certain types of devices.

Having been postponed many times, the amendments go into effect only in April 2021, i.e., two months from now. However, the key rules of mandatory preinstallation set out in Russian Government Resolution No. 1867 of November 18, 2020 (the “Resolution”) became effective in January 2021.

This alert considers the main provisions of the Resolution, including the list of devices that must have preinstalled software, how the software should be preinstalled and the requirements for keeping the software list.

I. Devices for which software preinstallation is mandatory

Mandatory preinstallation of software applies to smart phones, tablets, computer devices and Smart TV.




Specific types of programs that must be installed on them are further defined. For example, for smartphones

these are search engines, navigators, antivirus and some other programs. The annex to this alert contains a complete list of devices and the software that must be installed on them.

II. How to preinstall software and manufacturers' obligations

The obligation to preinstall software extends to device manufacturers and to other manufacturer-authorized representatives, including those that supply and/or sell devices in Russia.

The manufacturer (or its authorized representatives) may choose one of three methods of preinstalling the software listed in the Resolution or use a combination of methods.

 Placing on the hard drive	 Displaying icons	 Displaying a dialog box
Full preinstallation on device hard drive.	Preinstallation by displaying icons of Russian programs on the device screen to load them.	Preinstallation at device activation by displaying a dialog box the first time the device is turned on. The dialog box invites the user to select Russian programs to load.

In order to ensure mandatory software preinstallation, **the manufacturer and its authorized representatives are given a number of additional obligations.**





The main obligation is to enable consumers to use preinstalled Russian programs, even after the device is restored to factory settings, repaired or serviced.

The second important obligation is to ensure there is no discrimination in the terms of use of preinstalled programs as compared to other preinstalled programs. In other words, that consumers are given equal opportunities to use them for updating, displaying on the screen, etc.

III. Requirements for Russian software

For mandatory preinstallation purposes, software will be considered Russian software if it meets the Russian Government's requirements. Preinstalled software can only be free (which doesn't mean there can't be paid versions of it).

The Resolution's requirements for Russian programs can be divided roughly into four categories.

 Russian origin	 No restrictions	 Popularity or social significance	 Technical requirements
<ul style="list-style-type: none"> In many ways (other than the restriction on payments to foreign entities) these requirements coincide with the requirements for software that can be purchased for state/municipal procurement¹. The rights to the software must be held by Russian entities with no foreign control. 	<ul style="list-style-type: none"> Distribution of the software in Russia must not be restricted by a court or law. The software must not contain information classified as state secrets. There must be no effective court decisions finding personal data violations by the software rights holder in the three years before the application for inclusion in the register is filed. 	<ul style="list-style-type: none"> The software (except for the online-video software) must have a high rating determined by the number of users, which must be at least 500,000 over the past year; or The software must be associated with government services and/or state support (for a limited number of software classes). 	<ul style="list-style-type: none"> Compatibility with device operating system. No undocumented features in the software. Device operation must be safe. The software user interface must be in Russian.

Russia's Ministry of Digital Development, Communications and Mass Media keeps the list of software for mandatory preinstallation (the "List"). Any interested party, including a device manufacturer and software developer, may file an application for inclusion on the List.

The List generally includes one item from each software class (save for software for government services and online video software). And the software's rating and user popularity are the main criteria for including it on the List (provided the requirements listed above are met).



¹ The Unified Register of Russian Software for Computers and Databases that is kept by the Ministry of Digital Development, Communications and Mass Media of Russia.

IV. When software does not have to be preinstalled

The manufacturer (or its authorized representatives) does not have to preinstall software on a device if:

- The device was manufactured before January 1, 2021.
- The software's technical characteristics don't match those of the device or are incompatible with the device's operating system.
- There is no preinstalled software on the device (in the Resolution this applies only to smartphones and tablets).
- The software is not on the List.

Preparation for implementing the rules is at the final stage. This is evidenced by:

- 1) RF Government Order No. 3704-r of December 31, 2020, which has already defined the list of specific software to be preinstalled².
- 2) A draft law on administrative fines of up to RUB 200,000 for failure to perform the obligation to preinstall software passed in the first reading.

To conclude, the list of software to be preinstalled will be updated annually.



² Most of the software on the list is software from major Russian companies (Yandex, Mail.ru, Kaspersky Lab, Rostelecom), for example, Yandex.Browser, Mail.ru Mail, VKontakte and even the ICQ messenger.

Annex. List of devices on which preinstallation must be done and classes of software to be preinstalled.



Smartphones and tablets

- Browsers
- Search engines
- Navigators
- Cloud services
- Email
- Messengers
- Voice assistants
- News aggregators
- Webcasts
- Social networks
- Online cinemas
- Mir card payment app
- State and municipal government services
- Office software
- Antivirus software
- Socially significant domestic Internet services



Computers

- Browsers
- Office software
- Antivirus software



Smart TV

- Browsers
- Search engines
- Social networks
- Online cinemas



