

Database Rights, Social Networks and Access to Publicly Available Data: The Case of Vkontakte v. Double Data

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Irina holds a position of a Senior Associate of the IP/Digital practice in the Moscow office of the international law firm Bryan Cave Leighton Paisner LLP (Russia) (formerly Goltsblat BLP).

Irina focuses on IP consulting and litigation, data protection, unfair competition, advertising compliance, Internet-related issues. Furthermore, Irina is involved in supporting due diligences, court litigations and disputes at the Federal Antimonopoly Service.

Being part of the IP litigation team, Irina is representing Double Data in the complex case VKontakte vs. Double Data on use of big data and database protection.

In terms of her day-to-day work, Irina provides advice on a wide range of legal issues to Russian and international clients, such as NIKE, TEVA, Royal Canin, Cisco, Farfetch, GE and other. Irina was also actively advising clients on compliance with the FIFA legislation during the World Cup held in Russia in summer 2018.

Irina actively participates in initiatives related to advertising compliance. In 2018, Irina was one of the leading lawyers developing the Recommendations on Advertising of OTC Medicine together with pharmaceutical industry and Federal Antimonopoly Service. Currently, she participates in the working group created for development of advertising self-regulation in Russia.

Abstract

Currently, in Russia a unique and potentially precedent-setting case is pending in the courts. A social network VKontakte (Russian “Facebook”) has claimed the rights to a database containing its users’ data.

VKontakte filed a lawsuit against a tech startup Double Data which developed and successfully sold a highly accurate software tool allowing people to search for information about a particular person in open Internet sources, e.g. social networks.

The relevant Russian legislation for this case is fully based on the EU Database Directive. As such, this case may be interesting for the European market as well. The case touches upon the legal questions that have never before been analyzed in Russian and European courts. Namely,:

- 1) Whether a social network, such as VKontakte, can enjoy the database protection under the “sui generis” regime or their database should rather be considered a “spin-off” product;
- 2) Whether search engines, to which Double Data’s software is similar, may in principle infringe any IP rights in terms of their interference with open data on Internet;
- 3) Whether it should be possible to prevent access to the publicly available information using the institute of IP rights.