

THE LIFE OF A FOREIGN AGENT:

RISKS AND PERSPECTIVES ON OPERATING IN RUSSIA AS A NON-PROFIT ORGANIZATION DESIGNATED AS A FOREIGN AGENT

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Acronyms

HIV	Human Immunodeficiency Virus
WHO	World Health Organization
GF	The Global Fund to Fight AIDS, Tuberculosis, and Malaria
FA	Foreign Agent
RF	Russian Federation
RFVAC	Russian Federation Administrative Violations Code
LGBT	Lesbian, Gay, Bisexual, Transgender
MinZdrav	Russian Federation Ministry of Health
MinJust	Russian Federation Ministry of Justice
MSM	Men who have Sex with Men
NPO	Non-Profit Organization
NPO-FA	An NPO registered as a Foreign Agent
MMO	Mass-Media Outlet
AIDS	Acquired Immunodeficiency Syndrome
FDCS	Federal Drug Control Service of the Russian Federation
UNAIDS	Joint United Nations Programme on HIV/AIDS



Summary

Since 2012, more than 20 laws have been implemented and are actively applied in the Russian Federation that create significant obstacles for HIV service NPOs that receive foreign financing (laws regulating legal entities–foreign agents, MMO–foreign agents, individuals–foreign agents, citizen groups–foreign agents, and laws regulating undesirable organizations). The effects of these laws are compounded by prohibitions on information about HIV prevention and/or human rights, which is arbitrarily classified as propaganda either for drugs or for non-traditional sexual relations.

In September 2021, 15 HIV service NPOs were registered as foreign agents. Six of these organizations ceased operations. The remaining nine NPOs continue their normal operations, encountering substantial obstacles associated with their designation as foreign agents. The list of HIV service organizations, civic associations, advocacy groups, and experts affected by the restrictions established by these laws in conjunction with foreign financing will grow.

Thus, any operations in the field of HIV involving direct or indirect support from foreign sources must include plans for additional expenses to overcome legislative barriers, as well as to prepare for program, financial, and organizational changes in conjunction with a tightening of laws. Donors and national and international partners must exhibit maximal flexibility in their work with Russian HIV service NPOs, maintain adherence to the principles of scientific validity and international human rights standards in their operations, and strive to preserve and increase the strong professional integrity of local partners.



Introduction

As of September 2021, there are several laws in effect in the Russian Federation that fall under the general heading of “laws regulating foreign agents.” These laws directly or indirectly affect the operations of NPOs working to provide prevention, treatment, and care among key population groups affected by HIV (people who use drugs, sex workers, LGBT people).

The present study is dictated by the need to analyze the risks affecting the operations of NPOs due to the implementation and impact of laws regulating foreign agents, as well as to analyze practical difficulties and means of their resolution gleaned from the experience of HIV service NPOs designated as foreign agents. This will assist in determining the current needs of NPO-FAs and, therefore, in formulating recommendations to mitigate risks that may lead to cessation of operations by HIV service NPO-FAs in the future.

Study Purposes:

- To evaluate risks faced by NPOs arising from legislation regulating foreign agents holistically, as well as difficulties associated with registration of NPOs as foreign agents, in order to formulate recommendations for mitigation of risks impacting the operations of HIV service NPOs receiving foreign financing in general and NPO-FAs in particular.

Study Objectives:

- To analyze legislation regulating foreign agents.
- To survey representatives of NPO-FAs and identify changes in the operations of NPOs after their registration as foreign agents and operational difficulties encountered by NPOs under these new conditions.
- To identify risks that may lead to cessation of operations by NPO-FAs and evaluate their effect on the operations of NPO-FAs.
- To identify measures taken by NPO-FAs to mitigate the aforementioned risks.

The present study was conducted by the HIV Legal Network¹ as part of a program of technical support for the Global Fund to Fight AIDS, Tuberculosis, and Malaria.² The authors express their gratitude to all employees, volunteers, and donors of Russian NPOs working to provide prevention, treatment, and care to key population groups affected by HIV.



Methodology

An analysis of the impact of laws regulating foreign agents on HIV service organizations receiving foreign financing was conducted using open sources and unpublished data from the prosecution of administrative violations, litigation over extrajudicial blocking of websites, and materials gathered by law enforcement during investigations that led to criminal or civil charges. The analysis also includes laws restricting dissemination of information about HIV prevention by HIV service organizations or restricting the freedom of association and human rights advocacy for key population groups. These laws are closely related and are often applied in conjunction with laws regulating foreign agents.

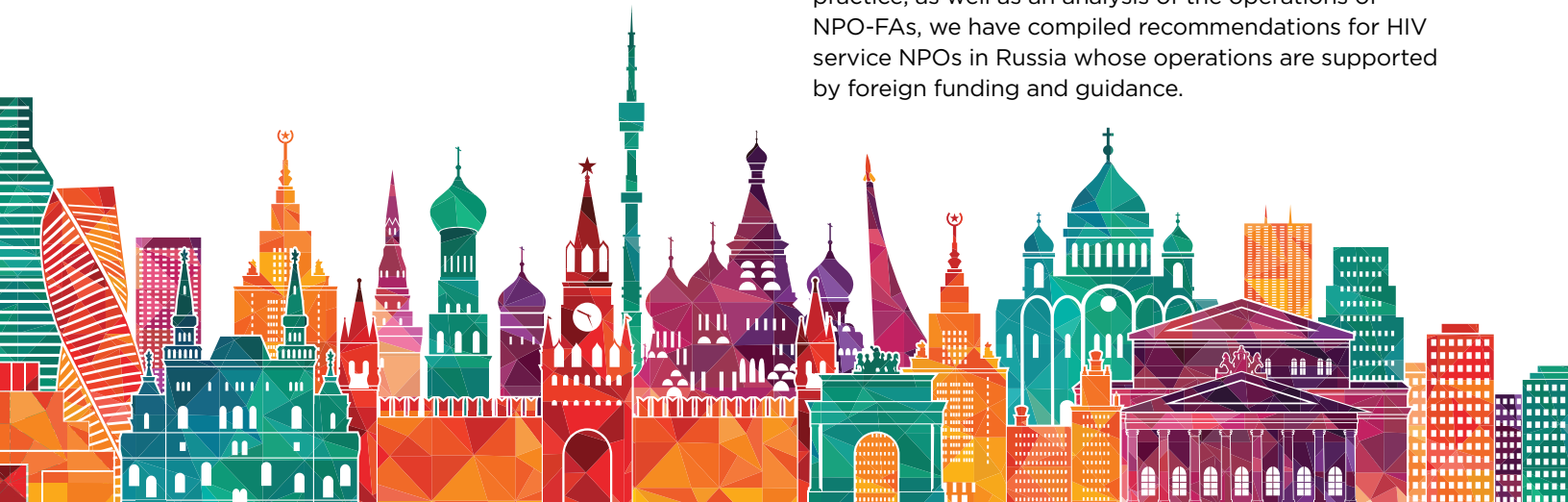
Information for the analysis of operations by NPOs after their registration as foreign agents was obtained through in-depth interviews with the leaders of non-profit organizations registered at various times as NPO-FAs. The primary respondents were organizations operating in the field of HIV prevention and providing social assistance to key population groups most vulnerable to HIV. In addition, in-depth interviews were conducted with the leaders of organizations that provide social assistance and rights advocacy to vulnerable population groups, including the LGBT community, migrants, and prisoners.

Eleven interviews were conducted in total. For the analysis, data was also obtained from three interviews with NPO-FA leaders, which were conducted as part of an assessment of the impact of designation as a foreign agent on the operations of non-profit organizations in the Russian Federation. The analysis was conducted in June and July 2021 by the Coordinating Committee for Prevention and Control of HIV/AIDS in the Russian Federation³ with the support of the Emergency Support Fund.

The interviews with study participants were conducted using a previously developed guide that included a list of questions. The average duration of the interviews was 40-45 minutes.

The interviews with leaders of non-profit organizations were conducted from August 19 to 24, 2021. The interviews took place online using Zoom. All interviews were recorded with the permission of the respondents and later transcribed. A thematic analysis of the transcripts was performed using encryption and categorization.

On the basis of the analysis of laws and their use in practice, as well as an analysis of the operations of NPO-FAs, we have compiled recommendations for HIV service NPOs in Russia whose operations are supported by foreign funding and guidance.



Laws Restricting NPOs Providing HIV Prevention, Treatment, and Care Services to Key Population Groups

Laws Regulating Foreign Agents Applied to Registered Organizations

An independent Russian law regulating foreign agents analogous to the American *Foreign Agents Registration Act (1938)*⁴ does not exist.⁵ The definition of “non-profit organizations operating as foreign agents” appears in Part 6, Article 2 of the 1996 Federal Law N 7-F3 *Non-Profit Organizations* (hereinafter “NPO Law”).⁶ Based on this definition, two criteria must be met for designation as an NPO-FA:

- Receive financing from foreign sources
- Engage in political activities

Both qualifying criteria are interpreted as broadly as possible by the RF Ministry of Justice and the Office of the Public Prosecutor. The term “foreign financing” may mean receiving money or assets from any source, including intermediaries. At the same time, the intended use of the foreign financing is irrelevant. For example, an organization might receive foreign financing to provide hot meals to people experiencing homelessness while simultaneously working on public opinion surveys financed by a President’s Fund grant regarding the need to build homeless shelters in a different part of the city. Based on the demonstrated use of Part 6, Article 2 of the NPO Law, such an organization may be designated a foreign agent.

Political activity also is interpreted as broadly as possible and includes any actions that might influence the workings of government agencies, local government, or the formation of social and political views and convictions. The application of Part 6, Article 2 of the NPO Law shows that the definition of political activity can include operations in the fields of public health, prevention, health care, social services, social assistance, and rights advocacy. Formally, these types of operations are excluded from the definition of political activity. In practice, however, a series of organizations, including HIV service organizations, have been declared foreign agents precisely because of their activities in the areas of health care and social services.

Organizations designated as foreign agents are required to submit reports on their activities to law enforcement twice as often as those organizations that have not been designated as foreign agents (every six months) and post such reports online; notify law enforcement about current and future programs, and planned and implemented events; submit data on their employees to law enforcement; and include information regarding their status as a foreign agent in any of their publications or interviews.⁷

For violations of the law, organizations designated as foreign agents are subject to administrative sanctions in amounts up to 500,000 rubles (~7,000 USD). According to the spirit of the law, organizations whose actions meet the criteria for foreign agents are required to self-register as such before being designated by the Ministry of Justice. Administrative fines may be levied for failure to self-register.

According to data from Amnesty International, 27 of 148 NPOs designated as foreign agents ceased operations within the first four years of the law coming into effect.⁸ In time, NPO-FAs were given the opportunity to be removed from the registry provided they completely refuse foreign financing. Currently⁹ there are 76 non-profit organizations, either active or in the process of dissolution, listed on the registry of foreign agents.¹⁰

The years 2020-2021 saw a tightening of restrictions regulating NPO-FAs: increased fines and criminal liability, including imprisonment for up to five years, for NPO-FAs that had previously been cited for violations and subjected to civil liability;¹¹ and the requirement to seek approval from the Ministry of Justice for all events, including purpose, dates, sources of financing, and lists of participants.¹²

Currently there are nine HIV service non-profit organizations on the registry of foreign agents, which were registered between 2016 and 2020. These are some of the key organizations active in the fields of HIV prevention and support for the population groups at highest risk of HIV. They are active both in nationally significant cities (Moscow and St. Petersburg) and in the constituent regions. The continuation of their operations is an important aspect of effectively combatting the spread of HIV in the Russian Federation.

Fifteen Examples of HIV Service Organizations Designated as Foreign Agents, 2016-2021.

1. In February 2016, the **SIBALT Center for Health Care and Social Welfare**, an Omsk region civic organization (Omsk, Omsk province), became the first HIV service organization to be listed on the registry of foreign agents. The decision to voluntarily join the registry of foreign agents was made by the leadership of the SIBALT Center after an audit by the Ministry of Justice found that the Center’s operations included activities that the Ministry viewed as political in nature. Such activities included publication and dissemination of a brochure entitled *LGBT: Human Rights in Russia*, whose text included criticism of a law prohibiting so-called “propaganda of non-traditional sexual relations,” as well as an assessment of discriminatory statements by lawmakers and officials.¹³ Voluntary designation as a foreign agent allowed the SIBALT Center to avoid fines.
2. The **Andrei Rylkov Foundation for Health Care and Social Justice** (Moscow) was designated as a foreign agent by the Ministry of Justice in June 2016. Activities declared to be political included solitary protests in front of the FDCS building by people who also volunteered at the Rylkov Foundation; publication on the Foundation’s website of a letter to Russian Federation President Dmitry Medvedev from a “Eurasian network of drug users”; and an interview with the Foundation’s president critical of the FDCS. In court, the Foundation succeeded in dismissing their fine on the grounds that there was no system of independent self-registration as a foreign agent. This victory was won on the basis of formal arguments asserting a failure by the Ministry of Justice to observe established procedures for imposition of administrative sanctions.
3. **Sotsium**, a Saratov region civic organization (Engels, Saratov province), was designated as a foreign agent in a case brought by the public prosecutor in 2016. Activities cited as political included the distribution of sterile syringes and condoms and the conduct of a survey among clients participating in their HIV prevention program. The prosecutor pointed out that some Sotsium employees helping to conduct the survey were also members of various local government commissions — a fact that, the prosecutor argued, meant that any information gathered while working for Sotsium could be used to make official decisions.¹⁴ An expert called by the prosecution asserted that the program for distributing sterile needles and syringes was a “manifestation of a hybrid war whose objective is political regime change in Russia,” as well as “the destruction of Russian traditions and national values.”¹⁵ Sotsium’s leadership decided to dissolve the organization.
4. **ESVERO**, a non-profit partnership, was designated a foreign agent by the Ministry of Justice in June 2016, two weeks after Sotsium was so designated. ESVERO financed Sotsium using funds received from foreign sources, including the GF.¹⁶
5. **Panacea**, a Penza-region youth crisis prevention civic organization (Kuznetsk, Penza province), was designated as a foreign agent in August 2016 after the organization’s leadership itself submitted a declaration to this effect to the Ministry of Justice. This declaration was presented as evidence by the prosecutor in the case to designate the organization a foreign agent. After the voluntary declaration was submitted to the Ministry of Justice, the prosecutor dropped the case, thereby allowing the organization to avoid fines. The prosecutor’s case included as evidence of political activity the distribution of sterile syringes and condoms to key population groups. As with Sotsium, an expert for the prosecution called their activities “implicit, and sometimes explicit, propaganda for drug use and gay culture,” as well as the “imposition of behaviors incompatible with the national interests of Russia.”¹⁷



6. The **Chapaevsk Medical Workers Association**, a municipal civic organization (Chapaevsk, Samara province), was designated as a foreign agent by court order in November 2016. Activities declared political by the court included the influence of the Association's director over decisions made by local government exerted by means of speeches given before a public commission of the regional Duma concerning healthy lifestyles, a needle-and-syringe distribution program, and work with people who use street drugs, which the court considered the imposition of behaviors incompatible with the national interests of Russia. The court levied fines against the organization in the amount of 300,000 rubles and against the organization's director an amount of 50,000 rubles.¹⁸
7. **Project April**, an independent non-profit social assistance organization (Tolyatti, Samara province), was voluntarily placed on the list of foreign agents in December 2016. Ministry of Justice officials recommended this step during a brief meeting with Project April's leadership to discuss amendments to the organization's charter. The Ministry of Justice official cited no specific reasons for the recommendation, but Project April had engaged in activities similar to those of organizations designated as foreign agents only a few months previously, such as the Andrei Rylkov Foundation, Sotsium, and others.¹⁹
8. **Health Era**, a Sverdlovsk region civic foundation (Ekaterinburg, Sverdlovsk province), was voluntarily placed on the registry of foreign agents in October 2016 only after a Ministry of Justice audit found that their activities were those of an NPO operating as a foreign agent. The organization was involved in HIV prevention among key population groups. As with Sibalt and Project April, submitting a voluntary declaration for designation as a foreign agent allowed the foundation to avoid fines.
9. The **Timur Islamov Charitable Foundation for Health Care and Civil Rights** (Naberezhniye Chelni, Tatarstan Republic) was designated a foreign agent in July 2018. In January 2019, the court fined the foundation and its director for failing to self-register as a foreign agent. The Ministry of Justice declared the publication of press releases and interviews in which the foundation's director assessed the performance of the Tatarstan government in the fight against HIV and drug addiction to be political activities. The assessment touched in particular upon the overcrowding of prisons and jails with people sentenced for drug-trade crimes and the many cases of human rights violations committed in the war on drugs.²⁰
10. **Vybor**, an Altai region civic organization (Biisk, Altai krai), was designated as a foreign agent by the Ministry of Justice and later fined 150,000 rubles by a court in October 2018. Activities declared political included HIV prevention programs for people who use drugs (distribution of more than 100,000 syringes and 20,000 condoms) implemented with the support of the GF via the ESVERO non-profit partnership. As with Sotsium and Panacea, the Ministry of Justice emphasized that the GF supports an ideology of maximizing the rights of LGBT people, people who use drugs, and sex workers. The Ministry of Justice considered such activities to conflict with government policy on HIV prevention, which propagandizes complete liberation from drug dependency. The use of mobile centres for HIV consultation and testing and the discussion of HIV prevention were also declared political.²¹
11. The **Deystviye Center for Social and Informational Initiatives** (St. Petersburg), an independent non-profit organization combatting the HIV and AIDS epidemic and providing health care to socially vulnerable population groups, was designated as a foreign agent in December 2018. Activities declared political by the Ministry of Justice included reposts of various online LGBT publications.²² In July 2019, a court fined Deystviye 300,000 rubles for failing to voluntarily self-register as a foreign agent.²³
12. **Humanitarian Action**, a charitable foundation (St. Petersburg), was placed on the list of foreign agents by the Ministry of Justice in December of 2020. Activities declared as political by the Ministry of Justice included the dissemination of opinions about government decisions and policies and the distribution of public appeals to government agencies, local authorities, and public officials. The Ministry of Justice pointed in particular to the assessment by the foundation of a bill proposing amendments to HIV laws. The assessment was drafted in response to a proposal to do so by a Ministry of Justice official during public hearings in the St. Petersburg Civic Chamber. A foundation appeal to a State Duma deputy regarding supply shortages of naloxone was also cited. As evidence for the government's decision, the Ministry of Justice cited an interview given by the foundation's director discussing HIV prevention among people who use intravenous drugs.²⁴

13. **Phoenix PLUS**, an independent, community-focused non-profit organization providing assistance to the public in the areas of prevention and health care (Oryol, Orlovskaya province), was designated as a foreign agent by the Ministry of Justice. Activities considered political by the Ministry of Justice included online publications about HIV prevention in the MSM community, including expert opinions about HIV statistics among MSM in various Russian regions, as well as critical opinions arguing that laws prohibiting propaganda for “non-traditional sexual relations” and on the project to write a new RF Constitution, in which marriage is defined exclusively as the union of man and woman, can hinder HIV prevention in the MSM community.²⁵ In May 2021 the court fined the organization in the amount of 300,000 rubles for failing to self-register as a foreign agent.²⁶
14. **Svecha**, a targeted charitable foundation (St. Petersburg), was designated as a foreign agent by the Ministry of Justice in December 2020. Activities declared as political included messages posted on the foundation’s director’s personal Facebook page arguing against amending the Constitution. Online publications associated with the foundation that advocated for permitting people living with HIV to adopt children, against deporting foreigners with HIV from Russia, for replacement therapy for drug dependency, and for decriminalizing sex work were also deemed political activities.²⁷
15. **Us Against AIDS**, a Krasnoyarsk region civic organization, was designated as a foreign agent by the Ministry of Justice in December 2020. Activities declared as political included visits by employees and volunteers of Us Against AIDS to gay clubs or “known prostitution areas,” as well as posting LGBT-themed news items to social media, which, according to the Ministry of Justice, confirmed that the foundation propagandizes non-traditional relationships.²⁸ The organization was fined 300,000 rubles for failing to self-register as a foreign agent with the Ministry of Justice.

From these examples it becomes clear that the Ministry of Justice considers as political those activities recommended by WHO and UNAIDS to help key population groups, including needle-exchange programs, condom distribution programs, human rights advocacy and protections, dissemination of HIV-related information, and engagement with government agencies on issues involving HIV prevention. In none of the 15 cases did the Ministry of Justice, the court, or the prosecutor give any weight to the defense’s arguments that the activities of the NPOs designated as foreign agents involved providing health care and civil advocacy to the population, which are excluded from the law’s definition of political activity. Russian government authorities interpret “political activity” as broadly as possible. Thus, from these 15 examples, the conclusion may be drawn that all that is necessary for HIV service organizations in 2021 to be designated as foreign agents is to receive funding from foreign sources, including indirectly through Russian organizations.

Laws Regulating Foreign Agents Applied to Unregistered Organizations

In December 2020, amendments were introduced to the 1995 federal law N 82-FZ *Civic Associations*, which allowed designation as foreign agents of any organization (civic association) not registered as a legal entity. Designation as a foreign agent requires the same evidence as for NPO-foreign agents. In August 2021, the Ministry of Justice placed Golos, a civic association, on the list of foreign agents. Golos assists citizens in exercising voting rights and monitors adherence to voting legislation. Golos was also the first NPO designated as a foreign agent, in April 2013. In September 2021, the second civic association placed on the list of foreign agents was the OVD-Info media project, which seeks to protect human rights from abuses of power by law enforcement agencies.

Procedures and deadlines for submission of notifications and documentation by civic associations to the Ministry of Justice are provided in Ministry of Justice Decree No. 92, issued June 1, 2021.²⁹

Similar to these applications of the NPO-FA Law, we can project that legislation regulating unregistered organizations-foreign agents will be applied initially to the most undesirable unregistered civic associations (those involved in issues of voting rights, official corruption, protection and advancement of civil and political rights, environmental problems). In the future, the Ministry of Justice will inevitably turn its focus to civic associations (advocacy groups, networks of key groups, fora, and associations) working in HIV prevention that are financed by foreign sources.

Laws Regulating MMO-Foreign Agents Applied to Organizations

In 2017-2018, amendments were introduced to the 1991 RF law N 2124-1 *Mass Media*. These amendments included the concept of the MMO-foreign agent (Article 6). The amendments added three additional categories of foreign agents, falling under the general title of “foreign mass media outlets operating as foreign agents,” to be tracked in a corresponding registry by the Ministry of Justice.³⁰ They are:

- Legal entities registered with foreign governments or with Russia
- Foreign parties not holding the status of legal entity irrespective of organizational or legal structure
- Individuals (whether foreign or Russian citizens)

For classification as foreign mass media operating as foreign agents, the parties in question must meet two criteria:

- Disseminate print, audio, audiovisual, and other information and materials (including via the internet) intended for an unlimited audience or disseminate information and materials created and/or disseminated by foreign mass media operating as foreign agents
- Receive financial or material support from foreign sources

Within one month of designation as a foreign MMO operating as a foreign agent, the foreign legal entity, organization, or natural person is required to establish a Russian NPO and notify the Ministry of Justice of such.³¹ The aforementioned parties are subject to the law regulating non-profit organizations as established by RF Ministry of Justice decree.³²

By the end of September 2021, 25 legal entities and 47 natural persons had been placed on the registry of foreign mass media operating as foreign agents, including notable journalists and rights advocates.

Individuals-Foreign Agents and Undesirable Organizations Under the “Dima Yakovlev” Law

The 2012 Federal law N 272-FZ, *Measures Regulating Parties Accessory to Violations of Fundamental Human Rights and Freedoms and the Rights and Freedoms of Russian Federation Citizens*, provides two additional categories subject to special regulatory control:

- Undesirable organizations
- Individuals-Foreign Agents

Undesirable organizations

The RF Attorney General may designate as undesirable foreign or international organizations whose activities represent a threat to the constitutional order of the Russian Federation or to the defensive capabilities or security of the government, including enabling or preventing the nomination of candidates or lists of candidates, the election of registered candidates, the promotion of referendum initiatives, the conduct of referenda, and the achievement of specific election or referendum results (including various types of participation in election and referendum campaigns, except participation in election and referendum campaigns as foreign [international] observers).

Designation of an organization as undesirable in the Russian Federation makes it absolutely impossible for that organization to work in Russia as Russian citizens are banned from participating in the activities of those organizations under threat of civil or criminal penalty. As of September 2021, only two HIV service organizations — the Andrei Rylkov Foundation (Moscow) and the Open Public Health Institute (Moscow) — had been subjected to civil liability for creating hyperlinks to materials provided by organizations designated as undesirable in Russia. In both cases the hyperlinks to the materials in question were placed long before the relevant organizations were designated as undesirable. In the case against the Andrei Rylkov Foundation, the prosecutor and court found the violations to be ongoing and levied a fine under Article 20.33 of the RF AVC. There is currently no information available in open sources about the results of the case against the Open Public Health Institute.

Thus, at the close of September 2021, the index of undesirable organizations includes 46 foreign and international organizations based in the US, Great Britain, Luxembourg, Ukraine, Latvia, Belgium Germany, France, and Romania.³³ All of the aforementioned organizations either supported election observers and protection of



voting rights, provided support for the protection of civil and political rights, or supported democratic reforms in Russia. The Open Society Foundation (the Soros Foundation) provided support in Russia for 17 years, including programs for HIV prevention among key population groups.

Individuals–Foreign Agents

Any natural person (irrespective of citizenship) may be designated by the Ministry of Justice as a foreign agent provided they meet the following criteria:

- engaged in political activity (as defined by the law regulating non-profit organizations);
- purposefully collect information on the military and technical activities of the Russian Federation, the acquisition of which by foreign sources may harm the security of the Russian Federation; and/or
- receipt by a natural person, Russian Federation citizen, or Russian organizations, from a foreign source or a party acting in the interests of a foreign source, of support in any of the following forms:
 - monetary assets
 - other material support
 - organizational or technical support

As opposed to the requirements for individuals–foreign agents under the law regulating MMOs, individuals–foreign agents under the “Dima Yakovlev” law are not required to register as NPOs but must meet the Ministry of Justice reporting requirements as private citizens.

At the close of September 2021, no natural person had been designated a foreign agent under this law.

Laws Prohibiting Drug Propaganda or Advertising

Article 46 of the 1998 Federal Law N 3-FZ *Drugs and Psychotropic Substances* contains an extraordinarily broad definition of “drug propaganda.”³⁴ Based on Paragraph 1, Article 3 of the 2006 Federal Law N 38-FZ *Advertising*, the concept of drug advertising is interpreted even more broadly than that of drug propaganda.³⁵ A joint decree issued in May 2017 by the Federal Communications Supervisory Agency, the Russian Ministry of Internal Affairs, the Russian Consumer Protection Agency, and the Russian Federal Tax Service provides a maximally broad definition of prohibited drug information.³⁶ Taken together, the aforementioned documents allow any information about drugs to be designated as propaganda or advertising, including information about legal assistance for people who use drugs, as well as information about measures to reduce stigma and discrimination against people who use drugs.

Article 6.13 of the RF AVC establishes civil liability for illegal drug advertising and/or propaganda in the form of significant fines for citizens and legal entities. In practice, application of this article by Russian law enforcement displays a maximally broad interpretation of propaganda and illegal advertising. In 2019–2020, approximately 320 persons per year were prosecuted under this article.³⁷ Legal application of this article in practice is replete with absurd examples of liability for sale of objects (socks, T-shirts, belt buckles, beer bottle labels, etc.) featuring the image of a marijuana leaf; bans of books by famous authors describing drug use; and bans and fines for interviews with politicians, public figures, and people who use drugs that touch upon issues of drugs and drug policy.³⁸ In October 2018, the Andrei Rylkov Foundation was fined 800,000 rubles for publishing a newsletter for people who use drugs. The newsletter, using language perfectly clear for people who use drugs, provided information on reducing health risks associated with the use of synthetic drugs (bath salts).³⁹ In 2012, a page on the Rylkov Foundation’s website was blocked for publishing UN recommendations for replacement therapy.⁴⁰ Where drugs and people who use drugs are concerned, one may write with emphatic condemnation and stigmatization or not write at all. Such is the general conclusion drawn from the many years of practical application of the law by law enforcement, prosecutors, and courts in cases concerning blockage of websites or liability for drug propaganda.

Criminal Liability for Inducement to Use Drugs

Article 230 of the RF Criminal Code prohibits inducement of others to use drugs, punishable by up to 15 years’ imprisonment for qualifying circumstances. The concept of inducement is defined in 2006 Supreme Court Order N14, *Judicial Practice in Cases of Crimes Involving Narcotic, Psychotropic, Potent, and Poisonous Substances*.⁴¹ In 2003, for the purposes of increasing the judicial security of harm-reduction programs in Russia, an appendix was added to RF Criminal Code Article 230 in order to remove such programs from its scope. A formal requirement provided in the appendix is the approval of health care programs by the executive branch and the Ministry of Internal Affairs. Procedures for such approvals are not provided. Since RF Criminal Code Article 230 has been in effect, there has not been a single criminal case against employees of harm-reduction programs for inducement to drug use because, in their actions to reduce harm (including distribution of sterile needles, syringes, literature on HIV and other intravenous drug-related illnesses), there is no evidence of intent to induce any other person to use drugs. We know of only one case, in 2007, in which an HIV prevention organization received a warning from law enforcement that their program distributing sterile needles and syringes may lead to criminal liability under Article 230 of the RF Criminal Code.

Laws Prohibiting Sex Work

Sex work is prohibited in Russia under RF AVC Article 6.11 and liable for civil penalties. The law fails to provide for any liability or blockage of web resources containing information about rights advocacy or HIV prevention among sex workers. However, a broad interpretation of RFAVC Article 6.11 was the basis for the Ministry of Justice's denial of registration for the Silver Rose Sex Workers Association.⁴²

Law Prohibiting Propaganda for “Non-Traditional Sexual Relations”

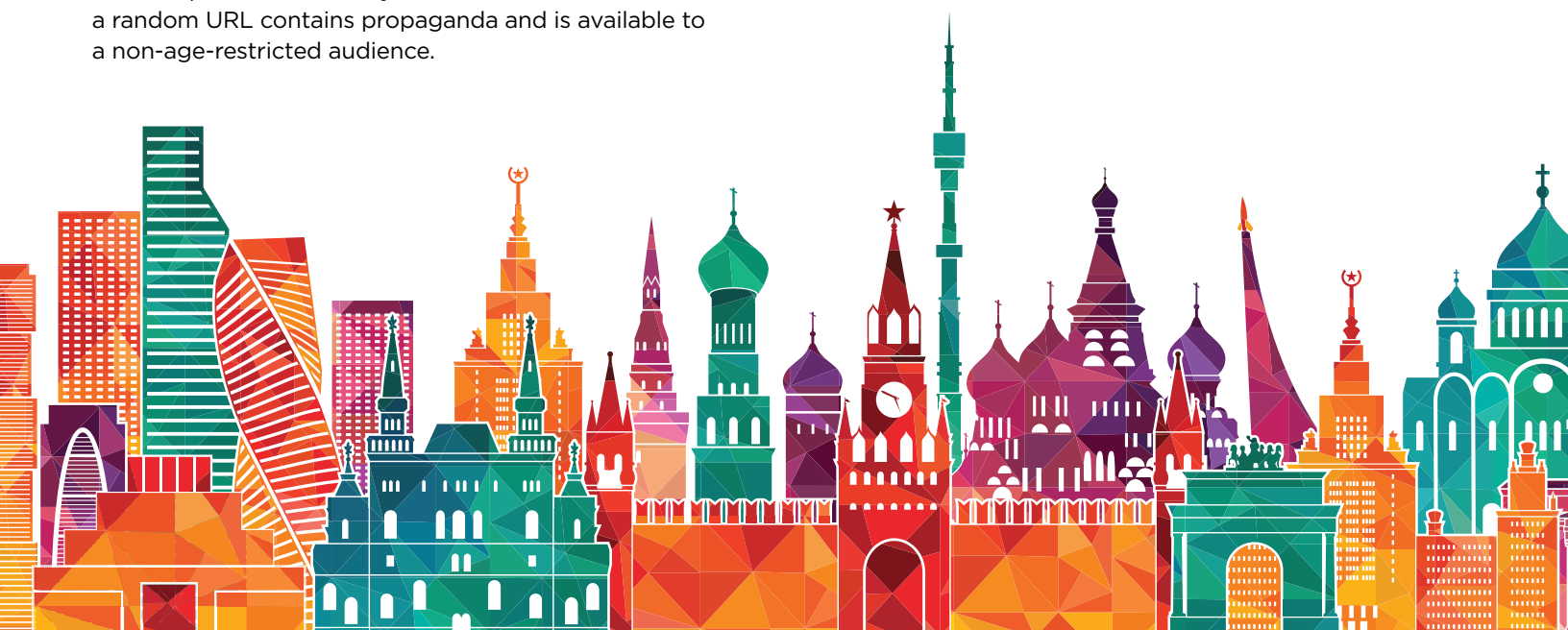
In June 2013, a law entered into effect prohibiting propaganda for non-traditional sexual relations among minors, providing for civil penalties under RF AVC Article 6.21.⁴³ Neither the Code nor a subsequent order issued by the RF Constitutional Court provides a clear definition of what constitutes propaganda for non-traditional sexual relations. In this context, any actions to disseminate information considered by law enforcement to be targeted at the “formation in minors of a non-traditional sexual orientation, a positive image of non-traditional sexual relations, a distorted perception of social equivalence between traditional and non-traditional sexual relations, or the inducement of interest in such relations” can be considered propaganda.

In the practical application of the law, there are dozens of court decisions in civil cases brought by prosecutors in which the prosecutor declared material found on pornographic websites to be propaganda for non-traditional sexual relations.⁴⁴ Citing RF AVC Article 6.21, the prosecutor tersely asserts that a video found at a random URL contains propaganda and is available to a non-age-restricted audience.

The constitutional court clarified that the prohibition on “propaganda for non-traditional sexual relations does not exclude provision of relevant information in neutral (educational, artistic, historical) contexts [...] with the involvement of experts — educators, physicians, psychologists.”⁴⁵ However, the civil case against the artist Yulia Tsvetkova shows that RF AVC Article 6.21 may be applied to any information alluding even obliquely to the “normalcy” of LGBT relations, and more so of families with same-sex parents.^{46, 47}

As of September 2021, we know of only one civil case attempted under RF AVC Article 6.21 against an organization providing information to the public about HIV prevention. The case was brought against the AIDS CENTER Foundation for violations of Article 6.21 and continued from November 2020 to August 2021. The cause for opening the case was a report to police by “defenders of family values,” which alleged that the foundation was spreading propaganda for “non-traditional sexual relations” among minors. A months-long investigation by law enforcement found no evidence of such propaganda.⁴⁸

As in the case against Yulia Tsvetkova, evidence in the case against the AIDS CENTER Foundation shows that law enforcement and the prosecution were motivated by accusations leveled by vigilant citizens. The only measure that protects organizations from the application of RF AVC Article 6.21 is to place statements on their websites declaring the materials are intended for an 18+ audience. However, this makes the task of providing HIV prevention counseling to minors extremely difficult.



Changes and Difficulties Encountered by NPO-FAs After Designation as an NPO Operating as a Foreign Agent

Traits of Respondent Organizations

In-depth interviews were conducted with 11 non-profit organizations that have been placed on the registry of NPOs operating as foreign agents. The operations of eight organizations are focused on HIV prevention in key population groups most vulnerable to the risk of HIV infection, as well as on providing social assistance to such groups. Three organizations focus on social assistance and rights advocacy for vulnerable population groups.

The majority of respondent organizations represent cities of national significance — Moscow and St. Petersburg. Five of these operate in St. Petersburg. The Krasnoyarsk, Omsk, and Samara regions each have one such organization. One organization operates in various regions of the country and has its own subsidiaries. The majority of the organizations (nine, or 82%) have been operating for more than 10 years. Of these, five organizations have been operating for more than 20 years, established in the 1990s during the rapid establishment and development of the non-profit sector in the country. Seven organizations (64%) expend substantial financial resources on implementing their charter mission: on average their annual budgets exceed 10 million rubles. The annual budgets of two organizations do not exceed 5 million rubles (Table 1).

Table 1. Characteristics of Respondent Organizations

NPO Area of Operations		NPO Duration of Operations		Average Annual Budget		Year of Registration as NPO-FA	
Region	Number of respondents	Period, in years	Number of respondents	Budget, thousands of rubles	Number of respondents	Year	Number of respondents
Krasnoyarsk region	1	5-9	2	1,000-5,000	2	2015	3
Interregional	1	10-14	3	5,000-10,000	2	2016	4
Moscow	2	15-19	1	More than 10,000	7	2018	1
Omsk region	1	20-24	3			2020	3
Samara region	1	25-29	1				
St. Petersburg	5	More than 30	1				

Only three respondent organizations have been designated as “foreign agents” for less than a year, having been placed on the registry of NPOs operating as foreign agents at the end of 2020. The remaining organizations have been operating with this designation for between four and six years (Table 1).

For three non-profit organizations, the basis for their placement on the registry of foreign agents was an ad-hoc audit by their local division of the Ministry of Justice, with three others designated after ad-hoc audits by the prosecutor’s office. Two organizations were designated as foreign agents after scheduled audits by the Ministry of Justice. Three organizations voluntarily self-registered as foreign agents, primarily to avoid financial penalties for failure to self-register.

**Placement on the Registry of Foreign Agents:
“I am angry, I am indignant, I am outraged.”**

Foreign Financing

The receipt of foreign financing is one of the mandatory conditions for placement on the registry of foreign agents. However, during audits by regional divisions of the Ministry of Justice or by local prosecutor’s offices, several respondent organizations had no foreign financing. In some cases, the operations that had been supported by foreign financing had ended several years previously and new financing was neither received by the organizations nor planned. One organization, prior to the audit and placement on the registry, submitted documents to begin voluntary self-dissolution due to a cessation of operations and the absence of any plans to resume them. However, these facts failed to influence the decision made by the auditing authorities to place the NPO on the registry. The Ministry of Justice or the prosecutor’s office examine the organization’s documentation and analyze its operations over the previous three years, making any receipt of foreign financing more than two years previously sufficient grounds to designate the NPO as a foreign agent. *“They audited three years — 2018, 2019, 2020. Our foreign funding ended at the start of 2018. But that was sufficient to designate us.”* (P6⁴⁹) Even organizations that had received financial support only from Russian organizations over the previous three years had their financing designated as foreign. This is the so-called “indirect” receipt of foreign financing — receipt of assets from Russian organizations or foundations that had themselves received foreign financing.

Political Activity: “Now All Activity is Called Political”

All respondents note that under the law the concept of “political activity” is very poorly defined, and that the Ministry of Justice and prosecutors’ offices interpret political activity very broadly, and *“political activity can mean anything they want.”* (P4) *“We, ordinary people, are all political ‘consumers’ and are required to speak out about laws and the functions of government agencies. And this cannot be considered in any way to be political activity. But everything is called political activity now.”* (P5)

Political activity includes any activity intended to influence government policy or public opinion. According to the law regulating non-profit organizations, activities in the areas of health care, prevention, public health, social assistance, civil protections, and healthy lifestyles are not political.⁵⁰ Nevertheless, organizations that work in these areas are designated as foreign agents anyway. The reasons for their placement on the registry are still unclear to NPO personnel. *“We always thought that we weren’t engaged in political activity. Prevention [of risky behaviors], health care — how is this political activity?”*

I still don’t understand.” (P7) *“We completely disagree with the Ministry of Justice’s decision [about political activity]. We work in health care and don’t fall under that law. The organization has medical and pharmaceutical licenses to engage in our activities. By law we can’t engage in political activity. And the decision by the Ministry about political activity cites nothing that says we are exceeding our boundaries. All of our activities are in the field of health care. If there is any discussion of law, then that law should be about health care.”* (P3)

Audits of respondent organizations by regional divisions of the Ministry of Justice or by prosecutors’ offices resulted in designation as political of the following activities:

- The basic operations of a non-profit organization
“In court we were told that we are supporting those [population] groups that we ought to be fighting against.” (P7)
- Cooperation with government agencies, including public announcements and participation in public fora held by legislative and executive government agencies
“Part of the function of Ministry of Health public fora is reconciliation with local laws, decrees, and orders. Materials issued by the Ministry of Health are to be examined in public fora and either approved as-is or with recommended changes. I happened to be on a Ministry of Health panel. And they called it political activity.” (P7)
“On our site we published a letter to the Ministry of Justice commenting on changes to the federal law about the spread of HIV. All as part of open public discussions. And this turned into political activity.” (P3)
- Organization of various events, including promotional events
“It was declared that our roundtable on discrimination in the workplace was held in order to influence government policy in terms of labor legislation.” (P8)
- Public assessments of government functions (interviews, web publications, forum posts)
“We had reposts on VKontakte about pension reform from Parni Plus.” (P2)⁵¹
“Our political activity were publications about legislation, specifically about bans on propaganda for non-traditional sexual relations among minors. The Ministry of Justice concluded that we were spreading negative reviews on the internet about government policy to protect children.” (P8)

Many organizations have found that activities that had not been considered political in previous audits by the Ministry of Justice were subsequently designated precisely as such. *“In 2018 we had already been audited by the Ministry of Justice, and in 2014, and they didn’t find anything, although our activities have not changed. We did prevention [of risky behaviors] and distribution [of prophylactics].”* (P7)

One respondent noted that avoiding “political” activity is impossible and it is *“useless to try to do anything, because if you do then it’s just no giving interviews anywhere, no writing articles, just running programs and not a single word about government, laws, or anything else.”* (P3)

Courts: “We will continue the struggle”

During the interviews and the writing of this report, hearings were held for four organizations to resolve questions of their placement on the registry of NPO-FAs and the levy of financial penalties. Of those, three had been designated foreign agents by the end of 2020.

Despite the fact that there is no precedent for a successful challenge to being placed on the registry of NPO-FAs, since courts have always agreed with the political designations made by auditing authorities, nevertheless the four aforementioned respondent organizations are determined to challenge their registration at every level. *“We will challenge the placement of our organization on the registry.”* (P3)

Helping to defend these four in court are lawyers who provide informational and legal support to non-profit organizations. Legal assistance in challenging the registration of these organizations as foreign agents is provided pro bono. However, not all organizations were aware of this opportunity to receive legal assistance and found out only from colleagues working in the same field.

At the time of the interview, one of the aforementioned respondent organizations had appearances in both a regional court and a Moscow court. *“Of course, we didn’t win in Moscow court and we appealed. As for the regional... I think I was very convincing: What political activity? Are you nuts? You’re judging me, so ask me what political activity I’m doing. How can I self-register [on the registry] if I’m not engaged in political activity?”* recounts the director of this organization. *“And the court decides to wait for the Moscow court’s decision. Our lawyer said that we had done the impossible — delayed the decision on the fine. Now we are waiting for the Moscow appeal. It’s scheduled only for the end of autumn.”* (P7)

Lawyers engaged to defend two organizations discovered violations committed by Ministry of Justice officials in placing those organizations on the register, which they then used in challenging the Ministry of Justice decision

in court. *“The Ministry of Justice declared publications on our website to be political activity. But the report about it was drafted incorrectly — it showed screenshots of publications that did not exist on the date that the report was written.”* (P3) Procedural errors were also found in the case of another organization. *“The Ministry of Justice audited our activities over three years — 2018, 2019, and 2020. In their final document they included financing for 2017. This financing did not exist in 2018. And we will defend our position that they [Ministry of Justice officials] made a mistake and included the wrong years.”* (P6) As a result, the regional court ruled that the Ministry of Justice audit of the first organization had been conducted without violations. In the second instance, the case was remanded. *“I worried so much. It all seemed hopeless — 300,000 for the organization and 100,000 for the director. But they remanded the case! It’s not a complete victory, but it is a victory.”* (P6)

All organizations with open cases plan to exhaust every judicial level of review in order to later submit an appeal to the European Court of Human Rights.

Attitudes toward Designation as “Foreign Agent”

The various respondent organizations, during their time designated as foreign agents, have developed varying attitudes toward this status.

Some organizations felt a sense of relief because *“it happened and there’s nothing more to fear. Now we don’t quake in our boots over our foreign financing. We started living in the specific situation. It’s finally become easy for the first time in the past few years, when we worked and waited to get put on the registry.”* (P1) They have accepted it and continue to operate at a capacity allowed by their status and don’t consider the designation to have caused them any special problems. *“The status of foreign agent hasn’t really affected our activities, and in essence, since 2016, after we fought off the fine, we haven’t had any trouble due to this status.”* (P9)

Many respondent organizations consider the designated status as a “mark of quality.” *“Just look at the organizations on this list [registry of non-profit organizations operating as foreign agents]. This status is without a doubt a mark of quality.”* (P4) *“We used to walk on eggshells; now we paste the label ‘foreign agent’ on every publication. We want to wave this status like a banner.”* (P8)

However, there are those who try to avoid advertising or talking about their status as a foreign agent: *“We don’t broadcast our status as foreign agents. We work and work. Why shout about it? Why attract attention? If we don’t mention it no one knows about it. If we don’t shout about it everyone will forget it quickly.”* (P7)

Principal Risks and Measures for their Mitigation

Once designated as foreign agents, risks increase for non-profit organizations and may impact the future operations and lead to cessation of organization operations. The principal risks, as well as measures recommended by respondents for their mitigation, are presented in Figures 1 and 2.

Financial expenditures

The primary risk to the operations of these organizations and any subsequent cessation of operations is the increase in financial expenditures. Fundamentally, these financial expenditures come from the need to pay fines levied against organizations and their leaders for failure to independently place the organization on the registry. As a rule, fines are levied in the amount of 300,000 rubles for organizations and 100,000 rubles for their leaders. Continuing to operate as an organization with the status of “foreign agent” also increases the possibility of further fines associated with errors in report submissions, missing identifiers on informational materials published by the organization, etc. For the majority of NPOs these fines are overwhelming and can very seriously affect the ability of organizations to continue operations. This is the primary risk noted by all respondent organizations. *“Most unpleasant was the thought that you’re looking at a fine. Most frightening is the big fine — 400,000. If not that, well, okay.”* (P7)

The respondent organizations employ various measures to manage the increase in additional financial expenditures experienced by NPOs after being placed on the registry of foreign agents. Primarily, they seek to have any fines dismissed in court. All respondent organizations have endured judicial proceedings. If they failed to have the fines dismissed, then fines could be paid from the organization’s own funds, or money could be saved for this purpose, or a donation drive could be announced. However, not every organization can pay from their own funds. As a rule, only large organizations engaged in programs with significant budgets can afford to do so. *“We haven’t had our final hearing on the fines yet. But we’re already putting money away [for the fines]. We’re a team. We have salaries. I put away half of my pay, because of the fine. If the organization didn’t have any programs right now, if there weren’t anywhere to collect from, maybe we’d have to shut down. As long as there is somewhere to collect from we won’t consider closing.”* (P7) Two respondent organizations hit with fines started donation drives and were able to pay the fines. One organization still awaiting the court’s decision on its fines is considering crowdfunding: *“We have no programs, so we have nothing to pay with. To pay my personal fine, I’m thinking of crowdfunding, but for the organization — we’ll see what*

the circumstances require.” (P6) However, the respondents display varying attitudes toward the collection of money to pay fines. Not everyone looks favorably on this option: *“Collecting money is an exception, when you can’t agree with a donor and you have no money, no organizational funds. And you can’t collect forever.”* (P3) *“If there is somewhere to take money from I won’t ask anyone for it. Who would I ask? Social media? Give me money? What idiocy. I’m used to relying on myself.”* (P7)

Only one respondent organization experienced increased expenditures due to increased administrative activities after being placed on the registry of foreign agents. As a rule, all organizations prepare their own quarterly and annual reports for submission to the Ministry of Justice. *“The reports were not large, but for us were complicated to complete. Once you figure it out it’s not complicated.”* (P7) The same respondent noted that the additional expenditures were associated not with *“submitting reports, but with keeping up with the legislation — it’s constantly changing. We have an expert here dedicated to working with government authorities due to our status.”* (P8) In terms of payment for the mandatory annual NPO-FA audit, respondent organizations as a rule include funds for this in their budgets. *“Our annual audit is a mandatory requirement of many of our program donors, and so we do it without fail.”* (P8) If not possible to include funds for the audit in the budget, the respondents recommend saving funds to pay for it.

To reduce risks associated with additional fines levied by auditing authorities, some organizations recommend completely eliminating activities that might increase attention from and the number of audits by the Ministry of Justice and the prosecutor’s office. *“We stopped all our publications, then shut down our site. Now we have nothing like that. We have no plans to publish anything in the mass media and definitely won’t do so. In our new project we aren’t planning any seminars either. You just shouldn’t do anything that is easy for them to find fault with.”* (P7)

Figure 1. Principal risks influencing the closure of organizations

Financial expenditures
<ul style="list-style-type: none"> • Payment of fines and audits • Increase in expenses for administrative activities (rent, new employees, legal consultation, etc.)
Decrease in sources of financing
<ul style="list-style-type: none"> • Fewer international foundations and organizations to provide grants • Ineligibility for government financing
Decrease in organizational activities
<ul style="list-style-type: none"> • Primary activity of the organization — political • Reduction or cessation of cooperation with government agencies
Tightening of laws regulating NPO-FA activities
<ul style="list-style-type: none"> • Additional reporting and auditing requirements from Ministry of Justice, prosecutors’ offices, etc. • Possibility of designating organization employees and volunteers as foreign agents
The burden of the status of “foreign agent”
<ul style="list-style-type: none"> • Psychological and emotional health of organization leadership and employees • Anxiety over the future of the organization

Decreases in sources of financing

The majority of respondent organizations have seen a decrease in available sources of financing. Some respondents noted that they encountered decreased availability of financing because some foreign organizations or foundations had ceased to work with Russian non-profit organizations or had been designated “undesirable” organizations and couldn’t work with them. *“There is a trend right now of embassies leaving Russia and not wanting to give money directly to non-profit organizations. There are donors who have become ‘undesirables.’ Obviously, it’s better to stop working with ‘undesirables.’ It’s a shame, because these were good, prominent organizations.”* (P8) The trend of decreasing foreign financing continues: *“The principal risks are in the pressure put on international foundations and organizations that had been sources of financing for Russian NPOs via grants. There are fewer such foundations every year.”* (P10)

The majority of respondent organizations also noted a decrease in government financing. This is linked to the fact that the government grants and subsidies previously available to NPOs were no longer available once an organization was designated as a foreign agent. Only two respondent organizations stated that they had not received any government financing prior to designation as a foreign agent, nor did they afterward. However, all remaining respondent organizations worked with government agencies prior to designation as foreign agents and received government financing. The availability of sources of government financing is particularly important for smaller, regional organizations for whom the support of government agencies, especially on the regional and municipal levels, is critical to their continued operations. Frequently this is because, as well as direct financing received from local authorities to support operations, NPOs may receive support in the form of municipal real estate for offices; by being designated as foreign agents, organizations generally are not allowed renew leases.

There are respondent organizations that note that nothing had changed in terms of their government financing after placement on the registry of NPO-FAs. These are very few. Organizations are taking various steps to attempt to restore their eligibility for government grants and subsidies. The primary measure in this case is to establish a duplicate organization that receives no foreign money and operates using only government financing. Among the respondents are those who already have established duplicate organizations and those who plan to do so. *“We don’t have a duplicate yet, but we’re considering it and looking at the possibility.”* (P8) There are organizations that have decided to refuse all foreign financing in order to be removed from the registry of foreign agents. One respondent organization is considering taking such a step in the near future. However, there are activities that currently are not supported by government financing (such as distribution of sterile works, rights advocacy for the LGBT community) and, consequently, refusing foreign money will not help to fix the problem of decreased organizational operations. In addition, as another respondent noted, foreign financing *“helps with integration into international civil society and is a powerful stimulus for development.”* (P11)

Some organizations facing decreases in their financing are also considering the use of fundraising to increase funds for charter operations: *“We always were able to accept contributions, but we started actively seeking them [private contributions] in 2017 after we were placed on the registry. Right now we are also in the process of a large reorganization. We separately hired people who will help us get better at collecting money.”* (P8)

Decreasing organizational operations

Many respondent organizations found that their operations were significantly curtailed after they were placed on the registry of foreign agents. For some organizations, this happened because their basic operations prior to placement on the registry were declared “political activities” by the Ministry of Justice or the prosecutor’s office after an audit. *“They wrote [in their complaint] that we are giving out condoms. Therefore, we aren’t following government policy, we support prostitution, we propagandize promiscuous sexual relations.”* (P7)

Developing relationships with prominent government agencies, as well as municipal, regional, and federal authorities, is important for non-profit organizations. However, being deemed a foreign agent substantially affects their ability to work with such authorities; as a rule, relationships are terminated. For many organizations, the termination of these relationships seriously affects their ability to operate competently at full capacity, which

directly affects the viability of the organization under the newly imposed conditions. *“I was even a member of the city commission on HIV under the administration and the Ministry of Health. For us this was important advocacy work, because we needed to make proposals from the inside [on behalf of the public]. This was useful collaboration. Naturally, after the organization was placed on the registry I couldn’t continue to work with them. Working with government officials became impossible. And what’s the point of maintaining the organization?”* (P2)

In order to continue operating under such conditions, respondent organizations recommend either changing direction and completely ceasing activities declared “political”; continuing the same activities but under a new legal entity, by creating a duplicate organization; or shutting down the organization designated as a foreign agent and opening a new one.

Figure 2. Principal risks leading to closure of organizations, and possible measures for their mitigation

Risks	Measures
Financial expenditures (fines, audits, etc.)	<ul style="list-style-type: none"> • Sue to dismiss fines • Appeals to donors • Savings • Fundraising
Decreases in sources of financing	<ul style="list-style-type: none"> • Removal from FA registry • Creation of a duplicate organization • Fundraising
Inability of organization to operate at full capacity	<ul style="list-style-type: none"> • New directions for operations • Removal from FA registry • Creation of a duplicate organization
Tightening of laws regulating NPO-FAs	<ul style="list-style-type: none"> • New positions (lawyers, etc.) • Engagement of legal assistance
Burden of foreign agent status	<ul style="list-style-type: none"> • Exchange of experiences with NPO • FAs • Removal from FA registry



Tightening of laws regulating NPO-FAs

All respondent organizations noted a constant tightening of laws regulating non-profit organizations, and especially NPO-foreign agents. The most recent amendments to the laws, which now make it possible to designate unregistered civic associations and individuals as foreign agents and also establish the requirement of gaining approval from the Ministry of Justice for all planned events, greatly disturb all the respondents because it is still unclear how these legislative changes will affect the operations of NPO-FAs. *“I’m very worried that people will refuse to work with us. Those same psychologists and lawyers receive money from us. They can get scared. It’s unclear how to behave with charity recipients, it’s really unclear how the law will be applied. Our charity recipients are people who most often have no involvement with any activism, they are people who more or less want to safely live their lives. If they start to put people en masse onto this registry, it can happen that people will be afraid to come to us for help. The same is true for regional groups and organizations. It’s often more difficult for organizations in the regions, they don’t have the same support and money, they often don’t have lawyers they can take with them to court. I think that a number of organizations will refuse our help.”* (P8)

“On the whole, we have quite a lot of very different events and meetings. Getting approval for every event — that’s a different, complicated story. Plus I am entirely uncertain they will approve.” (P8)

The respondents recommend actively tracking all changes occurring in the legislative sphere, as a way to somewhat reduce the negative effects of the new amendments to the laws on the operations of an organization, and where necessary, immediately consulting with the organization’s team, attorneys, and other NPO-FAs on approaches. *“This [designation of individuals as foreign agents] worries the team. We discussed this with the team and our employees — no one is afraid of being personally placed on the registry. We talked about it. And when new people come, I tell them: Pay attention to this possibility. And over all this time there was only one person to whom we wanted to offer a position who said he was afraid to work here. In general, people are calm about it and say that it’s not the worst thing that could happen.”* (P8)

The burden of foreign agent status

Being assigned the status of foreign agent is emotionally difficult. The decrease in financing for operations, the possibility of receiving additional “overwhelming” fines from auditing authorities, additional audits, and the certain stigma carried by NPO-foreign agents in society all increase the emotional load on the NPO’s leadership and team. In addition, the uncertainty of whether legislation

affecting NPO-FAs will change again in the near future and whether it will be possible to continue operations additionally worsens the mental state of NPO employees. The majority of respondents noted the difficult emotional state they and their employees encountered after designation as “foreign agents.” *“I didn’t think that it would knock me so far off track; I was in a panic. In the first few months I really worried about this.”* (P6) *“At that moment we were already so stressed, they had already piled so much on us in the mass media.”* (P1) Some respondents noted that the moment would come when it would be emotionally impossible to continue working. *“The last drop is only a drop, by itself meaning very little, but it overflows the cup, which is already filled to the very top.”* (P5)

Operational Outlook

How do non-profit organizations registered as foreign agents see the future of their operations? All respondents participating in the interviews note the worsening situation for non-profit organizations that receive foreign financing. The amendments to the law on foreign agents are of an increasingly discriminatory nature. *“They are making everything worse for our operations. I don’t expect anything optimistic to happen.”* (P5) *“The wheel is turning. If we speak in the language of European organizations, it is a shrinking space. And getting smaller.”* (P6)

Despite the difficulties encountered by non-profit organizations due to their foreign agent status, it is possible to continue to work under this designation. *“Once we learned how to live as foreign agents, we understood that this is simply a regulatory mechanism and it’s still possible to live and work.”* (P1) *“We are foreign agents since 2016. Work is difficult, but still manageable.”* (P8)

Generally, FA organizations do not attempt to expand their operations. Their primary objective is to cope with the basic difficulties of their operations and maintain their current direction. *“Nothing has changed for us. We will work as we have worked — by coming to the office and helping people.”* (P11) Some organizations consider creating new organizations — duplicate organizations — that are not foreign agents and through which it is possible to seek additional financing, including from the government. Other respondent organizations plan to *“deal with their foreign agent status,”* (P7) that is, to attempt to remove their organization from the registry by completely refusing foreign financing. This will give them the right to within a year ask the court to remove the organization from the registry of foreign agents. *“If the law doesn’t change in a year,”* a respondent added with a smile.

No respondents know how their operations will be affected by the new amendments to legislation regulating NPO-FA operations. However, they want to continue to *“maximize*

the legal closure of any loopholes that can be closed. If they want to close them, let them try.” (P8) There is also an acceptance of the possibility that they won’t be able to change anything. “If there is the political will to close down an organization, they will do it regardless of whether we resist. We operate on the premise that everything must be done as openly and clearly as possible so as to provide as few reasons as possible for them to hassle us. Sometimes there are cases where they close the organization – they really have some serious issues, so on the whole it’s not very surprising that they get closed. At the same time we understand that even if we hire ten more lawyers to work constantly it will not really help if there is the political will to close us.” (P8)

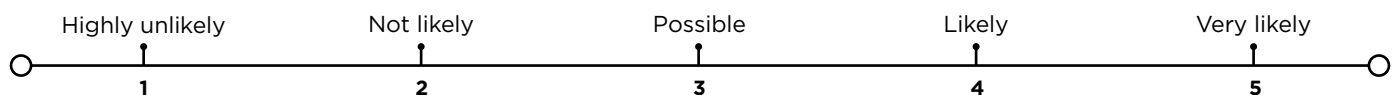
Risk Analysis

Some risks encountered by NPOs designated as foreign agents can cause relatively insignificant negative consequences, while others may lead to serious problems affecting their ability to operate and lead to closure. In this section we will conduct an analysis of the aforementioned risks based on the probability of their occurrence and their possible influence over the closure of the organization. Table 2 shows an assessment of the existing risks according to probability of occurrence and their impact on the organization (particularly on whether the NPO close). The assessment scale is provided below the table.

Table 2: Assessment of existing risks according to probability of occurrence and their impact on the organization.

Risk	Risk designation	Probability	Impact
Financial			
Payment of fines and audits	P1	5	5
Increase in expenses for administrative operations	P2	2	1
Decrease in sources of financing			
Reduction in number of international foundations and organizations providing grants	P3	4	5
Ineligibility for government financing	P4	4	3
Reduction in organizational operations			
If the base operations of the organization are “political activities”	P5	3	5
Cessation/reduction in cooperation with government agencies	P6	3	3
Tightening of laws regulating NPO-FAs			
Additional reporting and audits	P7	5	5
Designation of employees and volunteers of the organization as foreign agents	P8	2	3
Burden of foreign agent status			
Psychological and emotional state of leadership and employees of the organization	P9	5	3

Probability of occurrence



Impact on operations

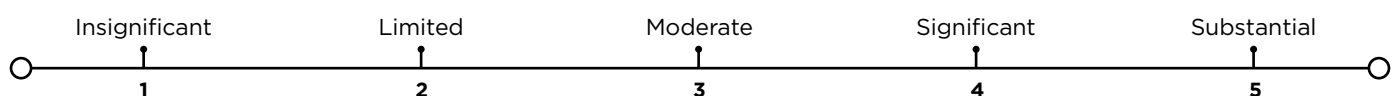
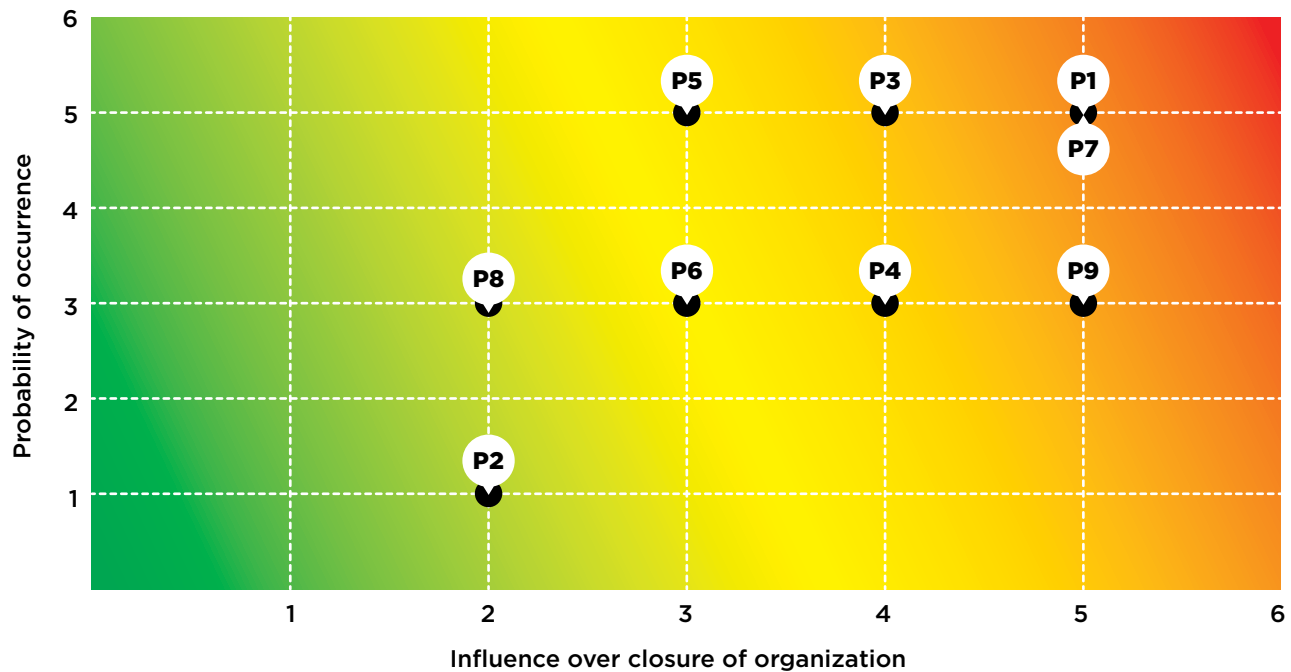


Figure 3 illustrates the relevance of organizational risks: To the right are the greater risks (red zone) and to the left are the lesser risks (green zone).

According to an analysis of responses, the most significant impact on the operations of non-profit organizations, including influencing their closure, is made by *financial expenditures associated with payment of fines* (P1) and *additional reporting and auditing on the part of the Ministry of Justice and prosecutors' offices* (P7). The principal demands on NPO-FAs, such as submitting quarterly and annual reports to the Ministry of Justice and labeling informational materials and publications, require resources but, judging from the experience of respondent organizations, this is a burden that, as a rule, does not cause undue hardship. The principal concern is finding money to pay fines, particularly those levied against leaders of organizations for violations of the law regulating foreign agents, which non-profit organizations may not have sufficient funds to pay since all revenues (donations from citizens and grants) are targeted to specific programs. In addition, constant changes in legislation regulating the operations of NPO-FAs, increased reporting demands, and increases in the number of required audits and approvals all are primary causes of anxiety in all respondents and significantly affect the continued operations of organizations. Since there is currently no precedent for placement of individuals, whether NPO employees or volunteers, on the registry of foreign agents, this risk is for now not significant in terms of affecting organization operations.

Figure 3. Heat map of organizational risks.



Risks and designations

- P1 - Payment of fines and audits
- P2 - Increase in expenses for administrative operations
- P3 - Decrease in international foundations and organizations providing grants
- P4 - Ineligibility for government financing
- P5 - If the base operations of the organization are “political activities”
- P6 - Cessation/reduction in cooperation with government agencies
- P7 - Additional reporting and audits
- P8 - Designation of employees and volunteers of the organization as foreign agents
- P9 - Psychological and emotional state of organization leadership and employees

In terms of impact on organization operations, the next most significant risks are *decrease in the number of international foundations and organizations providing grants to NPOs (P3)* and *psychological and emotional state of organization leadership and employees (P9)*. Foreign financing is especially important for HIV service organizations, because refusing foreign money, as a rule, leads to substantial reductions in operations that are ineligible for government support (such as purchase and distribution of prophylactics for key groups affected by HIV, rights advocacy for key groups, etc.). Therefore, any decrease in the number of international organizations able to collaborate with Russian NPOs, including because of the increased likelihood of foreign organizations receiving the designation of “undesirable,” greatly affects the operations of HIV service NPOs and is a more significant risk than the ineligibility for government financing of those designated as foreign agents. Additionally, among the respondent organizations are those who don’t apply and have no plans to apply for government grants because their principal operations are not supported by the government (such as rights advocacy for the LGBT

community). The psychological state of organization leadership and their teams after placement of the organization on the registry is an important aspect affecting operations, since human capital is the foundation on which NPOs are built, especially for volunteer organizations and NPOs whose employees can work as volunteers during temporary absences of financing (*We are a volunteer organization. We are activists. And we exist, with or without money. We work anyway, focused as volunteers on helping people [P1]*).

A risk such as *declaration of an organization’s principal operations as “political activities” during scheduled or ad-hoc audits by the Ministry of Justice or a prosecutor’s office (P5)* is undoubtedly important but, in the opinion of the respondents, currently less significant compared to the risks discussed above. The majority of respondent organizations have not encountered such a situation, while those whose principal operations were declared political find ways of working under those conditions, including by changing operational direction or creating a duplicate organization.



Fundamental Conclusions

Since 2012, there has been a gradual but clear shrinking of the space in which HIV service organizations receiving foreign financing operate. Prior to September 2021, 15 HIV service organizations were subject only to the laws regulating NPO-FAs. There is no basis to assume that this number won't grow. In addition, there are reasons to assume that laws regulating MMO-foreign agents, natural person-foreign agents, civic association-foreign agents, and undesirable organizations will also be applied to HIV service organizations, advocacy groups, and experts. Laws regulating foreign agents are frequently applied using the same logic as that used for the laws prohibiting propaganda for drug use and non-traditional sexual relations.

After placement on the NPO-FA registry, HIV service NPOs have experienced more challenges to their continued operations given additional financing and administrative difficulties. The reaction to designation as a foreign agent varies, but NPOs are succeeding in adapting and finding ways to continue their work under their new conditions.

The principal risk affecting the operations of NPO-FAs is financial expenditures associated with paying fines levied for failure to independently self-register as a non-profit organization operating as a foreign agent (if unsuccessful in pursuing dismissal in court), as well as possible subsequent fines for errors in meeting all requirements imposed by the status of foreign agent (quarterly and annual reports, labeling of informational materials, etc.). Other significant risks to the ability of NPOs to continue operations are decreases in the number of international foundations and organizations providing financial support for activities not supported by the government, and the increased psychological burden borne by organization leadership and employees.

Despite the difficulties encountered by NPO-FAs (excluding those who opted for dissolution), they are finding ways to overcome difficulties and reduce risks in order to continue operations.

Further study of the needs and risks of NPO-FAs is needed, especially as related to new amendments tightening the reporting requirements of non-profit organizations placed on the registry and their impact on the operations of non-profit organizations.



Recommendations

Based on analysis of laws regulating “foreign agents” and their application in practice to HIV service organizations, as well as of data obtained via in-depth interviews with NPO-FAs, we have drafted recommendations for HIV service organizations designated as foreign agents to minimize the risks to their operations.

1. Minimize financial expenditures associated with payment of fines levied either for failure to voluntarily self-register as a foreign agent or for continued operations after designation as a foreign agent (late submission of reports, failure to label materials, etc.):

- Discuss with donors the possibility of financial support if fined for failure to voluntarily self-register and for payment of the annual audit, if not previously included in program budgets
- To avoid fines associated with observance of the law regulating foreign agents, it is essential to carefully examine all requirements and consult with attorneys and other prominent experts about meeting the requirements imposed on organizations by the FA designation (preparation of report submissions, labeling of informational materials and publications)
- Prepare lists and contact information of sympathetic attorneys who might be relied upon to defend the organization in court, including disputing fines, and for consultation on other issues
- Examine the possibility of alternative means of attracting financing for payment of fines (if unsuccessful in seeking dismissal in court), such as fundraising and engaging volunteers

2. Decrease in available sources of financing due to FA designation and the end of collaboration with government authorities:

- Monitor and collect information on all international and foreign organizations and foundations providing support to Russian organizations by means of grants
- Analyze the possibility of applying for government grants available to NPO-FAs
- If considering the creation of a duplicate organization, analyze pros and cons, including potential obstacles to registering an organization with the same charter as the original organization (such as rights advocacy for the LGBT community)
- If considering complete refusal of foreign financing for the purposes of removal from the FA registry, analyze the pros and cons (eligibility for government financing, possibility of continuing specific operations within the parameters of government financing)
- Improve communications and develop collaboration with businesses to attract funds to support organization operations. Don't forget that support can not only be financial but also material (such as provision of certain goods at cost [such as antiretroviral medicines]), resource (provision of office space, venues for NPO events, doctors for consultations, etc.), and informational (website maintenance, printing of informational materials, etc.)
- Consider types of NPO registration in friendly jurisdictions for receiving foreign financing for payment of employees located in Russia by means least risky for them



3. Inability to operate at full capacity (if principal operations of the organization are declared political):

- Consider developing new directions for organization operations (not a fundamental change in field of operations, but rather a new direction within the current field). Examples of such new directions could be online outreach and online operations in friendly jurisdictions
- See recommendations above regarding creation of duplicate organizations and refusal of foreign financing for the purposes of removal from the FA registry
- Donors and organizations should prepare to reconsider program objectives and measures, based on a constantly changing situation and continual narrowing of possibilities for NPO advocacy in the context of meaningful dialogue with government
- Donors and Russian and international partners should consider diversification of risks associated with online publication of materials for broad access, including publication of such materials on the web resources of friendly NPOs located outside the Russian Federation
- Donors and international partners should show the maximum respect for inquiries from local NPOs concerning issues of security. Don't make decisions about security and/or cancellation of programs in Russia without significant consultation with local partners, including representatives of grass-roots NPOs

4. Tightening of laws regulating NPO-FAs:

- Constant monitoring of legislation and analysis of ongoing changes to legislation that impact the operations of non-profit organizations
- Project possible avenues for development and operations under new conditions that undermine the position of NPO-FAs and lead to new risks for the continued operations of organizations
- Consult with friendly attorneys regarding the risks to organizations from changes in legislation
- Continue to support programs and activists engaged in documenting human rights violations, including the rights of free association and speech, and presenting such documentation to UN and Council of Europe treaty bodies
- Consider using audio formats for NPO program reporting with verification at the local level via community monitoring and subsequent creation of reports outside of Russia



5. Burden of foreign agent status and difficulties encountered after designation of organizations as foreign agents:

- Develop internal documents — a resource packet of information — that will contain all useful information for the operations of the NPO-FA (contact information for friendly experts, such as attorneys, financiers, etc., basic measures to take in response to specific crises, etc.)
- Sharing of best practices with friendly NPO-FAs (operational methods of other NPO-FAs), operational difficulties encountered and ways of managing them
- Consider reducing the informational activities of the organization (publication via internet and social media) to decrease attention paid by auditing authorities to the specific, most “problematic” activities of the organization
- Measures to prevent emotional burnout and psychological pressure among organization employees
- See recommendations above regarding creation of duplicate organizations and refusal of foreign financing in order to remove organizations from the registry of foreign agents



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- Information describing or imagining actions required to manufacture, develop, and use any type of drug, as well as methods for use of precursors for their preparation (excluding works of art featuring information justified by the genre)
 - Information describing or imagining the creation of specific conditions for sowing and cultivating drug-containing crops, refining cultivation techniques, derivation of novel breeds, increasing crop yields, and improving crop resistance to adverse weather conditions
 - Information describing or imagining locales suitable for cultivation of drug-containing crops, as well as locations where such crops occur naturally, including descriptions of routes to such locations

- Information describing or imagining evasion of criminal or civil liability for violations of laws restricting the illegal drug trade
 - Information describing locations where drugs may be obtained, prices, and how to obtain any type of drug (including slang term usage)
 - Information intended to create among a target audience a positive image of those engaged in the manufacture, development, and use of drugs, those providing services for their acquisition, or those engaged in cultivation of drug-containing crops (excluding works of art featuring information justified by the genre)
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