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THE LEGAL MODEL OF DIGITAL RIGHTS AND THE PROBLEMS OF PROVIDING INFORMATION

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ABSTRACT

This article analyzes the formation of civil law regulation of digital rights, to civil law ways of protecting digital rights, the concept and essence of digital rights, the need to define digital rights, the relationship of digital law with other rights, civil law analysis of digital law, theoretical and practical problems of the introduction of digital rights as a special object in civil circulation, conducted comparative analysis of the conceptual foundations for determining the rights and obligations of subjects of digital law, as well as scientific meta-methodological foundations of the categorization of digital rights in civil law.

The rapid improvement of information technologies leads to the emergence of a number of new rights, which gradually receive a theoretical justification and a legal form of consolidation. Over time, proposals are being formed in the scientific discourse on the expediency of endowing a whole set of such rights with a new terminology designed to emphasize their unique legal characteristics. Researchers have their own view on the problem of digital rights and present the author's ideas on the development of regulation in this direction. The author's approach proposed by E.V. Talapina on the allocation of binary (binary) rights is quite interesting [1].

Ideas are being strengthened and theories are being developed aimed at fixing and theoretically substantiating the fact of the emergence of a new category of rights or even a generation of human rights [2]. Such research approaches and scientific views are characteristic of scientists of the information society era, in which a person determines his capabilities with the help of technology, independently forms goals and attaches importance to facts, phenomena and events in a virtual environment, and with legal tools fixes their binding nature and emphasizes the need for uniform understanding and implementation. The current stage of development of society differs from the previous one in that a person independently forms meanings and creates the basis for law-making, and not only fixes subjectively generalized observations of the dynamics of changes in social relations and their external expression with the help of norms. An urgent problem of the information society is the availability of

various actions with knowledge and information, taking into account the requirements of current legislation and the rights available to individuals [3].

It is quite obvious that information technologies have a direct impact on the development of the entire institution of human rights, including both rights that are natural in nature and rights that have been secured by public legal institutions. At the same time, technologies significantly expand the possibilities for legal actions, creating both conditions for the realization of rights and the risks of their violation (for example, the problem of realizing the right to privacy is particularly acute, taking into account the appearance of many means of recording information, the right to non-discrimination in information systems when using the Internet, etc.).

Researchers are actively analyzing the phenomenon of digitalization of society and delineating the conceptual outline for a new category of rights – digital human rights. A significant number of contemporary works emphasize that such rights are global in nature [4]. Their emergence is due to the possibilities of free dissemination of information and the conditions for the widespread penetration of information technologies into various spheres of human activity.

The problem is to determine the content and expression of digital rights. Studying them, it is impossible to overlook the very essence of the category on the basis of which legal regulation should be built. Digital rights can most obviously include the rights that, as a rule, arise from users of information systems when using information and communication networks. In other words, such rights may arise from entities using certain information systems (in the structure of sites, applications and services) on the Internet. The most fair example reflecting the essence of digital law is the so–called "right to oblivion". Other rights with a "digital" nature include the right to access data in an information system, the right to dispose of user content, as well as many other rights that arise due to two circumstances (one of them is enough for the right to arise).

The first circumstance of the emergence of the category of rights under consideration is the requirement of legislation, i.e. the direct consolidation of the legal norm in the text of the legal act. Digital law can be sanctioned by the state and provide for freedom of discretion and actions in a virtual environment (within the framework of an information system).

The second circumstance of the emergence of digital rights can be associated with the rules of the information system, which are established by its owner or operator.

In a certain sense, digital rights arise both in the conditions of imperative prescriptions emanating from the state, and as a result of the variability of the actions of the entity that establishes the rights and obligations for users of the relevant information systems. The special significance of establishing the institution of digital rights in the context of their public law regulation and the definition of public value is due to the fact that in practice, with the development of information technology and changes in ethical views in society, such controversial situations will increasingly arise in which it will be necessary to clarify the limits and establish boundaries for subjects defining rules within information systems, as well

as determining the circle of persons in these relationships.

Researchers argue that digital rights are inherently derived from information rights, but they do not fully relate to them and are not included in the corresponding system [5]. In addition, if there is a "digital" interpretation of existing rights, it is not possible to form an exhaustive list of them [6]. However, we believe that information and digital rights can be differentiated according to the principle of determining the scope of their implementation and implementation. Information rights are implemented in actual reality, often with the use of media, while information technology is only an additional factor. Digital rights can be implemented in specialized information systems, i.e. in a virtual environment. This makes it possible to highlight the essential characteristic of digital rights as rights of a new order.

Digital rights are established and secured by the system of national legal regulation. There is a real need for their recognition at the international level, however, to date, no systematic or integral approach to the allocation and isolation of digital rights at the interstate level has been formulated. Some assumptions potentially indicating their special emerging status can be made on the basis of reports published by international organizations [7]. Digital rights can be found in international documents of a recommendatory nature, which do not contain any specification regarding the concept [8].

Digital rights imply the provision of access to public goods, which are to varying degrees related to the virtual environment. One of the key goals of interstate cooperation, actively supported and declared by the UN and other organizations at the international level, is the sustainable development of the world. Its most important components are the information security of the individual and the state, equal access to technology for humanitarian and civilizational development, and the creation of universal management systems. However, the lack of a common understanding of the nature of the digital sphere associated with the dissemination of information and the use of information technologies does not allow any effective success at the international level, either in matters of cooperation between States or in aspects of the normative declaration of digital rights. This task is promising, and the practical problems of its implementation are associated with many factors depending on the level of economic, political, social, cultural development of individual states.

Analyzing the actual manifestation and essence of digital rights in the context of the peculiarities of the domestic legal system for the current period, it seems appropriate to present them in the form of a set of rights that belong to the individual by virtue of the indication in the legislation. Thus, the fundamental feature of digital rights is the possibility of obtaining access to information, regardless of the form of its presentation, through the use of digital communication channels and information technologies. Of course, an important condition for the implementation of digital rights is a technique that provides the possibility of using information. However, having drawn an analogy with the traditional form of realization of subjective rights, which, for example, are also often associated with paper, it is hardly advisable to consider the need for technology as a

mandatory component necessary for the formal separation of digital law. We believe that technology, technology and digital communication channels should be considered only as means or conditions for the realization of the right.

Defining the legal nature and legal properties of digital rights, it is logical to emphasize that their basis is information. At the same time, the content of such information is not of fundamental importance, since its use is conditioned by the possibility of using technical means. Detailed information should be provided in digital form. The subject of the implementation of the digital right is a specific person (natural or legal) who has access to technical means and who is provided with conditions for the implementation of such a right.

It is advisable to distinguish between such concepts as digital law and the digital form of the implementation of the right. A right that can be realized both in electronic form (for example, receiving a public service through the official website of the authority) and through actual actions (for example, receiving a public service at the premises of the authority) is not digital in nature. Digital law is implemented exclusively in a virtual environment, therefore it has a special form of expression. Digital law in an information system can be represented in the form of specific information that does not have a real material embodiment, objectified in any form, or a connection with a physical object. The right to information as a basic and broader right, which has a multifaceted interpretation and implementation, in modern conditions includes the possibility of using information technologies, digital communication channels, as well as equipment for the use and processing of information in digital form. In a broader, generalized sense, digital rights are derived from the right to information, which in the current conditions of digitalization of public life acquires a further interpretation and a new reading.

The development of the institute of digital rights is connected with the fact that the rights realized by individuals and legal entities should receive effective protection mechanisms, which would minimize the risks of abuse and violations for the entire human rights system by public authorities. Digital rights are inherently an intersectoral education. The information aspect of digital rights can be most clearly disclosed through information and other industry legislation.

Of no small importance for understanding digital rights in a subjective sense are certain provisions of the Okinawan Charter of the Global Information Society [9]. The rights declared in Articles 3, 5 and 7 of the Charter have a direct connection with the digital environment. The issue of their initial systematization in the context of the formation of regulation is debatable, since the sphere under consideration is quite dynamic – it is constantly enriched with new phenomena that do not always consistently receive legal consolidation within the framework of national legal systems.

In scientific research, attempts are being made to consider digital rights in various contexts – as a special form of the realization of law, emerging social relations, an intersectoral legal institution, a guarantee of the realization of rights or a new complex legal direction [10]. We believe that the author's approach we are

forming to the consideration of digital rights, which are a complex of various new-order rights reflected in information and industry legislation, is currently the most promising and meets the traditions of the development of domestic legal regulation.

The close attention of the public and the scientific community to the category of digital rights can be compared with the discussion that has been conducted and continues to be conducted regarding the importance and value of the right to access the Internet and other rights closely related to the use of open information and communication networks. At the same time, recognizing the Internet as a special good and its fundamental importance for a person in the information society, it is important to understand that this does not at all form the presence of its specific legal nature [11]. Similarly, it is impossible to distinguish a special legal nature from a virtual environment in which digital rights can be implemented. In fact, the virtual environment is one of the many options for carrying out human activities, the importance of which increases as a result of civilizational development. Of course, such a circumstance does not completely exclude the need for its legal regulation – the creation of uniform rules of conduct for all participants in the relationship.

The real legal problem arises from other observations that are related to the trends of domestic lawmaking. Is there a need to establish legal regulation for technological advances in modern conditions that require the preservation of freedom of information activity? Freedom of information is not only the most important value in the information society, but also stimulates the appearance of positive results when using information technologies.

With the increase in the array of regulatory and legal regulation, there is a fixation of patterns, a structural separation of norms by signs and the possibility of their separation into an independent education appears. In a theoretical sense, digital rights at the current time can be considered as an institutional formation within the theory of information law, which can receive additional development in the fields of other branches of public and private law.

We believe that for digital law in a public legal context, there should be no analogue or connecting object in reality. However, the formation of regulation at the current stage is taking place in a different way. The proposed approach is integrative, it combines practice and norms, delineating the spheres of sectoral influence in the conditions of competition of legal norms.

The author's law model of digital rights allows them to be considered as a special kind of rights realized within the information system through access to information presented and expressed in a certain form. Such information is digital, but expressed in a form necessary for its accessible perception by the subjects of these relations. At the same time, the operators of such an information system can be public authorities and local self-government. Appropriate technical devices should be used to access digital information, and, as a rule, conditions for the operation of information and telecommunications networks should be provided. In the law model, the possibilities of disposing of digital law are narrowed,

and their implementation is assumed to obtain a specific result.

It is necessary to protect publicly available information contained in state information systems and available on the Internet, for example, from copying, as well as distribution and provision in modified and distorted form. The State information system is essentially a source of official information that is intended for use by persons who have access to it. Accordingly, it becomes important to establish legislative boundaries that determine the capabilities of authorized bodies to manage systems and establish modes of using information in the form of open data, as well as the conditions for the use of information technologies. The impossibility of establishing restrictions on the automated processing of publicly available information in terms of its provision and dissemination can be an important guarantee of the development of the idea of freedom of information on the Internet.

The problems of providing information are of a practical nature. They are associated with a wide variety of fields of activity, in which not only the independent receipt of information and data by one of the parties is provided, but also the receipt of information in objectified and legally established forms, for example, in the form of documents.

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