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THE CONCEPT OF DIGITAL LAW AND THE HISTORY OF ITS DEVELOPMENT

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Abstract:

This article analyses the concept of digital law and its formation, in particular, the opinions and ideas of various legal scholars about digital law, as well as the role of digital law in modern public life and issues of its development

Keywords: Law, digital law, Internet, blockchain, Convention, object, subject, information, connection, modern chnologies, legislation

Digital rights throughout the world are understood as specific human rights of public legal origin.

Digital rights mean rights to objects of civil rights in a decentralized information system certified by a set of electronic data (digital code or designation) (the description of the objects itself must be available to the owner of the digital right within the information system).

Thus, digital rights (instead of tokens) are recognized by the bill as a type of property rights. They will be able to certify rights to all objects of civil rights (except for intangible benefits) and participate in civil legal relations as negotiable objects of civil rights.

The reasonableness of distinguishing property rights from rights to intangible benefits suggests the possibility of establishing digital human and civil rights along with political, social, economic and other rights guaranteed by the Constitution [1]. To develop the idea, it is quite timely to raise the issue of securing the digital rights of humans and citizens, for example the right to digital immunity from "fake" information on the Internet, to the protection of personal data and information about personal life, the right to cybersecurity, the right to free access to Internet communications and others [2].

The owner of a digital right is a person who, due to the fact that he has unique access to a digital code, is able to dispose of a digital right. Digital rights can be alienated or transferred from one person to another on the same conditions as the objects of civil rights, the rights to which they certify.

The transfer of digital rights to objects of civil rights is carried out exclusively by entering into the information system ("distributed registry") information about the transfer of digital rights to the acquirer [3]. Encumbrance or restriction of the disposal of objects of civil rights, the rights to which are certified by digital rights, arise exclusively when information about the encumbrance or restriction of the disposal of such digital rights is entered into the information system, unless otherwise provided by law. It is assumed that the acquirer of the digital right is aware of such encumbrance or restriction.

In other words, the circulation of "digital rights" will be carried out only by making entries in an information system ("distributed registry technology" or blockchain), including the possibility of buying and selling such rights. In this sense, a legal basis is being created for the "digital circulation" of "digital rights" (including "digital money"), which consists of sequential records of program code executed by a computer according to the rules of a distributed registry.

Digital law can certify a right (claim), the transfer of which is carried out in the same manner, except in cases where the assignment of the right (claim) must be made in notarial form or by force of law requires the consent of the debtor.

It is also fundamentally important to apply the principle of legalization to digital rights, that is, such rights can

[1] Ахмедшаева М.А., Сайдуллаев Ш.А. Ўзбекистон Республикасининг Конституциясида инсон ҳуқуқларининг кафолатланиши. – Тошкент: ТДЮИ, 2011. – 36 б.

[2] Карцхия А. А. ЦИФРОВОЕ ПРАВО, КАК БУДУЩЕЕ КЛАССИЧЕСКОЙ ЦИВИЛИСТИКИ. Текст научной статьи по специальности «Право». Журнал «Право будущего: Интеллектуальная собственность, инновации, Интернет». 2018 г. // Источник: https://cyberleninka.ru/article/n/tsifrovoe-pravo-kak-buduschee-klassicheskoy-tsivilistiki-statya

[3] Карцхия А.А. Оцифрованное право: Виртуальность в законе // Интеллектуальная собственность. Авторское право и смежные права. - М., 2018. -№ 2. - С. 5-20.

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be recognized only in cases provided for by law. This conceptual approach will allow, according to the developers of the bill, to distinguish economically important objects ("tokens") from insignificant or potentially unsafe objects (bonuses on loyalty cards, virtual items in online games, etc.).

Digital rights are provided with judicial protection on an equal basis with other rights to objects of civil rights. The demands of citizens and organizations arising from a transaction with digital rights are subject to judicial protection if they comply with the conditions established by the Civil Code and other laws.

With the advent of digital technologies, so-called digital rights arise – the right to access the Internet, the right to be forgotten, the right to protection from unwanted information, which have already received legislative recognition in different countries.

The introduction of digital technology is weakening privacy protections at the mass level. At the same time, at the individual level, the right to personal data protection is receiving increasing attention and regulation.

Since access to the Internet is a necessary precondition for using all online opportunities, it can today be considered an essential aspect of human freedom, as proclaimed by Article 1 of the Universal Declaration of Human Rights, since blocking a person's access to the Internet represents a serious interference with his freedom.

Speaking about the evolution of human rights, it is necessary to recall the concept of their three generations (civil and political rights – economic, social and cultural rights - collective rights), which arose, or rather, were recognized as social development. Some write about the fourth and subsequent generations of human rights, which include information rights, the rights of all humanity and other rights[4].

The right to freedom of opinion and expression and the right of access to information, guaranteed by the above-mentioned Convention, lead today to the formalization of the right to access the Internet [5]. In world practice, this happens in three ways: recognition of the Internet as a universal and publicly accessible service (Estonia, Spain), securing the right to access the Internet as a constitutional right (Greece, Portugal), recognition of this right by the highest courts (France, Costa Rica).

In general, the right to information via the Internet implies the right to access the Internet, the right not to be disconnected, the right to freely search for information, the right to use the Internet safely, and the right to protection from unwanted information. However, on the Internet, as well as offline, it is important to distinguish between allowing people to express whatever they think and thoughts they cannot express freely [6]; it is a rule without which a democratic society could not exist.

Without digital communication, it is now difficult to talk about global "ius communications" (the right to communicate) [7]. A person who does not have access to the Internet today cannot take part in political life, and therefore cannot be an active citizen. Therefore, "ius communications" is used to legitimize the right of a modern person to access the Internet.

Article 8 of the European Convention on Human Rights "The right to respect for private and family life" gave the right to the protection of personal data. Its active development in the digital era has led to the emergence of the right to be forgotten (the right of an individual to demand that the search engine operator stop issuing information about the index of a site page on the Internet, allowing access to certain information about this individual). The right to be forgotten is enshrined in the legislation of many countries [8].

In Germany, for example, the model of constitutional and legal protection of personal data consists of the following components:

- the right to informational self-determination;
- the right to guarantee the confidentiality and integrity of technical informational systems;
- the right to privacy of correspondence, postal items and telecommunications; right to inviolability of the home.

All these rights are judicial in origin. As we can see, the main source of digital rights is the right to respect for privacy, but digital technologies have also influenced other fundamental rights. For example, freedom of

[4] Sartor G. Human Rights and Information Technologies // The Oxford Handbook of Law, Regulation and Technology / Ed. by R. Brownsword, E. Scotford, K. Yeung. New York, 2017. P. 438.

[5] Ахмедшаева М.А., Сайдуллаев Ш.А. Ўзбекистон Республикасининг Конституциясида инсон ҳуқуқларининг кафолатланиши. – Тошкент: ТДЮИ, 2011. – 36 б.

[6] Dolunay A., Kasap F., Kegeci G. Freedom of Mass Communication in the Digital Age in the Case of the Internet: "Freedom House" and the USA Example // Sustain-ability. 2017. Vol. 9. Iss. 10. P. 1739-1760.

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expression, which underlies the right to access the Internet, has been confronted with new ways of combating illegal content, which are implemented by the state with the participation of private actors. Freedom of entrepreneurship has been enriched by the right to digital existence (the right to a domain name, the right to provide services via the Internet, the right to use digital tools - advertising, cryptography, electronic contracts, and now smart contracts). The right to reputation in modern conditions becomes the right to digital identity [9].

In the field of ensuring human rights on the Internet, a modern state (democratic and encouraging technological development) is called upon to solve three problems:

- do not interfere with the exercise of human rights via the Internet or limit them (for example, do not censor);
- protect the legitimate use of information and communication technologies from cyber-attacks by third parties;
- guarantee and facilitate the legal use of information and communication technologies (access of low-income people to the Internet).

Throughout the world, "digital rights" are understood as specific human rights in the field of public law.

From a theoretical and legal perspective, attempts to isolate digital law or Internet law are of interest. To isolate digital law into an independent element of the legal system, it is necessary to have an independent subject and method of legal regulation. Without a doubt, there is no need to talk about specific relations in the sphere of digital reality or special methods of legal regulation. The main distinguishing feature of digital relations is the use of a special communication system – the Internet space. Moreover, the usual forms of social interaction – property relations, electoral, political and others – are clothed in a new communication shell. Arhipov believes that Internet law cannot be considered as an independent branch of law. Rather, we can talk about a special branch of legislation, subject to the appearance of a set of fundamental normative legal acts regarding the regulation of relations in connection with the use of the Internet [10].

In American legal literature, there is a well-known discussion regarding the substantive independence of Internet law as a field of legal knowledge. Thus, Easterbrook spoke out against the isolation of Internet law, using the analogy of the "law of the horse" [11]. In his opinion, the law regulating the Internet does not have any fundamental features. There is no need to single out trends in jurisprudence regarding a particular subject without taking into account other legally significant features. With the same success, one can isolate horse law, since there are legal institutions regarding transactions regarding horses or causing harm to horses. A different point of view is shared by L.Lessig, who notes the uniqueness of the reality (virtual, electronic) in which these social relations take shape. In such an environment, on the one hand, a digital code operates, and on the other hand, relations in the sphere of Internet use, taking into account its architecture, are not subject to the same control as physical social relations [12].

In fact, the architecture of the virtual world is such that the usual theory of law and model of legal regulation do not work in cyberspace. First of all, relationships in the digital space are not subject to the same control as in traditional settings. In the electronic environment, it is much more difficult to identify a person's identity, gender and age, and therefore to take these features into account in legal regulation. Legal regulation of public relations in the Internet sphere goes beyond the national space and acquires international legal significance. Thus, cyber-attacks on information systems are carried out from the territory of foreign states, and the identification of users to access content with socially and psychologically dangerous consequences is vulnerable in modern technological conditions. But unlike physical reality, the virtual world can be changed by a person through code. It is no coincidence that in Western practice it has long been believed that the Internet sphere is beyond legal regulation and there are still movements for its free development without government intervention. At the first stage of the spread of the Internet, relations between users were regulated on the basis of spontaneously emerging customs and technical norms. Until now, a significant part of the virtual world is outside the scope of legal regulation and is subject to spontaneously formed social norms. Thus, forums for discussing certain topics develop their own rules of communication and sanctions for violators of these rules in the form of exclusion or restriction of participation in such communication [13].

[9] Талапина Э. В. Эволюция прав человека в цифровую эпоху. Текст научной статьи по специальности «Право». Журнал «Труды Института государства и права Российской академии наук». 2019 г. // Источник: https://cyberleninka.ru/article/n/evolyutsiya-prav-cheloveka-v-tsifrovuyu-epohu

[10] Архипов В. В. Интернет-право. М., 2018. – С. 29 -33.

[11] Easterbrook F. N. Cyberspace and the Law of the Horse / University of Chicago Legal Forum, 1996.

[12] Lessig L. The Law of The Horse. What Cyberlaw Might Teach / Berkman Center for Internet & Society at Harvard University, 1999.

[13] Васильев А., Ибрагимов Ж., Насыров Р., Васев И. Термин "цифровое право" в доктрине и правовых

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The emergence of cyber-attacks, the collection of data on private life, and the protection of the interests of children have given rise to the rapid development of lawmaking in the Internet sphere. The emergence of the dark net, the criminal and hidden side of the Internet, means that nation states cannot remain indifferent to this side of the problem. There is an urgent need to develop international legal documents and mechanisms to neutralize socially dangerous manifestations of the digital space, as well as national legal mediation of the digital environment: blockchain, crypto currency, smart contracts, user identification, dispute resolution, cyber security and the prevention of computer crimes.

Digital law can be considered in two meanings:

1) In a broad sense, it covers a set of legal norms governing social relations that take place using the Internet;

2) In a narrow sense, digital law unites the rules of law related to resolving systemic problems of the Internet.

In addition, digital law can also be understood in a subjective sense. We are talking about a type of property rights to electronic (virtual) goods that can be converted into real material goods [14]. Scientists give the following definition of digital rights - "obligatory and other rights, the content and conditions for the implementation of which are determined in accordance with the rules of the information system that meets the criteria established by law. Exercise, disposal, including transfer, pledge, and encumbrance of digital rights in other ways or restriction of disposal of digital rights are possible only in the information system without recourse to a third party".

Thus, we can note the formation of a special branch of legislation and scientific direction - digital law (Internet law). It should be understood in two meanings. In an objective sense, digital law is a set of legal norms aimed at resolving systemic problems of Internet law. In a subjective sense, digital law represents the legal possibility of using information and other benefits using the Internet space.

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