THEORETICAL ISSUES OF LEGAL RELATIONS REGULATION IN THE GLOBAL INTERNET

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Today, the global network - the Internet is an important component of the information society. "It is the world wide web that is gaining importance today in the formation of business, culture and society itself," the native researcher E. E. Marupov [1] rightly notes. Particularly the progress is probable in the formation of a unified global communications system, which brings together the national and international network of data banks by consolidating satellite, telephone and fax communications, television broadcasting, etc"[2].

A. Pazyuk noted that the "Globality and ubiquity of information and communication technologies, providing access to each person in cyberspace, causes the transformation of pre-existing social relations and the broad development of transnational legal relations between individuals. At the same time, the existing institutions of modern society, including law, as a carrier of social values and a regulator of the behavior of subjects of legal relations, implemented in cyberspace as well, cannot be transformed, adapting to the changing regulatory environment. This factor fully applies to both national (domestic) and international law. The problem of regulation of transnational legal relations in cyberspace, the role of international law in the performance of this task require scientific understanding and development of proposals for subsequent implementation in international law [3]. Given that the regulation of relations related...
to the use of the Internet in the third Millennium goes to one of the first places in politics, the study of national and international legislation, information strategies and programs of information developed countries, international legal mechanisms in this area, as well as the comparison of state mechanisms for regulating the circulation of information on the Internet, requires the priority consideration[4].

It should be noted that before our eyes, completely new social relations are being formed, of course, those that should be regulated by the law. These relations differ in the first place by features that are given by a specific environment of formation and existence - the information environment. They are public relations, occurring in the information (electronic) form in the virtual space. This is not just a relationship on the turnover of information - it is a relationship in the information environment[5].

As E. V. Mikhaylenko rightly notes, "Internet relations should be regulated by law and other social regulators"[6]. This postulate is correctly defined by Yu. A. Rodichev, who notes that "the developing global information society poses a number of fundamentally new legal problems in connection with the avalanche-like growth of the Internet."[7]. There is a number of fundamental theoretical problems in the sphere of legal regulation in the field of Internet use.

Daniel Joyce was noted that the "Internet - especially in the context of its public sphere - leads to a reassessment of the jurisprudence in the area of freedom of expression, primarily from the point of view of the importance of issues of access and participation, but also from the point of view of increasing potential harm, and this indicates the need for conceptual development of the field of Internet freedom"[8].

As J. Neisbitt wrote: "Computer technology has become to the information age the same what mechanization was to the industrial revolution"[9].

However, it should be noted that, with the positive aspects, computer technology and the Internet have also problematic issues. In this regard, the problems associated with the legal regulation of the Internet are becoming more and more urgent.

The primary problem associated with the legal regulation of the Internet is the lack of a single general theoretical approach to the understanding of the virtual space of the Internet from a legal point of view[10]. As rightly stated in the thesis of the
Russian researcher A. K. Jarova, "For many years the term" Internet " has been used, but a common understanding of it has not yet developed. Many of its definitions lead to the understanding of the global network of information communications as a technical and technological object and to a lesser extent reveals its social purpose and consequences"[11]. As A. Pazyuk notes in this regard, "the terminological distinction between the concepts of the Internet (with capital letters), the internet (with lowercase letters) and cyberspace is relevant and carries not only a technological regulatory load, but also a significant political and legal implication. The latter is related to the issues such as the competence of States, other interested persons such as business (ICT industry) and civil society, as well as existing international organizations—in matters of Internet governance covered by the concept, the so-called of "multilateral cooperation" (Eng. - multi-stake holder approach)[12].

It should be noted that the reason for such discrepancies is the lack of elaboration of certain fundamental regulatory provisions. The Internet as a global network is not under someone’s sovereignty, moreover, each state can provide a particular form of control in accordance with its legal framework not over the Internet directly, but over the users of its resources, however a set of tools available for this purpose is small[13].

In this regard, we draw attention to the fact that, according to most researchers, the Internet has a dual nature - the technical and social. In one of the first systematic works authored by D. V. Gribanov, devoted to the theoretical understanding of the Internet from the point of view of legal science, the unity of social and technical aspects of cyberspace is shown as a set of information relations, as well as the need of addition of the existing legal regulation with the provisions considering the peculiarities of information relations[14]. I. M. Rassolov, on the basis of the already mentioned duality, concludes that cyberspace is "a sphere of social activities related to the circulation of information in the world information web, as well as in other information and communication networks"[15].

According to M. B. Kasenova and M. V. Yakushev, the dichotomy of the Internet is that the network is not only a technical invention as a means of infocommunication, but also "affects the formation of national and international regulatory processes, economic and social development"[16].
Considerable attention was given to the search for optimal parameters for the definition of the Internet and its fundamental provisions during the world summit on the information society (WSIS) in 2003 in Geneva and in 2005 in Tunisia. At the same time, the problem of understanding the Internet is shaded by the proposed definition of the term "Internet governance", which, in fact, reveals a broad and narrow understanding of the term "Internet", proposed by the working group on Internet governance (WGIG), which worked between the stages of the said world summit.

Internet governance is not only about Internet names and addresses, but also about issues that are dealt with by the Internet Corporation for assigned names and numbers (ICANN). According to the broad definition developed by the RGA, "Internet governance is the development and application of the general principles, norms, rules, decision-making procedures and programs governing the evolution and use of the Internet by governments, the private sector and civil society, in their respective roles"[17].

As Kurbalija rightly states, "the rapid transition of global communication towards the use of communication protocols of the Internet as the main technical standard testifies in favor of the use of the term "Internet"[18].

Thus, it is quite acceptable to use the term "Internet" (as a unity of social and technical phenomenon) - to refer to the continuity of the information carrier and the information in the global network - infocommunication infrastructure (technical aspect) and virtual cyberspace as a social information environment, the basis of which is said infrastructure, implemented through technology (protocols) of network interaction - "Internet protocols" (IP/TCP).

It is necessary to determine a number of important postulates for the national legal system of building the concept of legal regulation of Internet relations.

1) The Internet as a special environment cannot be either an object or a subject of legal regulation. The subject of regulation is the legal relationship between operators and Internet users, both among themselves and in relations with other persons and state bodies in connection with the transfer of information and the provision of services via the Internet[19].

2) Internet-related legal relations are inter-ethnic in nature. Application of local legal norms to such legal relations without
taking into account and connection with the legislation of other countries may be ineffective[20].

3) A certain number of regulatory problems related to the Internet can and should be solved without the use of methods of state and legal regulation, including at the level of organizational interaction of participants in Internet relations, as well as at the level of algorithmization and automation of procedures used in the Internet[21].

4) Given the social importance of the Internet and its ability to fully access the world's information resources, it is necessary to legally consolidate the principles and rules for regulating the functioning of the Internet.

5) Due to the diversity and heterogeneity of legal relations arising in the field of Internet use, the formation of the legal framework of regulatory aspects related to the functioning of the global network should not be limited to a separate specific array of legal norms.

The task of theoretical and legal justification of the Internet as a special legal field is assigned, first of all, to the general theory of law. It is difficult to imagine the solution of specific industry problems of legal regulation without a solid general legal foundation, which involves not only the construction of a holistic legal concept, but also the development of a special methodology.

In our opinion, it is important to determine the subject of regulation of Internet relations. For example, V. B. Naumov defines the subject of regulation of social relations arising in connection with the use of the Internet[22]. Etymologically close approach is followed by V. A Kopylov, understanding the legal relations in the Internet as relations regulated by the rules of law in the virtual space[23]. In turn, I. M. Rassolov defines Internet relations as "a part of relations in the virtual space (including moral, ethical and other relations), the participants of which act as the bearers of subjective rights and obligations in the Internet"[24], and the relations themselves - "arise as a result of the impact of the rules of information, international and other branches of the right to the behavior of people in this environment"[25]. In turn, A. Pazyuk reduces the whole set of legal relations related to the Internet to four main types, having their own specific subject:

1) legal relations implemented in connection with the use of the Internet (between users and access service providers,
telecommunication and information services, information products, etc.);

2) private legal relations of property (electronic payments) and non-material nature (interpersonal communication), carried out through the Internet, including social networks;

3) public legal relations related to the provision of administrative (management) services between the state and private entities (e-government, etc.) and the performance of law enforcement functions (responsibility for offenses on the Internet) by the state;

4) public legal relations related to Internet governance in a broad sense[26].

At the same time, A. Pazyuk notes that if the first three types of legal relations are implemented in cyberspace and are regulated by national law and international private law, the latter of these types of legal relations is of a mixed (hybrid) nature and is carried out both in a virtual environment and outside the cyberspace. This is due to the fact that both subjects of international private law (natural and legal persons of national law, as well as transnational corporations such as ICANN) and international public law (states, international organizations) take part in legal relations on Internet governance. The mentioned feature suggests the formation of transnational information law (international Internet law)[27].

The solution of the above-mentioned theoretical and applied problems in the framework of international law should become a principal vector of development using the mechanisms of international information law, which is perhaps the most "adapted" industry to improve the relevant regulatory framework. As Professor P. N. Biryukov rightly noted in 1998.: "Trends in the development of international cooperation in the field of information and communication show the formation of a new industry in international law, which can be designated as international information law"[28].

In our opinion, the main directions of international and national legal regulation of relations in the Internet are:
- protection against harmful and illegal information;
- compliance with copyright and related rights in terms of dissemination of information in electronic form (digital information) and technically easy copying of such information;
- issues of electronic document flow, domain names, legal regulation of relations when using electronic signature;
- questions cybereconomy (electronic money, cryptocurrency, advertising, electronic publishing, electronic contracts, e-policies, e-tickets, e-vouchers, tax on the transfer of information, electronic signature);
- information security as a state of safety of all subjects and objects of information legal relations in the Internet;
- cybercrime in the Internet.

There is a need to develop relevant principles and institutions in specific areas such as Internet traffic rules, security of online information, protection and management of cyber infrastructure, and prevention of international cybercrime. Only a step-by-step approach to the formation of the legal framework in the field of cyberspace, taking into account the gradual global development and the interests of all states, will be beneficial to the entire world community[29].

It should be noted that the Internet introduces a huge number of complex elements into both international law and national legal systems. Its very existence as a special outside the legal field causes logical contradictions when trying to regulate the law by the state. But the main problem is that there is already an urgent need for both such regulation and for finding a specific mechanism for its implementation. It is clear that the process will not be accelerated by the efforts of one or even several states. This underlines the particular importance of creating an appropriate regulatory framework, the feature of which will be a reasonable combination of national legal requirements and international interest in the normal functioning of the Internet[30].

Thus, based on the definition proposed by A. K. Jarova: "Internet is the spatially distributed global network of computer technologies and infrastructures of users, allowing to carry out the services on addressing the information in order to meet the needs of individuals, legal entities, government authorities and other object in the information, provision of their contacts in real time, the operation of which is regulated by technical standards and international and domestic law, focusing on protection of human rights, the security of states and society in the use and development of the potential of this network"[31].

In turn, L. Magdilova defines the Internet as "a network global AIS, which forms the basis for the formation and development of the information society and consists of cross-border information and telecommunications networks and distributed
Information resources as a stock of knowledge, together representing an integrated source of knowledge and a means of communication of the information society"[32]. V. A. Kopylov, in his turn, notes that the Internet is a network global automated information system, which is the basis for the formation and development of the information society[33].

In connection with the above, there is a need for contractual reinforcement of international information law, as well as the formation of a full information legislation within the national legal systems of states. These processes should be in unison and mutually reinforcing.

At the same time, the information legislation of the states and the normative-contractual basis of international information law should have significant differences in legal features, and, first of all, in the subject, because the object and subject of regulation, based on the unique characteristics of the Internet is unified.

In this regard, while recognizing the transterritorial nature of the Internet, it is necessary to address the issue of jurisdiction on legal relations arising from actions committed in or via the Internet.

REFERENCES


