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CIVIL REGULATION OF DIGITAL CONTENT

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Abstract

Digitalization is becoming fundamental for the transformation of the economy, social sphere and legal regulation. This can form alternative reality that has been outside the legal field for a long time. Nevertheless, the use of traditional constructions and legal concepts, on the one hand, may not correspond to the nature of regulated relations, and on the other hand, it may cause rejection on the part of representatives of the legal community, one way or another included in the critical process of the proposed scientific research. It is assumed that the “anonymity” of online life allows you to overcome the prohibitions and restrictions that exist with the so-called analogous existence, including overcoming the borders of states and the boundaries of private life. “Many users do not respect the freedom of the“ other ”, aggression is stimulated”, which is caused by a conflict between freedom of information and the protection of personal data, violation of the right to informational self-determination of a person. In the article, the authors analyze the normative and doctrinal material on the use of traditional and non-traditional objects of copyright in digital realities. The paper discusses changes in legal relations, which are developing, inter alia, between the subjects of copyright in the environment of the global information society. The authors consider modern legal mechanisms for regulating copyright relations. It is noted that in some countries there are timely doctrinal approaches to legal regulation of the new digital reality, although historically established conceptual foundations of copyright are preserved.

Keywords: Civil law, digital content, civil code.

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1. Introduction

The translation of social relations into a “figure” entails not only the mechanization of processes, but also the transformation of the structure of public relations in general. So, already today the content of individual rights is actively discussed, such as the recognition of access to social networks as an independent human right (Jones, 2014). Moreover, the current legislation lags the prior art, but the problems that arise are partially offset by judicial practice and business practices.

Despite the general understanding of the positive aspects of this process, nevertheless, there is no adequate digital environment for the content of the responsibilities of persons entering such a mechanized relationship in online communities. Moreover, the modern philosophy of law notes the risks inherent in a post-industrial state, to which the information society belongs: “a decrease in manageability, an increase in social risks, a gradual loss of sovereignty and legitimacy due to the alienation of the population from state power, as well as the loss by the state of a monopoly on rationality of management" (Entin, 2018, p. 91).

2. Problem Statement

At the present stage of development, the state, instead of the regulatory one, strengthens the intermediary function and becomes a “platform state”, setting the framework (Decree, 2017) for the functioning of the so-called "Digital economy" as a key area of development of the business environment, as the most important engine of innovation and competitiveness of the tangible and intangible branches of social production. Thus, the state creates (including through public-private partnerships) a digital infrastructure, providing an opportunity for other entities not only to carry out legally significant actions within a specific digital platform, but also to determine the rules for joint actions within it. It seems that this will strengthen the functions of self-regulation and increase the value of the contract.

At the same time, digitalization entails uncertainty and conflict due to the lack of a single conceptual framework, since the traditional legal structures of the national (Russian) legal system clash with the legal structures of other legal systems due to the transnational nature of this information community.

3. Research Questions

The methodological basis of the study was legal hermeneutics and the methods of interpretation of the legal text and its qualitative analysis based on it.

4. Purpose of the Study

The main aim of the study is to systematize certain provisions of the legislation regulating new public relations in the field of legal protection of intellectual property in the digital environment, taking into account the development of national legislation on digital technologies; analysis of the mechanism of civil regulation of digital content as an object of copyright, taking into account international and foreign experience.

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5. Research Methods

The methodological basis of the study was legal hermeneutics and the methods of interpretation of the legal text and its qualitative analysis based on it.

6. Findings

So, a person in the legal environment simultaneously acts in several "roles", which requires determining how the restrictions and prohibitions of personal status in the "analog" environment can be correlated with the rights in the information environment. For example – to conduct entrepreneurial activities using digital technologies, to engage in creativity in the same environment, etc. At the same time, the development of technologies will inevitably lead to the problem of determining the legal status of those citizens who refused to use the “digital” service. Indeed, for full use, a citizen must have an “online” status, his presence in digital space. But what is “digital space”, “online mode”, “digital content”, etc.

Digital content in the broad sense is defined as the content and informational content of a site, including texts, pictures, music and video posted on an information resource. In other words, digital content is information embodied in a special form and placed in a special source. However, at present, the Civil Code of the Russian Federation (hereinafter –the Civil Code) (Government RF, 2001) does not attribute information to objects of civil law regulation. In this connection, it is proposed the legal consolidation of information as an object of civil rights by including the appropriate instructions in Article 128 of the Civil Code.

At the same time, references to the fact that the information had already “visited” the list of civil rights objects and was excluded from this list by article 17 of the Federal Law of December 18, 2006 No. 231-FL “On the Enactment of Part Fourth Civil Code of the Russian Federation”.

One often hears that information cannot be the subject of civil rights, if only because it is perceived by all the human senses (light, sounds, heat, taste, smells) and there is no need, nor is it possible to establish subjective civil rights for such benefits.

At the same time, as soon as information gains economic value, it becomes property, and therefore – an object of civil rights, since Art. 128 of the Civil Code of the Russian Federation classifies such property as any property, the list of which in the article is open.

The complexity of developing adequate regulation of relations regarding the information mentioned is largely since today information is created, stored, processed, transmitted not in written or verbal, but in electronic form. Thus, any information created – sounds, texts, images, instrument readings and so on. – to ensure the possibility of its processing, storage and transmission by a computer, it requires conversion to digital (electronic) form. That is, digitalization involves changing the form of existence of information for the purposes of its storage, processing, transmission, etc. From a technical point of view, the digital form of information provides for its transmission from a source to a receiver via a communication channel. At the same time, from the standpoint of the theory of civil law, the transfer of information from one person to another is unacceptable, since only the transfer (transfer) of property rights to information is possible.

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This combination led to the fact that many objects of civil rights that existed in the traditional ("analog") form were enriched by a new – digital – form. These are, for example, uncertificated securities; digital art objects – computer animation, electronic music, digital painting, etc. In addition, new objects of civil rights have arisen that envisage existence exclusively in digital form – the so-called virtual property (game property, virtual money, domain names, etc.).

In both indicated cases, the creation of special regulatory rules is required that consider the specifics of the digital form of the mentioned objects. But, as you know, legislative regulation in this area lags far behind turnover needs. Digital conversion of information using various electronic devices (for example, studio recording equipment, scientific and / or medical frets, etc.) does not automatically turn such information into digital content. Digitized information, regardless of its content component, is digital content from the moment it is filled with an electronic information resource and until it is removed from the latter.

What is meant by an information element? . In domestic legislation and in the doctrine, there is no special conceptual apparatus characterizing the legal relations associated with the circulation of digital content, the phrase “electronic (digital) form” is actively used, but a general definition of the concept “ digital content ”, which actualizes the need for research in this direction. The word "content" is foreign in origin and is translated from English as content, content, content. In addition, “electronic content”, “online content”, “media content” and other synonyms can be used.

The philosophical approach to determining the nature of a thing is mainly based on a dualistic perception of its nature, which implies the universality of its understanding and allows the inclusion of both material and incorporeal things. That is, with this approach, digital content can be considered both material and ethereal, but it also entails inconsistency in understanding its nature. Thus, an ethereal characteristic entails an understanding of digital content as a set of property rights that are only formally classified as things, although they do not have a pronounced material form.

The mixture of legal regimes is characteristic mainly of the Anglo-American legal system, where it is customary to distinguish things into “things in possession” (choses in possession) – these are things that have a clearly expressed material form, and “things in demand” (choses in action), – these are things that do not have a material form, to which the concept of “incorporeal thing” inherent in Roman private law can be applied (Kovaleva & Lyovina, 2017).

The German Civil Code defines a thing as a “bodily object” (Kefeng et al., 2006). A similar position is taken by the legislator of the Republic of Poland, which only material objects are included in the concept of a thing (Kulcu & Cakmak, 2012), while the French legislator adheres to the concept of a “broad concept of a thing”, classifying objects as not things having clearly expressed material forms, among which are digital content (Ma et al., 2018).

Despite the unambiguous definition of things in German law, discussions are ongoing in the doctrine about the possibility of extending the legal regime of things to digital content. On the one hand, researchers argue that digital content is not a thing, because it does not have a material embodiment. Even if digital content is placed on a tangible medium, there is an occurrence of rights with respect to this medium, but not with respect to digital data on it. This also applies when digital media is lost, damaged or

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destroyed. Indeed, such a loss of a specific carrier of digitized data does not always entail the loss of the digital content stored on it (Kulcu & Cakmak, 2012).

On the other hand, from a material point of view on digital content, the latter becomes the subject of property law from the moment it is recorded on a tangible medium. Such media can be CD, DVD – disk, computer hard drive, even recording on a server in a "cloud data storage". Currently, a draft Directive of the European Parliament and the Council on some aspects relating to digital content supply agreements dated December 9, 2015 No. 2015/0287 (Entin, 2018) has been developed and submitted for approval by the European Parliament. In this act, digital content is defined as:

a) data generated and delivered in digital form, including video and audio applications, computer games and other types of programming;
b) a service by making the creation, processing or digital storage of data received from a consumer;
c) a service that provides the ability to disseminate or otherwise influence the digital data received from other users of this service.

The European Commission has also developed a few documents containing the concepts of digital content. So, the final report “Digital Content Services for Consumers: Assessing Problems” (Economics, 2011) provides a list of objects that are defined as digital content, in particular:

a) media services containing visual or audio content that is downloaded by users to their personal devices or broadcast over the Internet in real time. At the same time, the consumer of these services is not required to perform any additional actions;
b) computer games

Analyzing the above positions of lawmakers and scientists, we conclude that digital content is a generalizing term, most often used to describe and characterize digital objects, multimedia products in the digital sphere, the consumption of content generated and distributed in digital format.

For distribution companies, online sites, stores involved in the circulation of content, as well as for ordinary consumers, digital content is an informational, entertainment or gaming product that is distributed via digital networks or in digital format on a physical medium, and used, recorded and copied without compromising its quality.

The concept of “digital content” also has other meanings. Producers of multimedia content associate this term with any multimedia product created using digital technology and presented in digital format. Telecommunications operators understand digital content as a special kind of transmitted data using the broadcast or multicast system.

Domestic doctrine under a thing means an object of the material world. In this connection, a priori the intangible nature of digital content does not create legal grounds for protection.

On the other hand, transferring digital information to a tangible medium already converts digital content from an ethereal object into a tangible thing. Proponents of this approach argue the attribution of content to tangible things, based on: the possibility of concluding loan agreements for electronic journals located on a specific server, contracts for storage in a cloud storage of data, other transactions inherent in

objects of property law, including foreclosure on digital content. Thus, the domestic legislator adheres to a unified approach regarding the definition of a thing based on a "narrow" definition of a thing in its material sense.

Now the term "content" means both digitally published works, advertisements, as well as public and any other information that fills the Internet space. Moreover, the different content of digital content, which is formed by various types of information (information about the business entity, about the product, work, service, including advertising information; scientific and technical information; tax information; statistical and other information), various purposes of using the specified digitized information, as well as different functional purpose and different status of the websites on which it is placed, causes differences in the legal nature of digital content.

The advent of the global Internet, new technologies, and the latest ways of communication have greatly influenced changes in law. They consist not only in introducing legal norms to regulate legal relations arising, but also in adapting existing legal norms to new realities. The development of the "virtual world" requires fast and flexible legislative regulation. Some of the objects of civil circulation, until recently, existed exclusively in their material form (CDs, DVDs, books), having adapted to the conditions of the "virtual market", they are modified and lose their physical form of expression. Audio and audiovisual hyperlinks are becoming popular among users, playing online, electronic magazines, books, computer games, software and cloud storage technologies. The emergence of such objects necessitates the development of a legislative definition of their concepts and the development of an appropriate legal array for their treatment.

At this stage of development of domestic science, there are gaps in the definition of the concept of digital content and the creation of a mechanism for legal regulation of relations related to its circulation. The problem of the legal definition of digital content is considered in the works of foreign theoretical scientists, including L. Guibault, M. Luz, H. Mac, G. Spindler, N. Helberger and others (as cited in Ermakova & Sukhareva, 2018).

Thus, the Russian legislator does not fix the normative definition of the concept of objects existing in digital form. However, analyzing the provisions of the current domestic legislation, we see that it is at the stage of formation of a regulatory framework that will become a regulator of public relations related to the circulation of digital content.

7. Conclusion

Based on the analysis of the provisions of the current legislation, domestic and foreign doctrines, it is possible to offer such an understanding of digital content as the content and information of a site, including texts, pictures, music and video posted on an information resource. That is, it is information embodied in a special digital form and placed in a special source that ensures the use of this information.

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