

# *Digital law as a nascent branch of Russian law*

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**Abstract** — This article is devoted to the topic of digital law as a new legal phenomenon, an emerging branch of law. The subject of the research is modern Russian legislation, international acts, scientific articles.

The aim of the research is to study the issues of the formation and development of digital law as a stage of the development of the Russian legal system in the context of the active growth of public relations, implemented through information and communication technologies, including using the Internet. The objectives of the research are to define the concept and types of digital rights in the modern legal system, depending on the scope of public relations.

As a result of the research, the concepts of "information rights" and "information law" are developed. A differentiation of information rights is proposed, the need for reforming Russian legislation is proved. It is suggested about the development of a new branch of law — digital law.

**Keywords** — *digital law, copyright, property rights, personal non-property rights, digital information*

## I. INTRODUCTION

The modern life of society and the state is closely connected with modern information technologies. Information technologies are applied in all scopes of life of a society and a person. With the help of information and communication technologies, citizens realize their rights and duties; new forms of providing public services via the Internet (for example, in 2020 it is planned to switch to e-driver licenses and identification of drivers through recognition using information technologies) are actively introduced, electronic payment services are developed and introduced, the concept of an electronic document [9] and electronic signature [8] is introduced at the legislative level, etc.

Public relations, arising from the use of information technologies in spite of their wide distribution, are in their infancy and active development. Like any others, they require legislative regulation. The specificity of the relations under consideration is their introduction into various scopes of public life. Offenses, related to the infringement of the security of digital information, infringe upon such objects of legal protection as: private life, non-cash money, state, commercial and other secrets, intellectual property right, property, etc.

However, despite the widespread introduction of information technologies into the life of society, the legal regulation of relations, associated with them, is fragmentary.

## II. METHODOLOGY

When conducting the research, methods of analysis, synthesis, deduction, and research of documents were used.

## III. RESULTS OF THE RESEARCH

According to the results of the research, the concept of "information rights" is developed - the rights of individuals to access, use, create and publish digital works, images, software, access and use of computers and other electronic devices, as well as information and communication networks, in particular, to the Internet, ensuring the compliance of human rights and freedoms, protection from illegal encroachment on property, honor, dignity, business reputation, intellectual property and other legally protected property and personal non-property benefits. The author developed a classification of information rights, proved the need for reformation of Russian legislation. It is suggested about the development of a new branch of law — digital law.

## IV. DISCUSSION OF RESULTS

New terms "digital law" and "digital rights" appeared in modern legal literature [9, 10, 11, 14]. These terms do not yet have legislative securing. However, the deputies of the State Duma of the Federal Assembly of the Russian Federation, a member of the Council of Federation of the Federal Assembly of the Russian Federation originated the draft of Federal Law No. 424632-7 "On Amendments to Parts One, Two and Four of the Civil Code of the Russian Federation" [3] (on digital rights). Currently, this bill is under consideration. The authors of the bill define digital law as a digital code or designation, a set of electronic data, existing in an information system, that meets the statutory features of a decentralized information system, provided that information technologies and technical means of this information system provide a person with unique access to this digital code or the designation the opportunity to learn the description of the relevant object of civil rights, certifying the rights to the objects of civil rights at any time. According to R.I. Sitdikova and R. B. Sitdikov, the term "digital" in the concerned bill reflects, to a greater extent, the method of certification, and not the type of law, since the bill states, that it is possible to certify rights to objects of civil rights with a set of electronic data in the form of a code or designation in cases provided by law. [2, p. 76].

The definition of "digital law" presented in the concerned bill contains an indication on the exclusion of non-material benefits from the scope of rights, that can be certified by a set of electronic data (digital code or designation), therefore, this is a new type of property right.

It is difficult to agree with this position of the authors of the bill, because we believe, that this definition significantly narrows the area of legal relations that are digital. So, for

example, Internet piracy is massively widespread, illegal use and copying of works, images infringe on copyrights, and taking into account the specifics of electronic content, we can distinguish such type of rights as non-property digital rights. Copyright protection on the Internet is a global problem. Most of the researches in the field of digital rights are dedicated to this issue. [17, p. 724]

We also consider it possible to relate the honor and dignity of citizens, business reputation to this group of rights. The infringement of this group of rights is carried out through the dissemination of information discrediting honor and dignity, business reputation, information of private life, images of an intimate nature on the Internet. For example, in the Review of the jurisprudence of the Supreme Court of the Russian Federation No. 1 (2017), the Supreme Court of the Russian Federation cited an example of a dispute, when resolving it, the Court specified, in which case a post on social networks could still become the basis for bringing a suit for protection of business reputation [1, p. 20].

Considering the issue on information, relating to privacy and personal data on the Internet, should pay attention to two points: on the one hand, users enter their data themselves, understanding, that they can become known to an unlimited circle of people — both voluntarily and unintentionally; on the other hand, owners of social networks, various Internet resources develop their privacy policy and conditions, accepted by the user and must enforce them. Personal data and personal information are currently being converted into an article. [16, p. 3] Unscrupulous persons trade in personal data and personal information. The solution of the problem should be carried out in two directions - on the one hand, by developing software protection that is not accessible to hacking, on the other hand, by enhancing the protection of the digital rights of citizens in the legal field.

Non-property digital rights of citizens are recognized by the provisions of international law. So, on July 5, 2012, the United Nations Human Rights Council (HRC) adopted the first resolution on freedom of speech on the Internet - resolution L13 "Encouragement, protection and enjoyment of human rights on the Internet". This resolution became innovative in its own way. In particular, the resolution confirms that the same rights that people have off-line should also be protected on the Internet, in particular, freedom of opinions expression, which is applicable independently of frontiers and by any means they choose, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

The important question of whether digital rights should be considered human rights was raised by Joshua Kopstein. According to the scientist's opinion, our digital identity is an integral part of everyone as an individual. He cites the example of large companies that manipulate the consumer behavior of their users by tracking and processing their digital activity and data, available online. Kopstein insists that the biggest problem of the digital age is the prevailing understanding of human rights as a concept, related to the physical identity of a person. However, personal data should be admitted as part of us as people, thereby expanding the concept of human rights to digital rights [4, p. 45].

I would like to note that scientists admit digital rights not only of living persons, but also of the deceased. Posthumous private life becomes a relevant topic in legal literature. Posthumous private life is considered a human right to preserve his reputation and dignity after death. The assumption that the deceased has no rights to privacy inviolability, because his physical life is over, is not true in the modern information society.

In the digital age, a deceased Internet user leaves his "legacy" on the Internet. The deceased has no longer the ability to dispose of his information and data. Legal control over the personal information of the deceased is important in privacy protection (in the afterlife), as the encroachment on it affects the honor of the deceased person and the interests of his relatives. [15, p. 129]

Digital rights as a new type of rights are the object of public relations not only in the sphere, regulated by civil law, but they can also be distinguished in the field of criminal law relations. So, Begishev I.R., offers an introduction of the concept of "digital information" to the Criminal Code of the Russian Federation in order to replace by it the concepts of "computer information" and a number of other narrower and inaccurate ones. This author considers that digital information should be considered as the subject of a crime under Art. 272 of the Criminal Code of the Russian Federation. The author also consider that using information technologies, using digital information, other crimes can be committed, such as extortion, bringing to suicide, fraud, violation of inventive and patent rights, and others. By digital information, the author understands the totality of information, circulating in information and telecommunication devices, their systems and networks [6, p. 398]. Based on the foregoing, we consider, that crimes, the subject of which is digital information, encroach upon digital human rights (taking into account the provisions of Resolution L13 of the United Nations Human Rights Council (HRC)). Therefore, we can talk about the new object of criminal law protection — "digital rights".

In legal literature, digital rights are defined as a complex of human rights, including the right to access, use, create and publish digital works, access and use computers and other electronic devices, as well as information and communication networks, including to provide learning.

The right to access and use computers and other electronic devices in education is provided at the federal level by imposing compulsory requirements for the organization of the educational process in standard legal acts. For example, the Federal State Educational Standard of Higher Education in the direction of training 40.03.01 Jurisprudence (bachelor degree) contains the requirement for students of compulsory access to electronic library systems (electronic libraries) and to the electronic information and educational environment of the organization. The electronic library system (electronic library) and the electronic information and educational environment should provide for the student access from any spot where there is access to information and telecommunications network "Internet". Moreover, as competencies, formed in the learning process, it is established, that a graduate should possess basic methods, ways and means of obtaining, storing, processing information, computer skills as a means of managing information (GCC-3); ability to work with information in

global computer networks (GCC-4). [7] This confirms the existence of digital rights in education.

In 2017, the Decree of the President of the Russian Federation adopted the Strategy of the Development of the Information Society in the Russian Federation for 2017-2030. Ensuring the rights of citizens to access information; ensuring freedom of choice of means of obtaining knowledge when working with information; ensuring legality and reasonable sufficiency when collecting, accumulating and disseminating information about citizens and organizations, etc. are cited as some of the fundamental principles of this strategy. Strategy introduces the concept of a digital economy. The development of the digital economy is a priority vector for the development of Russia. Accordingly, the transition to a digital economy will require modernization of the legal regulation of new legal relations in the field of digital rights. The considered Strategy is a step towards creating an array of legal acts regulating relations in the field of digital law.

## V. CONCLUSIONS

Based on the foregoing, digital rights should be understood as the rights of individuals to access, use, create and publish digital works, images, software, access and use computers and other electronic devices, as well as information and communication networks, in particular, to the Internet, ensuring the compliance of human rights and freedoms, protection from illegal encroachment on property, honor, dignity, business reputation, intellectual property and other legally protected property and personal non-property benefits.

Based on the research, the following types of digital rights can be distinguished depending on the scope of legal regulation:

- digital property rights;
- personal non-property digital rights;
- digital rights as an object of criminal law protection;
- digital rights in the field of education;
- digital rights in the field of rendering of public services;
- digital rights in the field of economy.

Considering the variety of public life spheres, affected by the process of the implementation of digital rights, we consider the Russian legal system is on the threshold of significant reformation. The rapid growth of introduced technologies, resources, services, payment systems, etc., operating in the Internet space in digital form, requires the timely response of the legislator to the changing conditions of modern reality. The introduction of the term “digital rights” into the country's legal system will entail a change in a vast array of legislative acts. However, today there is a need to admit a new type of rights — digital rights. Perhaps in the process of updating the legal regulation of modern public relations, a new branch of law will emerge — digital law.

Digital law is a branch of Russian law that regulates social relations in the field of information and communication technologies, regulating the rights of individuals to access, use, create and publish digital works, images, software, access and use computers and other electronic devices, as well as information and communication networks, in particular, to the Internet, ensuring the compliance of human rights and freedoms, protection from illegal encroachment on property, honor, dignity, business reputation, intellectual property and

other legally protected property and personal non-property benefits.

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