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The virtual property under the legislation of the Russian federation: present state and development trends

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***Abstract* — This paper examines the legal status of virtual property under the Russian legislation and in research works of contemporary Russian scientists. The virtual property, as the product of virtual worlds, is gradually getting involved into the real civil circulation and its objects are becoming the real economic resources. Authors suggest the classification of these objects, using the base of the study of the Russian and foreign legal practice and make an attempt of the suggestions to the Russian legislator in this sphere. The purpose of this paper is to consider the legal status of virtual property under the current Russian legislation and to highlight the primary steps for the improving of this legal institute.**

Keywords — information, legal regulation of information, information as the object of civil rights, information features, objects of civil rights, property, virtual worlds, virtual property, virtual objects of property

I. INTRODUCTION

At the present time the human civilization exists in highly interesting moment its development – the age of information society. This is reflected in lot of factors and the most clear among them is informatization of all of the spheres of social life. The Russian Federation does not stay aside of these trends [1, 2, 3, 4]. The number of Internet users in Russia is growing every year. With that, there is a "transmission" of different processes of human and social life to the online-sphere. Particularly, the foundation of the digital government has been laid because of realization of the federal target programs "Digital Russia" and "Information Society". Now the majority of the popular state and municipal services in Russia could be received in electronic form due to the foundation of portal "Gosuslugi"; all of the state authorities have the official web-sites in the Internet, which are in use not only as the means of informing about own activity, but also as the instruments of interactive communication with users (legal entities and individuals) etc. Though we could emphasize the condition of legal regulation in public sphere (the sphere of public governance) as satisfactory (Adopted and apply the Federal laws of July 27, 2006 № 149-FZ "On information, information technologies and protection of information" dated 09 February 2009 № 8-FZ "On providing access to information on activities of state bodies and local self-government bodies", the decree of the RF Government dated 24 November 2009 № 953 "On providing access to information on the activities of the Government of the Russian Federation and Federal Executive authorities", etc.), the condition of private legal sphere is not so good. At the present time the property is not only an estate or bank deposits, but also the information and information carriers. While in the recent past the books or compact-disks were sold in stores, now both of these are keeping in smartphone, are downloaded to the hard drive of a computer etc. With that, this content is often bought with real (not virtual) money. This is why we could ask the logical question: is buyer obtaining the property right for such information products? Could be the iTunes Music Collection propagated? Who will be heir of the owner of Instagram account with thousands of followers? Is it possible to sell, for example, the tank, purchased in World of Tanks?

With that, the speed of development of the Internet and its influence to the transformation of traditional types of social relations is heavily outruns the possibilities of Russian legislator in field of legal regulation of behavior the users of Internet. Moreover, the new "environment" has the series of architectural features of its construction. This is why the traditional rules of Russian legislation cannot be applied for the deals in virtual space. This circumstance is usually explained of the virtual space has its specific features, which are influencing to the execution of civil legal deals. These features could be used both by the fair Internet users, and by the swindlers [5]. In the considered problem there is another aspect that requires close attention from the legislator, namely, ensuring the rights and legitimate interests of entities using cryptocurrencies, as well as the need to ensure information

security in General. Unfortunately, the new financial instruments under consideration are increasingly used in the criminal environment: in the Commission of corruption crimes, in the sale of drugs and psychoactive substances, pornography. Most often, these acts are carried out on the illegal Internet (Darknet) [6].

II. DATA AND METHODOLOGY

This study is the analysis of rules of the Russian Information Law, which is showing the urgent problems on the background of growing role of the information technologies in today's world.

In the course of the study, we tried to gather complete information about the legal regulation of virtual property.

Information search was conducted among the scientific literature and led to the selection of more than 20 sources. These sources provided information on the development and functioning of state regulation of the legal nature of virtual property.

The authors used further methods of scientific research:

- formal-legal-at the indication of signs and the analysis of definition " virtual property";
- comparative method-when comparing the legal regulation of access to information and its use;
- structural analysis - when studying an object, its specific features are analyzed as a structural element included in a more General term. With the help of this method, the authors have developed organizational measures aimed at the need to introduce the concept of "virtual property" into the legislation";
- information approach - in the study of any object, process or phenomenon in nature or society, the first goal is to identify and analyze the most specific information aspects that significantly determine their current state and development.

III. RESULT RESEARCH

The Virtual Property in Law and Theory

At the present time, the position of legislator looks like this. The Part IV of the Civil Code of the Russian Federation (hereinafter – CC RF) combines all of the problems of subjects to the institute of Intellectual property, while the category "information" is excluded from the list of the objects of civil rights, counted in the Article 128 of the CC RF. The Federal law "On the Information, information technologies and protection of information" (Part 5 of the Article 11) establishes that the property right and other real rights to material carriers, which are including the documented information, are established by the civil legislation. Therefore, the storage medium is separate from the content (the information) what is violating the united nature of document according to the opinion of I.L. Bachilo [7]. We suppose that the scientist's opinion is not optimal because such opinion is not taking into account the material and technical features of information processing at the current stage of technical progress and prospects of development of the society informatization. For example, the current practice of the document workflow knows the term "electronic document". Taking into account that the recognition of such form of the representation of document information requires the electronic digital signature, we may conclude that the paper document and the analogues document in electronic form (in case of the recognition by electronic digital signature) are equal and have the same legal force. Therefore, these documents could be copied to any carrier and transferred to significant distances through the technical means of communication. With that, we can say that the electronic document, during the process of transfer from one subject to other, could change a few information carriers, for example, to be transferred from the technical device of one subject to the communication network and then – to the technical device of recipient.

The subject of legal relations in all of such situations has the general feature – it is the information product, information.

The current Russian legislation contains a series of terms and definitions: "information", "document", "document information", "electronic document", "file", "web-site in Internet", "page of the web-site in Internet", "electronic message', "mass information', "data", "data banks", "information resources", "computer information", "electronic digital information", "electronic signature", "domain name" etc. This multiple complex of terms, according to the I.L. Bachilo, could be considered as the ground for the theory of the system of information objects, suggesting the new category – "organization form of information" [8]. All of the specified definitions have an unequal structure, different destination and are the complex of forms of the visualizing and understanding of information. There is a necessity of the systematization of such definitions and their harmonization with contemporary approaches to understanding of information. However, the term "organization form of information" is not reflecting the specific of systematization, because I.L. Bachilo has meant certainly legal information, which has certain legal force, but not the form of its presentation. We probably have to separate the systematization direction, using the criterion of the content of information and the form of its presentation, where the most important attribute is the content, while the form of presentation could be different. Otherwise, a legal information in any case keeps its legal force regardless of form, wherein the form of presentation of the information has the secondary nature and has to be differentiated to two groups: a) acceptable for people's perception without special technical devices; b) requiring the special technical devices for its perception.

The legal definition of information for today exists as the knowledge (messages, data) regardless of the form of its presentation (Article 2 of Federal law No. 149-FZ of 27 July 2006 "on information, information technologies and information protection»).

The word "information" is derived from the Latin word "informatio", what means "explanation, exposition, notification" [9]. In the Dictionary of Russian language by S.I. Ozhegov we can find such definition of information: this is the knowledge about surrounding world and the processes, existing in it, which are comprehended by the human or

special device. The term "knowledge" is usually comprehended as the "cognition in some field, news, messages, learning and ideas about something" [10].

Information has its features, for example, ideality, continuity, inexhaustibility, massiveness, transformability, universalism, dispersion, compressibility, reliability etc., which are quantitatively characterize it [11]. Quantitatively the information could be estimated by means of such terms as "capacity", "informativeness", "information volume" etc. We have to emphasize the interesting opinion of the non-material features of information by I.L. Bachilo: "If the information holder "sells" it to other subject, he didn't lose this information. In result of information selling the buyer still has no property right for it" [12]. In this case we have to talk about such attribute of information, as its "inexhaustibility". It should be noted that I.L. Bachilo has meant the Intellectual property, because the information is excluded from the object of real rights and cannot be sold, as well as the thing cannot be disclosed. The information in general is ideal and exist outsides of cognition process by certain individual. Any intellectual property object is the result of cognition process and appliance of obtained information. Otherwise, we have to advance a theory of the existence of certain etheric information space. This space exists autonomous and has the relevant physical carrier – all of surrounding world, used by the individual through the cognition and appliance processes, excluding from one aether the necessary information about processes or features of material, copying this data to the material carrier, which accessible for exchange (both the individual's consciousness and any other information carrier with purpose of benefits).

The chart illustrates the most common topic search queries on the Internet (percent) [13].

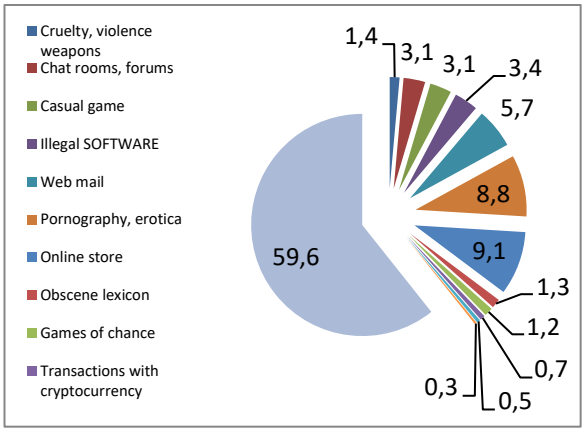

Fig. 1. Most common topic search queries on the Internet

In this context the terms "stealing of information", "appropriation of information" sound peculiar. In the former case the stealing is seizure of cognized information from an owner to third parties, in second case – the appropriation of authorship of the information processing, while the author has access to information for the future.

The number of authors sees the decision for this contradictory situation in the relationship of property right to information with material carriers [14], for example, documents, information resources, libraries, archives, information systems (including automated), printed media. According to the old Federal law "On the information, informatization and protection of information" such decision was the legal rule: the property right covered not only information, but also its material carriers – information resources, documents (Article 6 of noted Law).

The information is always inseparable from material carrier. Usually the massive of information moves from the individual's consciousness to the external material carrier. In this case it seems possible and reasonable to talk about property right to material medium storage. At the same time, taking into account the pace of the development of technologies, communication networks, copying methods and information transfers and fundamental attributes of information, such approach required the correcting. Probably the actual Federal law "On information, information technologies and protection of information" not decides this question at all.

IV. Discussion of Results

In result Russia has such situation in sphere of legal regulation of deals with virtual objects, that in the absence of necessary legal acts, which are clearly establishing the rules, the subjects could use one of following options:

1) To use legal analogy and use the rules of real right and property right for the virtual objects [15];
2) To conclude that the law cannot regulate these relations (In this case the courts use the conditions of Article 1062 of the Russian Civil Code "Requirements to organization of games and bets and participation in them". According to these rules, such relations cannot be protected in court, except certain cases);
3) To use already existing license agreements and other contract constructions for such relations;
4) To attribute the virtual property objects to "other property" and use the legal rules for the relevant types of deals to these relations. For example, to use the rules of the Chapter 60 of the Russian Civil Code, dedicated to the unjust enrichment.

However, the Russian government does not stay aside of the pending problem. Thus, the Government of the Russian Federation has adopted the Federal target program "Digital Economy". One of the goals of this program is "the founding of the ecosystem of digital economy of Russian Federation, where the electronic data is the key factor of production in all of the spheres of social-economic activity and where is the presence of efficient cooperation (including transboundary), of business, scientific community, government and citizens". Moreover, the Federal Assembly of the Russian Federation has to adopt about a fifty laws, regulating the different aspects of digital economy, during the year [16].

Article 128 of the Civil Code of the Russian Federation (hereinafter – CC RF) establishes that the objects of civil rights are the things, including money in cash and securities, other property, including non-cash money, non-documental securities, property rights, results of works and delivery of services; intellectual property non-material values".

Besides of such legal definition as a "property" is frequently used by legislator, it has no clear content. As A.N. Lysenko noted, the content of this term is not constant [17]. According to the conditions of CC RF the certain things, money, financial credit instruments, property rights could be considered as the property. Sometimes the complex of material things, financial credit instruments and the obligations of subject is considered as the property (Articles 63, 217, 1112 of the CC RF and other). Sometimes the whole property complexes are included to the content of property (Article 132 of the CC RF) [18].

Therefore, the understanding of property under the current Russian legislation is multifaceted and very broad. Moreover, the number of its objects is not exhaustive, so the content could change depends on needs of certain legal relations. Thus, including of virtual objects to the property assets is eventually possible.

Abovementioned Federal law "On the information, information technologies and protection of information" is the main regulator of relations concerning the process of production, collection, keeping, processing and other actions on information. Herewith, this legal act does not include the definition of virtual object. In absent of legal definition, only using of doctrine definition is possible now.

The dictionary defines a "virtual object" as the "social object, which is does not exist as a material, factual thing, actively participating in social processes" [19].

Virtual objects cannot be felt, touched, they just could be seen, by using of peripheral computer device, indicating a moving or stationary images, created by the personal computer and processed by the computer graphics board. Virtual objects have the external expression as graphical objects or as a part of computer code [20].

V.V. Archipov pays a significant attention in his works to the research of virtual spaces, virtual reality and the relevant virtual objects. Defining the term "virtual world", he has written that it is a simulated by means of a computer tools the relatively permanent environment, oriented to cooperation between users by means of the digital images [21].

One of the definitions of virtual object is the understanding as some abstract object, whose existence or attributes do not have a reflection in real world [22].

V. Conclusion

Summarizing the mentioned above, we could make further conclusions. First of all, there is no legal definition of a virtual object in the current Russian legislation. Meanwhile, the enforcers use it, when there is no way for the indicating of the phenomenon, existing in the Internet and needing the assessment within framework of certain judicial decision. For example, we have to note the Definition of Supreme Arbitration Court of the Russian Federation dated June 30, 2011 №ВАС-8143/11 on the case № А40-116118/09-104-553, where we could find the term of virtual object.

It is obvious that this problem requires the decision by means of the amendments to the current Russian legislation and the establishment of the term of "virtual object". It should to be start of the constructing of new segment of information legislation, which is regulating the digital economy. The continued delay of the definition of clear "rules of game" in this sphere (by means of legal rules) is the threat of regress of the Russian society. In this case the Russia could remain on the margins of global progress.

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