

Legal Regulation Of Digital Rights In Ukraine

Marianna Bilenko [†], Hanna Ilchenko^{††}, Anatolii Herych^{†††}, Olena Solodka^{††††}, Svitlana Podolyak^{†††††}

maxnik8888@gmail.com

[†]Kyiv Regional Center of the National Academy of Legal Sciences of Ukraine, Ukraine

^{††}State University of Trade and Economics, Ukraine

^{†††}Financial and Informative Law Uzhhorod National University, Ukraine

^{††††}National Academy of Security Service of Ukraine, Ukraine

^{†††††}National Technical University of Ukraine «Igor Sikorsky Kyiv Polytechnic Institute», Ukraine

Summary

In the scientific research, the object of research is a complex of legal relations, which are formed by the use of modern digital technologies. The subject of this work is the novelties of Ukrainian and foreign legislation, norms of international law aimed at regulating social relations in the field of digital rights, as well as doctrinal provisions and materials of law enforcement practice. Within the framework of this work, two types of digital rights are distinguished, those that exist in the law of Ukraine, and the issues of law that apply to legal relations, regarding the turnover of each of them, are considered. Examples of law applied in foreign countries are given for comparison. On the basis of a comprehensive study of the legal framework and positions of scientists, the prospects for the development of legal regulation of digital rights were noted.

Keywords:

human rights, digital rights, the right to access the Internet, the right to privacy and protection of personal data, the protection of human rights

1. Introduction

The use of the latest digital technologies in connection with the strategic orientation of the global and domestic development of the digital economy, the digitalization of various spheres of activity has led to a growing scientific interest in general theoretical and scientific-practical research, including in the field of legal regulation of digital rights. Modern prospects for the development of civil law are largely related to the use of digital technologies in the field of property relations and are determined by the awareness of the effectiveness of the application of the model of civil law regulation of digital rights and the possibilities of civil turnover.

In recent years, the legal regulation of digital rights has been of increasing interest. The relevance of this direction is due to the fact that the implementation of digital technologies is directly related to the need to

reflect objective measures in the legal regulation of digital rights. In legal science, the study of digital rights has become more relevant than ever. This can be explained by the registration of new draft laws that propose changes to the turnover laws, as well as a significant difference in regulation. At the same time, domestic legal science pays insufficient attention to issues of both domestic and international private law in this area, although any turnover in the digital environment is cross-border. In this regard, the authors investigated existing conflicting norms and their correlation with new legal relations, which are a consequence of the turnover of digital rights.

Separate issues of digital rights were investigated in the works of Ukrainian and foreign scientists: I.Ya. Veres, E.O. Galushki, I.V. Davydova, Z.P. Dvulit, I.M. Doronina, Ya.I. Kornagy, H.S. It was reported by E.O. Kharitonov, O.I. Kharitonova and many others.

Today, the state of the Ukrainian information society requires the dynamic development of the legal system, the identification of relevant doctrinal provisions and the comprehensive organization of legal regulation of digital rights.

The new digital reality presents legal practice and legal science with many fundamentally new tasks related to the development of effective tools and models of legal regulation of various spheres of social life.

2. Theoretical Consideration

The concept of digital rights, which originated at the end of the 20th century, has not yet been fully formed. The public-legal nature of digital rights is generally recognized, but their understanding is quite blurred, and the content they form and the nature of the state's obligations to ensure these rights are interpreted differently by different authors. In most scientific publications, the so-called basic digital right - the right to access the Internet - is analyzed, various aspects of

the right to be forgotten are often commented on, while other rights in this category do not attract the same serious research interest. Until now, in the doctrine of international law, there is no single view on whether digital rights should be classified as rights of the first generation (personal and political human rights, inalienable natural rights), second generation (socio-economic and cultural rights) or this is a new generation of rights fundamentally different from traditional ones.

First of all, it should be noted that the legal discourse has recently been enriched with such terms as digital rights of the individual, digital self-determination, the right to the Internet, digital services, virtual reality, cyberspace, digital sovereignty, artificial intelligence, cloud services, the Internet of Things, blockchain, etc. And therefore, a separate interdisciplinary legal institute of digital human rights is gradually being formed.

Digital rights are a relatively new legal category, and therefore their list, definition, and the need to distinguish them causes debate in the scientific legal community. Thus, there is an opinion that the concept of "digital rights" should be considered not as a separate group of human rights, but as a conditional category that covers the peculiarities of the implementation and guarantee of the protection of fundamental human rights on the Internet, in particular, freedom of expression and the right to online privacy. Given the huge role played by the Internet in modern life, the identification of such a category helps to better systematize and study the needs for the protection of human rights in the online environment, the individual guarantees of which are today scattered in recommendations, resolutions and other acts of international institutions [9]. Other researchers consider digital rights to be derived from information rights, but not identical, and emphasize the need to separate them into a separate group [8]. Also, digital rights are understood as the rights of citizens to access, use, create and publish digital works, the right to free access to the Internet (other communication networks) using computers and other electronic devices [1]

As N. Verlos points out, despite the debatable nature of the problem, the development of digital technologies has a real impact on the development of constitutional human rights, the need for doctrinal rethinking and optimization of regulatory regulation. The author also emphasizes the need to distinguish a separate group of "digital rights", which should include: the right to access electronic devices and telecommunications

networks (Internet), the right to protect personal data, the right to informational self-determination (identification), the right to anonymity, the right on oblivion, the right to free transmission and dissemination of information, etc. [2] At the same time, N. Verlos suggests taking into account in the process of constitutional and legal modernization the possibility and necessity of realizing fundamental human rights, which are already defined in the Constitution of Ukraine, but are implemented in the conditions of digitalization [3].

As for the very concept of "digital human rights", there is no single approach to this definition, since the need for it arose relatively recently, therefore it does not have legislative consolidation, and there is also insufficient development at the scientific and theoretical level.

Digital human rights are a separate group of human rights that are related to the use and/or are implemented on the Internet using special devices (computers, smartphones, etc.).

Among them we can include:

1) the right to access the Internet - is that everyone has the right to equal access and use of a free and safe Internet;

2) freedom of expression online – means the right to freely express one's views, search, receive and share information online;

3) the right to privacy and protection of personal data - everyone has the right to online privacy and protection of personal data on the Internet (social networks, filling out Google forms, etc.);

4) the right to freedom and personal security online – the realization of this right requires a mechanism of protection against illegal actions, i.e. certain state guarantees of protection against physical and psychological violence or harassment, speech of intolerance, intolerance and hostility, discrimination in the online environment; the state should promote the development and functioning of safe Internet technologies;

5) the right to peaceful assembly, association and/or use of electronic tools of democracy – means that people should have freedom of association and use any services, websites or applications to create, join, mobilize and participate in social groups and associations;

6) the right to digital self-determination, or the right to disconnect from online, or to be forgotten online - a person as a user in a system (social network, forum,

online discussion) has the right to determine a name (identifier) or other a priori at his own discretion information about her that she will use in the system.

In view of the need for legal regulation of digital rights, the Council of the European Union (Council) and the European Parliament concluded an Agreement on Amendment 138 to Article 1(3)(a) of Directive 2009/136/EC (Framework Directive), which states that Internet users enjoy the presumption of innocence and have the right to privacy on networks. Regarding the access and use of services and applications using the electronic communication network, states – members of the European Union must observe the basic human rights and freedoms, as they are guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms, as well as by the general principles of European Union Law [4-5].

On the same issue, the European Parliament stated that the right to access the Internet is also a guarantee of the right to access education. In particular, on March 26, 2009, the European Parliament stated that access to the Internet should be provided to all citizens, equivalent to providing access to education, emphasizing that such access should not be denied or used as a sanction by authorities or private companies [6]. Although it is not yet known how the EU member states will implement the above Directives into national legislation.

The Verkhovna Rada of Ukraine has registered a draft of the Law "On Amendments to the Civil Code of Ukraine, aimed at expanding the range of objects of civil rights" No. 6447, which proposes to provide that the objects of civil rights are material and digital things.

A material thing is an object of the material world, in respect of which civil rights and obligations may arise. According to the project, a digital thing is an object of the digital environment that is in circulation only in digital form, and in respect of which civil rights and obligations may arise. Digital things are virtual assets, digital content, online accounts, money and securities that exist solely in digital form. The provisions of the Civil Code on tangible things apply to digital things, unless otherwise established by this Code, other laws or is not the essence of a digital thing.

The draft law provides for amendments to the Civil Code, in particular, Articles 115, 177, 179, which define among other objects of civil rights digital things, their

essence as a subject of the digital environment, which is in circulation only in digital form, and in respect of which they can civil rights and obligations arise, and the circle of digital things, which are virtual assets, is outlined.

The explanatory note states that the continuous and everyday development of the latest information technologies led to the emergence of new objects of civil rights, which are intangible goods that exist exclusively in digital form and are designed to satisfy certain interests of participants in civil legal relations. Today, such objects include virtual assets, digital content, online accounts, and money and securities that exist exclusively in digital form [7].

The above allows us to say that the new concept of "digital rights", which has recently entered domestic civility, has nothing to do with the concept of digital rights that is being formed in international law. Concept of digital rights, should be considered as a special branch concept, separated from the mentioned concept. The need to introduce the concept of "digital rights" was initially explained by the desire to find a term "more in line with domestic legal traditions".

Thus, it should be assumed that binding digital rights are a function in digital format of a requirement to obtain a given result, perform actions, transfer property rights, etc. The creation and functioning of digital law is determined by the information system and its requirements. In other words, digital rights are rights that are established in a certain information system and that function according to the rules of a certain information system.

The above allows us to say that the concept of digital rights is being formed, touching on new sectoral human rights. To date, it is difficult to unequivocally state whether digital rights are a new generation or a subspecies of human rights exercised in the digital environment, which "includes information and communication technologies, including the Internet, mobile and related technologies and devices, as well as digital networks, databanks, content and services", or is it only a means of realizing traditional human rights in this environment. However, it is safe to say that the concept of digital rights has every reason to claim the role of one of the main concepts of international law contributing to the legal provision of global sustainable development.

Conclusions

In this regard, the authors consider the concept of the civil law model of regulation of digital technologies and digital rights recognized by law as a special institution of civil law, the subject of which is regulation of property and non-property private law relations related to the emergence (recognition), transition (transfer), other disposition of digital property civil rights to digital objects created as a result of the use of digital technologies and which are in digital form in the form of electronic or other technical means.

The peculiarity of the subject of civil legal relations in the field of digital rights is due to the intangible nature of digital objects created using new technologies (tokens, cryptocurrencies, other property), digital rights to which are recognized by law. Digital rights have potential or actual economic value, which allows them to be characterized as property rights. The disposal of digital rights is carried out in the form of contracts (deeds) between subjects according to the rules that may be established, including by a third party (site owner, operator, technological online platform-aggregator).

Considering the above, we can state that there is a large number of digital rights that require regulatory regulation, and some of them are fundamental in terms of their importance and meaning for people.

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