

On the subjects of rule-making in the field of regulation of relations in the electronic space and the place of Internet norms in the systems of international and domestic law

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Abstract: an attempt is made to differentiate (identify the potential of opportunities) of domestic and international legal regulation of the rules of behavior on the Internet, corporate and individual normative regulation of relations in the field of the Internet space, to determine the specifics of subjects and objects of regulation of the Internet sphere by means of international and state law. Criteria for the institutionalization of the law of Internet norms in the legal system of the state are formulated (based on the author's interpretation of the Russian experience).

Keywords: Internet, Internet relations, the state as a subject of legal regulation of relations in the electronic space, subjects of rule-making in the field of regulation of relations on the Internet.

In the Russian scientific literature, various points of view are expressed regarding the range of subjects and methods of effective regulation of Internet relations. According to a study by the Russian scientist I.M. Rassolov, a specialist in information law, in the foreign scientific literature express "quite polar positions on the mechanism of rule-making and the range of subjects of rule-making in the field of regulating relations in the electronic space. Thus, some researchers believe that market self-regulation should operate in the Internet system; it is necessary to abandon any "external" interference in the Internet, since "cyberspace is a new territory that is qualitatively different from physical space; regulators and judges of the "real world" are doomed to be ineffective in this "fluid" and elusive world, existing without formalism of documents and without physical boundaries".¹ According to the position of other authors, the regulation of relations in the virtual space is necessary, but this should be, as a general rule, corporate and individual regulation: this should be done not by the state, but by Internet users - first of all - economic participants in Internet relations. According to the definition of the supporters of this position: "states, their institutions and institutions are too slow, do little for the technical and commercial development of the Network and have powers only within their borders"; therefore, the best subjects of regulation of relations on the

¹ Rassolov I.M. Law and the Internet / Theoretical problems / 2nd edition, supplemented, 2009. P. 19

Internet are enterprises, practitioners, specialists, "interested in ensuring that their profitability is based on consumer confidence. It is they who should propose, develop, even oblige to introduce moral and ethical codes into the Internet sphere and introduce ideas of self-regulation, which the law and jurisprudence can then legislate"². Finally, another opinion is expressed that: "the existing democratic institutions and legislative processes fully reveal their consistency in regulating the information environment. And only they alone are legitimate to discuss and resolve legal issues facing the theory and practice of the Internet"³.

Regarding the participation of such subjects as enterprises and practices in the regulation of relations on the Internet, Russian researchers give such an argument that it is relevant for the proper identification of the subjects of relations that interact in the electronic information space. For example, V.B. Naumov (a researcher from the Russian Academy of Sciences) writes that: "for an initial assessment of the composition and boundaries of new institutions, legal science should use those interdisciplinary knowledge and solutions that are offered by economic sciences and are enshrined in strategic documents of the state. So, the need to establish the institution of identification found a response in the indication in the Action Plan in the direction of "Normative regulation" to the need to develop a draft federal law aimed at unifying the requirements for identification, expanding opportunities and methods of identification"⁴. It is also noted that: "in the field of information technology, one should take into account the impact on legal norms of technical norms ... the peculiarities of technical standards and protocols determine the presence of different identifiers for users, information itself, technical devices. This affects the conditions for the use and processing of information when identifying subjects of information legal relations"⁵.

In the study by M.B. Kasenova (from the Moscow Institute of International Relations) also speaks about the existence of grounds for the recognition and legitimation of corporate and individual regulatory regulation. The author writes that: "The Internet is not a kind of "single" object of regulation, since it is a multi-level technological network, the global technological infrastructure of which ensures its cross-border operation and use, which must be taken into account in the legal regulation of relations in the studied area. The technologically complex global multi-level structure of the Internet encompasses several infrastructural levels, ranging from the lowest "physical" level (fiber-optic communication channels, satellite channels, radio frequency spectrum, etc.) to the "highest" level of Internet applications (websites, social networks, postal services, etc.).

² Rassolov I.M. Spec. work. P. 20

³ Rassolov I.M. Spec. work. P. 20

⁴ Naumov V. B. Naumov V. B. Law in the era of digital transformation: in search of solutions. // Russian law. Education, practice, science. 2018. №6 (108P. 6-7). P 6

⁵ Naumov V.B.) Spec. work. P 7

At each of the technological infrastructural levels of the Internet, there are relationships that arise about various and rather specific objects of regulation⁶.

In the context of the issue of the subjects of rule-making in the field of regulation of relations in the electronic space, the issues of the relationship between the subjects of international and domestic law are relevant. In the Russian scientific literature, slightly differing opinions are expressed about the possible potential of the respective levels of regulation. So, according to V.B. Naumova: "The branches of law turned out to be not ready for technological globalization, which led to a conflict of jurisdictions ... in Russia and in any developed state, law enforcement is faced with questions about which state's laws to apply to information legal relations that "begin" on the territory of one, and "end" on the territory of another. The unresolved problem of the jurisdiction of the information space leads to a "race of laws", when states begin to extend the effect of their own laws to any information legal relationship where there is a national element, for example, a resident of the country, to whom information can be targeted, or the placement of an information server within the state's borders. Analyzing the current legislation, we can conclude that the normative description of digital processes lags far behind the actual development of digital institutions⁷".

Other authors, in connection with the characteristics of legal regulation, also note that: "The law in many respects lags behind the actually established relations⁸". According to A.O. Kozyreva and T.N. Mikheeva: "New technologies change the established legal relationship so much that we are now starting to regulate not from legal relations, but from technologies. Never before have we planned to regulate, for example, the very technology of storing information in databases. Now we need special legal regulation for technologies such as blockchain, artificial intelligence and the Internet of things".

In order to comment on the position of the above authors, we note that there is also a deficiency in international legal regulation, although: "the need for the recognition and protection of digital rights has been proclaimed in a number of international legal acts. Thus, the Charter of the Global Information Society (Okinawa, July 22, 2000), adopted by representatives of the eight leading world powers, including Russia, proclaims the need to strengthen relevant policies and regulatory frameworks that promote cooperation to optimize global networks and combat abuses that undermine the integrity of the network, to narrow the digital divide, invest in people and ensure

⁶ Kasenova M.B. Problems of legal regulation of the cross-border use of the Internet. M. MGIMO-University. 2015P 21

⁷ Naumov, V.B. Spec. work. P 5

⁸ Quoted from the article: Mikheeva T.N. On the issue of the legal framework for digitalization in the Russian Federation // Bulletin of the University named after O.E. Kutafin 2019. № 9 (61). P.115

global access and participation in this process⁹". The UN General Assembly Resolution № 68/167, adopted on 18 December 2013, "The Right to Privacy in the Digital Age", "calls upon all states to: a) respect and protect the right to privacy, including in the context of digital communication; b) put an end to violations of these rights and create conditions for the prevention of such violations, including by ensuring the compliance of national legislation with their international obligations"¹⁰, etc.

Referring to the discussion in the scientific doctrine of the issues of correlation between the national-state and international legal levels of lawmaking, M.B. Kasenova, in her study on the relationship between domestic and international law, draws attention to the fact that national, domestic regulation of cross-border relations in terms of the time of its emergence is ahead of international legal, which, in our opinion, is characteristic of international law in full: international law as a whole "grew" on the basis of the advanced legal experience of national states, from domestic rules. M.B. Kasenova notes that: "The problem of legal regulation of the Internet for quite a long time was limited to the national level and the international legal context of regulating the use of the Internet remained outside the legal analysis ... although due to the global nature of the Internet, the specifics of the cross-border functioning of the technological infrastructure of the Internet, the Internet should have become a natural object of interest in international law. In any case, it is obvious that the cross-border functioning and use of the Internet objectively affects the paradigm of international legal interaction between states and international organizations, as subjects of international law¹¹". The named author also focuses on the evolution of scientific views on the purpose of the Internet, described in a fundamental study by D. Goldsmith and T. Wu "Who Controls the Internet?: The Illusion of a Boundless World", published in 2006 by W. D. Goldsmith and T. Wu: "Global views" of the Internet cybertopians, who believe in the creation of a separate cyber-state, in which like-minded people "realized the dream" of an open, interacting and creative virtual world, and people who are worried about the "dark side of cyberspace", which gives shelter to pornography, fraud, terrorism and anarchy; stages of "transformation" of the Internet from the search network into the main means of communication, and so on. The main fundamental conclusion that D. Goldsmith and T. Wu come to is that "all our assumptions about the future of the Internet were wrong, since "territorial regulation is possible and in fact in demand, "the Internet"

⁹ Valery Zorkin (Chairman of the Constitutional Court of the Russian Federation). Reflection on the sidelines of the St. Petersburg International Legal Forum. Power Law in the digital world. Russian newspaper - Stolichny Issue № 115(7578) 29.05.2018 17:58 Heading:

¹⁰ Quoted from the article: Valery Zorkin. Spec. work.

¹¹ Kasenova M.B. Problems of legal regulation of the cross-border use of the Internet. M. MGIMO-University. 2015. P 21

should be considered as a virtual space, in which territorial law, state power and international relations play the same role as technological inventions¹²".

In addition to the above, another aspect in the development of the scientific theory of rule-making in the field of regulation of relations in the electronic space is associated with the issue of determining the place of Internet norms in the systems of international and domestic law. Various points of view have been expressed in the scientific literature regarding the "industry anchoring" of Internet norms. According to one of them (quite widespread in Russian science): "at the present stage of development of the information society, the use of infocommunication technologies and information resources is becoming increasingly important. Information, being a convergent and backbone resource, "provides all the processes of society, enriches and harmonizes relations in all areas of its life" [Bachilo 2016: 6–7]. It is worth agreeing with the deep analogy proposed by M. A. Kudryavtsev, who compared information law with the "conductor of the orchestra" of the legal system, that is, one of its most important organizing principles [Kudryavtsev 2018: 100]. The role of information law in the processes under consideration could become system-forming, but this has not yet happened, and it seems that this branch of law at the present stage of development of legal science is underestimated". However, not all authors agree with this point of view.

The reason is that in the Russian Federation there is no single special act regulating Internet relations and types of activities on the Internet, however, there are separate norms (groups, blocks of norms) concerning the status of participants in virtual relations, included in the legislation regulating the relations of subjects in the traditional living space. The legal norms on the Internet are thus "torn" between different branches of law and "scattered" in the texts of various sources of Russian law.

In legislation and scientific doctrine, special attention is paid to the issues of proper legal registration of digital economic relations¹³. In the Russian Federation, there is a Program "Digital Economy of the Russian Federation" adopted in order to implement the Strategy for the Development of the Information Society in the Russian Federation for 2017 - 2030.

Let us also turn to the issue of the constitutional and legal foundations of the Internet. The Russian legal basis for regulating relations on the Internet is the principles and norms of the Constitution of the state. The concept of "Internet" is not mentioned in the text of the 1993 Constitution of the Russian Federation. However, the Constitution provides for a norm according to which: "Everyone has the right to freely seek, receive, transmit, produce and disseminate information in any legal way. The list of information constituting a state secret is determined by

¹² Quoted from the book: Kasenova M.B. Spec. work. P 20

¹³ Vaipan V.A. Legal regulation of the digital economy // Appendix to the journal "Entrepreneurial Law" 2018:№1. P. 12

federal law. Freedom of the media is guaranteed. Censorship is prohibited" (clause 4 of article 29 of the Constitution of the Russian Federation of 1993). At the same time, there is a "constitutional segment" in the sphere of regulating relations in the Internet space in the Russian Federation, since, as V.D. Zorkin rightly notes: including judicial, acts) universal human rights guaranteed by international law and constitutions of states - in relation to the needs of a person and a citizen in a society based on information. The task of the state - on the basis of the Constitution and taking into account these international documents - is to recognize and protect the digital rights of citizens from all kinds of violations, while ensuring the constitutional and legal security of the individual, society and the state".

In addition, the issues of legal regulation of the Internet space are related to the fundamental principles of the constitutional system, formulated in Chapter 1 of the Constitution of the Russian Federation, including: the principles of state sovereignty and state security, the unity and territorial integrity of the state, a single economic space, etc. attention to the FZ "On the Security of the Critical Russian Federation" adopted in the Russian Federation (dated July 26, 2017 № 187-FZ), designed to ensure "the stable functioning of the information infrastructure when carrying out against its computer attacks" (art. 1 FZ).

As for the place of Internet norms in the information law system of the Russian Federation, there are grounds for formulating a hypothesis about Internet law as a sub-industry or institution of information law according to a number of criteria. Firstly, although in the Russian Federation there is no single special normative act regulating Internet relations and types of activities on the Internet, however, the institutional (or sub-industry) self-determination of the rules of Internet law in the domestic legal system is the FZ "On Information, Information Technologies and Protection information" (dated June 27, 2006 № 149 - FZ, as amended and supplemented). Numerous amendments and additions to the FZ "On Information, Information Technologies and Information Protection" (dated June 27, 2006) concerning the regulation of Internet relations, in our opinion, have largely changed the overall volume and balance of legal regulation implemented by this law. therefore, there is reason to say that the FZ "On Information, Information Technologies and the Protection of Information" (dated June 27, 2006), in fact, can be characterized as a special law on the Internet. The corresponding expansion of the subject of legal regulation (due to Internet norms), in our opinion, could be reflected in the expansion of the name of the Federal Law. The participants in Internet relations include specific categories of subjects, the conceptual apparatus of Internet law is specific, as well as specific sanctions and procedures for applying legal liability measures for violations of Internet norms. The organizational criterion through which Internet relations arise as objects of regulation by the norms of Internet law - electronic information technologies - is also specific.