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Network law in virtual space (descriptive context)

Abstract

The article is devoted to the basic idea: the network state should correspond to the *network law*, the network properties of the law are inherent in its communicative nature. The mechanisms are shown that allow to realize the essence of the right as a network right. The Russian specificity of the application of network law is analyzed on the example of the Law of the Russian Federation on the sovereign Internet of May 1, 2019.

General approach

First of all, there are many questions in the disclosure of the problem. Therefore, its disclosure carried out in general terms. This mainly concerns the conceptual definitions and features of the legal nature of social networks.

For example, «VKontakte», Facebook and Likedin are legal entities based on usage agreements. «VKontakte» is a limited liability company. Facebook is a joint stock company. The user agreement offers a set of services in exchange for information placed on personal pages. The presence of interconnected social relations is a feature of the resource compared to other sites.

These networks require users to provide reliable data about themselves. Anonymity is not welcome, sometimes prohibited. Professionals are encouraged to use the term "member" and not "user." The information basis is made up of individuals and organizations that form its content. Some lawyers consider it controversial that a member of a social network is a consumer of information and services offered by the owner of the resource. But the participant himself places his profile on the social network. As a result, a distinctive feature of a social network, according to a number of specialists, is the existence of a contractual relationship between the owner and the participant. Here the question arises about the legal nature of the user agreement, as the contract of accession («VKontakte» is clearly established). Social network resources, denoting the agreement as legally binding, imply the limitation of their responsibility both in terms of services and in relation to personal data. Their owner of the resource can use at their discretion.

For example, the Facebook user agreement states that the participant provides a non-exclusive, transferable international license to use P-content. He posts it or creates it using Facebook. At the same time, the participant (user) agrees that his personal information will be redirected to the USA and processed there. That is, this personal data is outside the jurisdiction of the state in which the user (participant) lives. Protecting them in case of un-

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authorized use of his information is complicated by the fact that in the user agreement the site owner is not responsible for the information posted on other sites.

The problem of responsibility in social networks today is only a search character. The importance of this is due to the restriction of the rights of the subjects of Internet relations, both the participant and the owners. According to lawyers, it is advisable to consider the establishment of the dual legal status of a social network. First, there will be a limitation of the mutual responsibility of owners and users. Secondly, it will be possible to control the legality of the actions of the authorities. In this case, the institution of self-regulation is important. It is already technically developed and operates through moderation, administration, etc. But due to the lack of a legal decision, these proposals of lawyers cannot be implemented and ensuring legal order in this area remains in question. The mechanism for controlling the placement of information should be for both commercial and political purposes. It is only formulated. The legal nature of the user agreement is not defined.

The term "social network" is not defined either. The law lacks a clear definition of it. The word "social" is important here, as social networks are part of civil society. A number of experts speak of the need to limit the term "social" with reference to the Internet environment. The term "owner" in relation to social networks is also absent in the legislation. The definition of the term "user" is absent in the right sense. A person using information technology is primarily a consumer. What makes him the most vulnerable member of the relationship.

Lawyers point out the problems of the gap between the development of information technology and holders and users of information resources. There is a gap between psychology and the ideology of information technology developers and those who want to get this information.

Attention is drawn to the fact that information in social networks is available not only to the administrator, the site owner, but can also be used by an unlimited number of people. Including for illegal purposes. There is no clarity in warning users about their responsibility. No answer and responsibility of the owners of Internet resources to users. However, the user agreement includes a clause on compliance with the law of the information that is posted by the user. In these cases, the administration imposes liability for the violation only, within the framework of the site, on those users who by agreement accept all risks yourself. Responsibility of website owners to users is not regulated by regulation.

Thus, among lawyers, the *Russian legislation is lagging behind the development of social networks*. Formed two main problems: the expansion of the scope of human activity in the virtual field and tight regulation by the state. Power vertical loses to social networks. Therefore, the current law under the influence of information and communication technologies is transformed into a completely different system. Namely - in the network right.

Network law is a new direction in law

In science, it is noted that it is necessary to rebuild communicative, network law, as opposed to distributive law. Distributive law does not correspond to the very communicative nature of the Network. The development of the state and law is closely interrelated; the



network state should correspond to the network law. Network properties of law are inherent in its communicative nature. Therefore, it is necessary to develop ways to implement the original essence of the right as a network right. And this should permeate the entire system of the state and society with networks of laws that must be implemented as they are formulated. Hence, one of the main goals of the modernization of law is to enhance the communicative properties of law. This is facilitated by the formation of network rights and legal connections of the individual and the state through social networks.

Network law is a new phenomenon in networks, which is a system of norms regulating social relations in electronic networks of various kinds and (or) with the help of electronic networks. As a result, the legal content of the construction and operation of the network is fixed. The category of network law helps to reveal the essence of law, which, as mentioned, is the network law. That is, designed to unite the state and its subjects with networks of legal ties. For example, vertical (public law), horizontal (private law) and their various combinations. Therefore, one of the promising tasks of network law is law-making in the network mode. A statutory right act can be created online; a request for this could come from the subjects of the right of legislative initiative, and from other interested subjects. Being involved in network law-making would create effective and long-term laws. They would not require changes or additions due to the inclusiveness of the network approach.

It is believed that the genesis of a new network branch of law is manifested in such a regulation that cannot be covered by other branches of law. The formulation of *an independent legal subject*, which can be called a new branch of law, is required.

Problems in the lawmaking of network norms.

The lack of development of the legal subject of the aforementioned new legal branch affects the legislative quality of the accepted network norms. A good example of this is the Federal Law of the Russian Federation on the Sovereign Internet of May 1, 2019.

From the granularity point of the “sovereign Internet” technology, involves the creation of a giant autonomous local network. The network is really moving towards *decentralization*. But the conditional center falls on a specific device, and not on the provider. The network with its thousands of nodes depends on none of them. An attempt to build a hierarchical structure is doomed to failure. According to commentators, the state, responding to the sphere of life from the standpoint of paternalism, will not succeed as a result.

Can the conditional America disable the Internet in the Russian Federation? It can not, evidence of this - every second exchange of cyber attacks between the United States and China. Is it possible to make a conditional Rostelecom a single provider in the Russian Federation? It is impossible: the volume of state participation in business has long been at its limit, further expansion may lead to economic collapse. Can I block Facebook, Twitter, Google or Telegrams? It is impossible, an attempt to block the last messenger turned into a compromise of the relevant department.

In general, the following conclusions were made in analytics:



1. The legislator fundamentally does not understand the subject of regulation and has no idea how the modern Internet works.
2. Most of the provisions of the project leading to the opposite effect of the stated. Centralization of communication network management leads to a greater vulnerability of data networks than currently exist.
3. The law does not disclose how to achieve the stated goal of "counteracting external threats."
4. Most provisions are costly to implement the law. However, the law does not involve budgetary injections.
5. The law is contrary to federal law. For example, the right of legal entities to enter into contracts. Contradicts the basic principles of functioning of the Internet *centralization* network instead of equal participants of information exchange.

But the difficulty is different. It is that the Government of the Russian Federation supported the concept of the law, although it indicated legal uncertainty. The documents do not explain what threats to the stability of the functioning of the Internet in question. In what cases can be carried out centralized control of a public telecommunications network.

The conclusion suggests one: you can not trust the unprocessed law, in which there are no criteria for disconnecting the Internet. This is due to a real gap in network law.

It is obvious that in no country, including the Russian Federation, the Network will be left unattended by the authorities due to its high coverage of citizens. This refers to the public and political life. The Internet needs regulation. At the same time it is important that the legislation, namely the network law, in the field of the Internet lies at the junction of law and policy. This directly affects the interests of society, the rights and freedoms of its citizens. Therefore, it is impossible to study the problems of network law in isolation from the philosophy of politics, political science and sociology. In practice, any law in this area causes a wide resonance in society. When adopting a law aimed at regulating the behavior of users online, the state is accused of violating the rights and freedoms of citizens. It is considered to be social networks a territory of freedom. Here it is important for the state to be aware of the measure of control in this area. However, to anticipate the consequences of the adoption of a law. Introduce full control on the Internet is seen only theoretically. There are examples showing that it is almost impossible to completely block and remove a resource from the Web. There are many ways to bypass the lock. Therefore, the state that intends to restore order in the online environment of their country should be borne in mind not only prohibitive measures, but rather regulatory ones. For example, it is worth negotiating with copyright holders whose rights are violated on the Internet. Or, in return for the requirement of compulsory registration for bloggers, offer them additional opportunities that registration will give them. The Internet is an environment that can only be adjusted through a real dialogue with the Internet community. And here everything depends on the development of network law.

It is important to note the following. The main issue in shaping the network law system is not in legal and technical details, high management level, etc. Everything depends on whether the state implementing the network law system will work in the interests of the "network people". In this sense, according to analysts, network law will be a tool with which



you can (1st option, positive) transform the country in an accelerated mode. At the same time, she returned to her the status of the former power through the achievement of the well-being of each citizen individually and society in general. Or (2nd option, negative) turning it into a network community, well managed through microchips and electronic networks. This question is out of the right subject. But it should be one of the essential functional features of network law, which has yet to be developed.