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HUMAN RIGHTS IN THE INTERNET: SOME PROBLEMS AND FOUNDATIONS OF INTERNATIONAL LEGAL REGULATION

The article deals with topical issues such as the international legal regulation of certain aspects of protection of human rights on the Internet, in particular the right to privacy, e-mail, as well as the issues of protection of personal data of network users.

Keywords: human rights, personal data, spam, international legal regulation.

Problem statement. Scientific and technological progress has accelerated the growth of internationalization of the economy and other spheres of public life. In connection with the transition to a post-industrial phase of development of the society characterized by the receipt and consumption of information and communication services, nowadays appear global problems in the field of information defence on the Internet and the resolution of which depends directly on the proper functioning of public relations.

Analysis of recent research and publications. At the last time there has been a dynamics in the settlement of relations within the Internet space. By writing the article were used Ukrainian, Russian and American authors: V. Naumov "Law and the Internet: Essays on Theory and Practice", A. Sergo "Internet and Law" and I. Rassolov "Law and the Internet", A. Kubah "Intellectual Property Rights on the Internet", S. Sudarnikov "Intellectual Property Rights", D.R. Johnson "Law and Border – The Rise of Law in Cyberspace," J. R. Reinberg "State Regulation Network and Making Law in Cyberspace "and others.

Paper purpose. The purpose of this paper is to examine some issues related to human rights on the Internet, to study certain aspects of regulation these relations, to provide general recommendations for their resolution. We attempted to determine how international law can effectively regulate the relations associated with the operation of the network and how important this regulation in

contemporary society. We have tried to form a general model of regulation of this aspect.

Paper main body. Today the Internet space needs the normal regulation of the relations related to the implementation of such rights of Internet users, as privacy and intellectual property rights. The cyberspace is of global nature; therefore, the methodology for the solution of the corresponding problem should not be traditional.

Frequent disputes rise up at the regional and international level, what force to think about the mechanism of realization of law enforcement functions. Many authors are inclined to believe that the Internet space does not need to be regulated but there are another point of view what states that the permissiveness and the comprehensive nature of the Internet can trigger a boom of cybercrime.

This "cyberseparatism" characterized by the absence of borders in cyberspace, and any territorial force based on the state regulation is doomed to fail. The Internet seems to exist everywhere and nowhere. Speaking about legal regulation of the Internet a sufficiently important aspect is that it should be implied directly to the regulation of relations themselves but not to the Internet. It is only a way or medium of occurrence of these relations.

The Internet is the way of transmitting information about the world, its objects, processes and phenomena that is objectified in a form that enables their computer processing [1, p. 45].

The Internet is a way to transmit information in the files and documents. The Internet enables users to create and implement information. It should not be lost from sight the existence of a supranational nature of the Internet, open and universal access to it and the lack of a single owner of the network.

The subject of the dispute is whether a state law should be applied in a particular case. This base is one of the reasons why it should not be copied the state regulation mechanism, as intra-law would be applied only to those who are in the territory of that state, as well as the Internet – extraterritorial, then the "Internet citizens" at some point may be confused about where the jurisdiction of a state

ends and begins another jurisdiction. On the other hand, the solution may be to create a protection framework from Internet users as a supranational body. It seems more reasonable, however has its drawbacks. How to choose that law enforcement, how effective they will be seized of the matter, whether each sphere will be given to a self-regulation and what are the penalties? [1, p.1].

It seems that to solve these issues it would be necessary to begin exploration these relations in the framework of national law and then to develop a model which will be applied at the international level. Do not miss the possibility of information and digital divide [2, p. 7]. It is advisable to talk about the intersection of the two above methods of protection based on the machinery of government and is reflected in cyberspace via specially delegated persons.

In this situation each state should develop fundamental importance to its own position in relation to regulation of the Internet, activate participation in the development and adoption of international instruments in this field. Today there is no country in the world with perfect codified law relating to the Internet. In some countries only particular issues have been developed conjugated with civil and criminal law. Other countries have gone the other way, through the regulation of specific issues but the mechanism works only if it is not beyond one state. National law varies from the maximum interference to a very strict censorship that is applicable in countries such as Cuba, China, Vietnam and others. However, there are some countries where certain types of content are prohibited.

There are number of issues related to human rights on the Internet, protection personal data and compliance with copyright protection. This range of issues requires timely decisions at the universal level. There are increasing cases of cyberterrorism, piracy, pornography. The above offenses indicate the need to tighten control over the network users.

Currently regulatory conflicts in cyberspace are associated with a worldwide availability of data on the Internet that harms the protection of fundamental values of the constitutional guarantee of freedom expression in those states in which data are available (many content providers are located in the US) [1, p. 11].

One of the most common intellectual properties that are harmful due to illegal copying is audiovisual works. Unlike trademarks and domain names audiovisual works do not have state registration and/or other equivalent protection system (whereas trademarks are registered, domain names are fixed by domain registrars).

Second, the fixation of rights violations to these objects is the most complex because of its dynamic structure. For example if to prove the infringement of a trademark in the network is sufficient to fix the corresponding web page, in the case of audiovisual work is necessary to prove its use, i.e. fixation viewing product is much more complicated than locking static objects.

Most of the objects that make up the site, as site graphic design, photos, graphics, animation, text content, etc. belong to the group of objects of copyright and therefore, the legal regulation of relations connected with the use of the site content is carried out on the basis of the legal rules that are applicable to the copyright [1, p. 2].

Another problem arising in the use of e-mail is spam. Spam – it is not strong-willed, unsolicited commercial advertising or other types of messages on the mail address of the recipient.

Many scientists believe if the issue regarding the mailing address of Internet user it is conjugate with the privacy and secrecy of correspondence. Spam accompanies to these types of problems as fraud, fishing, and spreading of viruses. What is the harm caused by receiving spam? Firstly, less obvious but no less important, is that the owner of the Internet mail spends more time searching for correspondence clogged spam. Secondly, spam is not always harmless, often it is malicious in nature, and the recipient can click on the link infected with a virus under the covert letter, which has a detrimental impact on the status of the computer. There is another variant, as well as the Internet link is used in order to copy data from computer carrier. Question about spam remains open, as there is no international instrument that would regulate this issue. The directive number 2002/58/EU of the European Parliament and of the Council "Concerning the

Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector" tries to control these relations. In particular it established a rule that requires the consent of the recipient to receive advertising or other information [2].

Specialists all over the world spent huge efforts to counter sending unsolicited correspondence. In 2006 was created «StopSpamAlliance», the goal of which is to increase the efficiency of international coordination in the fight against spam, as well as the creation of an appropriate legal framework. In addition, in 2004 was a forum known as the London Action Plan. The forum involved government and non-governmental organizations from 27 countries. Participants include organizations that responsible for personal data protection and consumer protection, regulators of TV communications and representatives of the business sector [3].

Not fully regulated are relations associated with cybercrime. An important step in this direction was the adoption of the Budapest Convention on Cybercrime of the Council of Europe in 2001 [4]. The convention gives a non-exhaustive list of acts that have this character it is: illegal access to the information environment, illegal interception of information resources, intervention in the computer system and the information contained in the electronic or magnetic media, forgery and fraud with the use of computer tools, as well as offenses related to child pornography, to violations of copyright and related rights [4, p. 48]. This legal document describes the problem of interaction between law enforcement agencies when the person committed a crime and the people suffered from criminal acts are in different states. The convention defines the rules for the storage of personal information for Internet service providers in case of requesting relevant information to law enforcement authorities.

An unequivocal international standard of privacy in the form of an international legal instrument does not exist, although the right to privacy in general terms is recognized in Art. 12 of the Universal Declaration of Human Rights and Art. 17 of the International Covenant on Civil and Political Rights [6,

7]. The UN has recognized the particular importance of adhering to privacy of persons whose personal information is stored in electronic records through the development of recommendations to the subject which were approved by the General Assembly resolution in 1990 [8].

Fundamental importance in the international context has the directive № 95/46/EU of the European Parliament and of the Council of the European Union "On Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data" from October 24, 1995. One of the provisions of the directive says that the personal data of EU citizens cannot be transferred to other countries, i.e. countries outside the EU, except for countries having their own means of protecting privacy adequate level [9].

Conclusions. Addressing the issues of protection of human rights on the Internet is seen as follows: a) solely on the international level; b) solely on the national and; c) in combination, i.e. the use of international and domestic law. In our view, it is more logical to use a mixed type of control, because separately they are not possible. Due to the fact that the Internet has extraterritorial nature, evident is the need for the adoption of international treaties for the protection of human rights in the web, as it is an international treaty allows most effectively overcome the territorial nature. A positive example of such a settlement was the signing the Budapest Convention on Cybercrime of the Council, as well as the adoption of the EU Directive "With Regard to the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector." However, the development of Internet culture and technology confronts international law with some tasks that require a quick and efficient resolution.

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