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SUBJECTS OF INFORMATION LEGAL RELATIONS: THEORETICAL ANALYSIS

Information legal relations today are quite a familiar phenomenon that millions of people enter into every day and everywhere. The range of subjects, boundaries, volumes and spheres of interaction is constantly expanding and attempts at their legal regulation often do not have time. At the same time, the development of information legislation has progressed far enough today, as evidenced by both international and national law.

However, from a theoretical point of view, information law is not stable. Theorists in this field have not come to the solution of many basic issues, including the subject of regulation, the range of subjects and their legal status in certain situations, the time of the emergence and termination of legal personality and many other aspects, including the concept of Information law as a branch of law.

The presented article attempts to analyze the concept and structure of information legal relations from the point of view of modern aspects of the development of information exchange.

Special attention is paid to the specifics of the legal status of subjects of information legal relations, which is a necessary condition for effective legal regulation of information exchange and ensuring its legality and intensity.

Key words: information, information legal relations, information legal personality, subject of information legal relations, information law, blogger.

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Ақпараттық құқықтық қатынастардың субъектілері: теориялық талдау

Ақпараттық құқықтық қатынастар бүгінде миллиондаған адамдар күнделікті және барлық жерде кіретін өте таныс құбылыс. Субъектілердің шеңбері, шекаралары, көлемдері мен өзара іс-қимыл салалары үнемі кеңейіп келеді және оларды құқықтық реттеу әрекеттері көбіне уақыт өткізбейді. Сонымен бірге, ақпараттық заңнаманы дамыту бүгінде жеткілікті түрде алға жылжыды, бұған халықаралық және ұлттық құқық дәлел бола алады.

Алайда, теориялық тұрғыдан алғанда, ақпараттық құқық тұрақты емес. Осы саладағы теоретиктер көптеген негізгі мәселелерді, соның ішінде реттеу тақырыбы, белгілі бір жағдайларда субъектілердің шеңбері және олардың құқықтық мәртебесі, заңды тұлғаның пайда болу және тоқтату уақыты және басқа да көптеген аспектілерді, соның ішінде ақпараттық құқық ұғымын шешуге келген жоқ.құқық саласы ретінде.

Ұсынылған мақалада ақпарат алмасуды дамытудың қазіргі аспектілері тұрғысынан ақпараттық құқықтық қатынастардың түсінігі мен құрылымын талдауға әрекет жасалады.

Ақпараттық құқықтық қатынастар субъектілерінің құқықтық мәртебесінің ерекшелігіне ерекше назар аударылады, бұл ақпарат алмасуды тиімді құқықтық реттеудің және оның заңдылығы мен қарқындылығын қамтамасыз етудің қажетті шарты болып табылады.

Түйін сөздер: ақпарат, ақпараттық құқықтық қатынастар, ақпараттық құқықтық субъектілік, ақпараттық құқықтық қатынастардың субъектісі, ақпараттық құқық, блогер.

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Субъекты информационных правоотношений: теоретический анализ

Информационные правоотношения сегодня это вполне привычное явление, в которое миллионы людей вступают ежедневно и повсеместно. Круг субъектов, границы, объемы и сферы взаимодействия постоянно расширяется и попытки их правового регулирования зачастую не успевают.

Вместе с тем, развитие информационного законодательства сегодня продвинулось достаточно далеко, о чем свидетельствует и международное и национальное право. Однако, с теоретической точки зрения информационное право не стабильно. Теоретики в данной области так и не пришли к решению многих базовых вопросов, в том числе и о предмете регулирования, кругу субъектов и их правовому статусу в тех или иных ситуациях, времени возникновения и прекращения правосубъектности и многих других аспектов, а том числе и понятию Информационного права как отрасли права.

В представленной статье делается попытка анализа понятия и структуры информационных правоотношений с точки зрения современных аспектов развития обмена информацией. Особое внимание уделено специфике правового статуса субъектов информационных правоотношений, что является необходимым условием эффективного правового регулирования информационного обмена и обеспечения его законности и интенсивности.

Ключевые слова: информация, информационные правоотношения, информационная правосубъектность, субъект информационных правоотношений, информационное право, блогер.

Introduction

Information exchange in modern society plays the role of a system-forming factor, connecting various social groups, territorial communities and markets with stable high-speed and mobile mass communication media and communication services. In the context of the development of the information market and the steadily increasing importance of information systems and technologies for all sectors of the economy, without exception, the urgency of improving the mechanisms of legal regulation of information relations is obvious (Alekseev 2008: 9).

Based on the above, it follows that many norms of various branches of law are of an informational and legal nature (for example, the norms of the Tax Code of the Republic of Kazakhstan on declaration and reporting, the norms of the Land Code of the Republic of Kazakhstan on land monitoring, the norms of the Environmental Code on the provision of environmental information, etc.).

At the same time, it is possible to distinguish information relations that are both a means to achieve specific goals and a certain result of information activity (for example, relations arising during the production and distribution of mass media, when using information security mechanisms, when creating and functioning the Electronic Government of the Republic of Kazakhstan and its constituent systems, for example, the tax system, Electronic Court, etc.)

Material and methods

Information legal relations are social relations regulated by law, the subjects of which are carriers of information rights and obligations. An equally broad definition is given by M.M. Rassolov, who analyzes information legal relations through norms, emphasizing that: “Information-parv relations include those social relations that are reflected in the norms of information law and are regulated by them” (Rassolov 1999: 41).

T.S. Izzatov gives a more specific definition, understanding by information legal relations the process of targeted redistribution in society of information about persons, objects, facts, events, phenomena and processes, regardless of the form of their presentation (Izzatov 2002: 11).

As for the features of information relations, then, as V.A. Kopylov believes, they boil down to the fact that these relations:

- arise, develop and stop in the information sphere when information is accessed;
- mediate the state policy of recognition, observance and protection of information rights

and freedoms of man and citizen in the information sphere;

- reflect the peculiarities of the application of public and private legal methods of legal regulation in the exercise of information rights and freedoms, taking into account the specific features and legal properties of information and information objects (Kopylov 2005: 98).

Attention should be paid to the definition given by O.A. Gorodov, who believes that: "The norm of information law is not regulated by all, but only the most important, fundamental groups of public legal relations that are essential for the interests of the state, society and the individual. These are primarily relations related to the search, receipt, transmission, production, distribution, transformation and consumption of information" (Gorodov 2009: 44).

Regulation of information legal relations with the help of law is carried out by establishing certain information and legal norms, i.e. by establishing rules of conduct for subjects of information relations and applying the norms of information law (Kovaleva 2012: 40). In other words, information relations arise, change and cease in the information sphere and are regulated by information and legal norms. Being a kind of legal relations, they express all the main signs of a legal relationship, namely:

- the primacy of information and legal norms;

- ideological (ideological) character, since the emergence, change and termination of information relations pass through the consciousness of people, primarily such a sphere as legal awareness;

- volitional character, since information relations are always the result of the will of its parties or one of the parties;

- bilateral or multilateral in nature, i.e. it is always assumed that there is a connection between its participants through their subjective rights and legal obligations;

- interrelated, corresponding nature, i.e. it always means that there is a connection between its participants through their subjective rights and legal obligations;

- the presence of information legal personality of the parties in information relations;

- the regulatory role, which consists in the fact that information relations determine the specific behavior of the parties and introduce an element of regularity and order into public practice, forming or determining public will (Bachilo 2003: 178).

A legal relationship is a means by which a norm acquires its real existence (Kovaleva 2012).

However, it must be remembered that the norms of information law cannot regulate all possible relations that exist. We agree with O.A. Gorodov's opinion that: "the inexpediency of legal intervention in certain spheres of life and, secondly, the impossibility of external control over the execution of certain regulatory prescriptions due to the specifics of the object of regulation. For example, it is impossible to regulate the creative process by the norms of law, establish the procedure for creating a work or prohibit the distribution of jokes with a positive effect" .

At the same time, it is necessary to focus on the structure of information legal relations. Informational legal relations, as well as legal relations in general, have a traditional structure (subject, object, content).

The content of an informational legal relationship, as well as other legal relationships, are:

- mutual subjective legal rights binding its participants (determining the possibility of a certain behavior protected by law) and legal obligations (determining proper behavior) – legal ties (legal content);

- a set of real actions for the use and exercise of rights and obligations (actual content) (Lovcov 2009: 3).

The difference is already evident here, consisting in the fact that in information legal relations, real actions are mainly informational in nature, i.e. the actual content of such legal relations is mainly informational in nature (Lovcov 2009: 3).

Discuses and results

According to the subjects, the information legal relationship does not fundamentally differ from other legal relations, since the subjects of the information legal relationship are its legal-subject participants – carriers of subjective legal rights (authorized) and obligations (legally bound), which may be:

- individuals: citizens, foreign citizens, stateless persons, persons with dual citizenship;

- organizations (state bodies, state institutions and enterprises, non-governmental public associations, business organizations, religious denominations, etc.);

- social communities (people, nations, population, labor collective) (Lovcov 2009: 3).

However, this is a very generalized approach and does not reflect the current state of things. The range of subjects is much more concretized and more suitable to the sphere of constitutional law, whereas the sphere of information turnover is mostly transferred to the IT level, which accordingly determines the specifics of relations, their functional circle and the circle of rights and obligations.

In fact, the subjects of ifnormational legal relations are individuals and legal entities participating (involved) in information activities. In turn, information activity is a new concept that, in fact, has not received proper scientific analysis, but at the same time exists as a phenomenon and ensures the implementation of information exchange.

Scientists considering this phenomenon adhere to different positions. At the same time, their opinions are similar regarding the fact that these are spheres of human activity, which is aimed at satisfying various vital interests.

Thus, I.M. Rassolov reveals this phenomenon as "providing real conditions for the development and protection of all forms of ownership of information resources, the creation and improvement of federal and regional information systems and networks, ensuring their compatibility and interaction in a single global virtual space; creating conditions for effective information provision of citizens and other consumers on the basis of state information resources, ensuring national security in the field of information and informatization" (Rassolov 1999).

Bachilo I.L. considers information activity as a professional activity in the field of creation, collection, search, accumulation, processing, storage, distribution, provision and presentation, protection and protection of information resources, information technologies for the use of means of communication, carried out within the framework of the legal status of the subject (Bachilo 2001a)

. At the same time, he identifies three levels of information activity: of a general nature – information support for the needs of all areas of work of the body, organization, employees, employees of any profession and individuals; special – carried out by relevant entities solving problems in the field of mass media and informatization, providing advisory, expert and analytical work for an unlimited range of consumers; specialized – related to solving problems of formation and use of state information resources, technologies and communications in the field of information industry and infrastructure development, implementation of innovations based on information technologies, ensuring information security of society, the state, the individual (Bachilo 2001a).

In addition, analyzing and offering a list of ten conditionally allocated blocks of problems of information legislation and their substantive characteristics in the field of information activity, Bachilo I.L. attributed the specialization of organizations in the field of information activity; activities to ensure the information needs of citizens, the population; information support of local self-government; legal entities and public organizations; information services. Here are also concentrated the norms for regulating the market of information and services; information support in emergency situations; elections, referendums; succession of IR and IP in the reorganization of authorities and organizations; execution of contracts, agreements, contracts and other legal acts, etc. (Bachilo 2000b)

That is, in the broadest sense, information activity is considered as an activity that ensures the collection, processing, storage, search and dissemination of information, as well as the formation of an information resource and the organization of access to it.

The above authors believe that information activity is nothing but a professional activity. At the same time, modern reality inclines us to the conclusion that a huge block of individuals is also engaged in the collection, processing, analysis and dissemination (publication) of information. This includes maintaining your own pages on social networks, which sometimes turns into an active blogging activity. Accordingly, the question arises whether individuals and other non-information organizations are subjects of information legal relations.

In our opinion, of course they are.

Not to mention the Constitution, which enshrines the right of everyone to freely receive and disseminate information in any way not prohibited by law [the Constitution of the Republic of Kazakhstan dated August 30, 1995] and the norms of a number of international treaties, the right of information activity of individuals is also enshrined in a number of special acts, for example, in the Law of the Republic of Kazakhstan dated November 24, 2015 No. 418-V "On informatization". Thus, the Law establishes that the subjects of informatization are "state bodies, individuals and legal entities engaged in activities or entering into legal relations in the field of informatization" (https://online.zakon.kz/Document/?doc_id=33885902&doc_id2=33885902#activate_doc=2&pos=3;-98&pos2=137;-108).

Of course, prominent representatives of individuals as subjects of information activity are journalists, editors-in-chief and other officials of mass media, information and advertising agencies, providing advisory, expert and analytical work for an unlimited range of consumers, etc., but in fact they carry out information exchange on a professional basis, which also corresponds to the opinion of I.L. Bachilo and I.M. Rassolova.

However, one way or another, ordinary citizens are also actively involved in information activities and, in fact, are also subjects of information law. Here it is impossible not to agree with the opinion of V.A. Ukhanov, who in his dissertation research emphasizes: "Information activity equipped with computer equipment and technology, means of individual and mass communication, turns almost every person into a subject of global information interaction" (Uhanov 1997: 98).

But, they mainly act as consumers information. If they switch to active blogging (or similar activities), then this is already a professional activity and falls under the signs of information activity.

At the same time, it is necessary to single out another block of subjects who, by their professional activity, are obliged to ensure the formation of information resources, their maintenance, technical and software support, the development of the information industry, the promotion of information technology, etc.

Accordingly, we believe that information legal relations should be divided into two blocks: 1. Information legal relations related to the implementation of professional information activities and 2. Information legal relations of a different kind, which are mainly related to the destruction of information, that is, non-professional activities. That is, public and non-public legal relations. And the subjects of such legal relations should be differentiated into general, special and specialized. Such an approach is necessary, from our point of view, due to the fact that many issues of legal regulation depend on it, in particular issues of spheres and level of impact, rights and obligations, legal responsibility, etc.

At the same time, a well-founded consolidation of the main provisions of the status of all three categories of subjects, namely the range of their rights and obligations, is required. Whereas it is in the field of information law that these issues have not been properly settled to the end.

If such general categories as the state, society, and a person, for example, a citizen, can be attributed to common subjects. Then special and specialized subjects are already persons who, directly by virtue of their official duties, are involved in the process of information exchange.

The established constitutional principles of freedom to receive and disseminate information are very generalized and are limited by the norms of the Constitution itself and this in no way contradicts the norms of international acts. E.V. Jenakova emphasizes: "A subject of information law becomes a subject of information legal relations when the norms of law unambiguously fix its individual legal characteristics. As is known, the set of features provided for by legal norms inherent in the legal state of the subject of an information legal relationship (information legal personality) depends on the subject of the information relationship and on the nature of information activity. This means that understanding the signs of the subject of information dissemination is important when determining its informational legal personality as a prerequisite for the formation of its informational and legal status" (Zhenakova 2019: 30).

Accordingly, it is necessary to clearly recognize and establish the range of rights and obligations of all participants in information legal relations. This is primarily necessary for the subjects themselves, since the legal recognition of them as a subject automatically ensures the regulation of their interests and ways to achieve and protect them, sets the boundaries and limits of their activities and the grounds for responsibility. At the same time, such legal consolidation is beneficial to authorized state bodies, since the sphere of information exchange is constantly expanding, as well as tools for collecting and analyzing information are expanding, which often creates prerequisites for violating the rights of other entities (for example, illegal sale of a client database, creation of programs for covert data collection and analysis, and many others). In addition, the establishment of a range of issues, criteria for their discussion on social networks and other aspects not only continue to remain relevant, but are gaining more and more urgency due to the fact that more and more people are joining the interactive environment.

Returning to the specifics of the subjects of information legal relations, it should be noted that the modern specifics of the division of labor in the information sphere clearly distinguishes three main categories or stages of information exchange, these are the production of information (copyright), the transfer of information (often, but not always, intermediary activity) and the final destination – the consumer of information. And here the question of the legal status of all three categories arises in the context of an ever-increasing variety of information transmission tools.

In our opinion, it is particularly necessary to address such a problem as bloggers and intermediaries of information transmission.

A blogger is a complex element and the definition of his legal status should ensure and cover all the specifics of his activities. On the one hand, a blogger

is both the author of information and its distributor, as well as often an advertising distributor. In addition, it is a public person who can influence the social atmosphere in society. Accordingly, the status of this subject is complex and given the influence that bloggers have in modern society, the legislator is obliged to regulate in detail the issues of his rights, duties and responsibilities.

The specifics of blogging activity are determined by the fact that a blogger creates a page on the Internet that is (becoming) popular, that is, has a certain circle and volume of users and through this page the blogger expresses his own opinion about things, people, processes, situations, and also the blog has the ability to collect (in open and closed chats) comments from others people and thereby automatically becomes an intermediary for the transmission of information.

Kazakhstan's legislation regulating the circulation of information on the Internet at one time chose a rather controversial direction, the results of which are manifested right now.

Adoption of the Law of the Republic of Kazakhstan dated June 24, 2009 "On Amendments and additions to some legislative acts on information and communication networks" revised the concept of mass media, referring to them, in addition to periodicals, television, radio, documentary films, audiovisual recordings and other forms of periodic or continuous public dissemination of mass media, as well as Internet resources (https://online.zakon.kz/Document/?doc_id=1013966&doc_id2=1013966#pos=5;-98&pos2=58;-44).

Accordingly, Kazakh Internet sites, including blogs, chat rooms and forums, are included in the media. The law covers not only materials posted on Internet resources, but also comments on them. Blog owners are also responsible for the information and comments posted on their pages.

At the same time, the issue of legal status has not yet been resolved. The Bloggers' Alliance has made a proposal to the Ministry of Information and Public Consent to establish the status of a blogger. The state is primarily interested in this, as it will allow regulating the blogger's activities, indirectly controlling the information published on the networks, taxing bloggers, etc. At the same time, opponents of such legal regulation, in particular M. Abenov, note: "Whether we want it or not, blogging is already regulated by the current legislation. If the site is considered a mass media, then the one who writes there can automatically be recognized as a journalist. Accordingly, he must have responsibilities, obligations, but at the same time, then he must also have rights. That is, we perceive this part as a fait accompli, respectively, now we have to think through issues related to the protection of interests, the opportunity to promote some issues, request information, participate in some events" (https://online.zakon.kz/Document/?doc_id=31613886&pos=4;-98#pos=4;-98).

In our opinion, we should turn to foreign practice.

Thus, Russian legislation defines bloggers as the owners of a website and (or) a website page on the Internet, on which publicly available information is posted and access to which during the day is more than three thousand Internet users (https://rg.ru/2014/05/07/informtech-dok.html). At the same time, the Federal Law Federal Law "On Information, Information Technologies and Information Protection" establishes the range of rights and obligations of website owners (bloggers), as well as requirements for the placement (dissemination) of publicly available information, as well as the basis of their legal responsibility. At the same time, both scientists and practitioners seriously criticize the current norms of the Law (https://www.hse.ru/news/expertise/424186062.html).

The Uzbek legislator has also advanced to a certain extent. Thus, amendments were made to the Law of the Uzbek Republic No. 560-II of December 11, 2003 in 2014, according to which a blogger is recognized as "an individual who places publicly available information of socio-political, socio-economic and other types on his website and (or) website page on the world information network Internet nature, including for its discussion by users of information" (https://www.lex.uz/acts/82956), as well as the principles of their posting of publicly available information.

At the same time, domestic legislation has not yet begun to develop this concept, while a number of bloggers have been brought to administrative and even criminal responsibility, for example, for inciting ethnic hatred, etc. But this is not the only reason for the speedy settlement of the legal status of this institution of the domestic segment of the Internet network. Blogging, as noted above, has a certain influence on public opinion and, in fact, blogging today represents a certain type of journalistic activity. For example, scientists analyze the ratio of blogging to traditional journalism, pointing out the contiguity of their functions and note the decreasing difference in professionalism among the representatives, and also point to the social significance of blogging and the involvement of bloggers in certain forms of culture – such

as subculture and culture of belonging (https://internauka.org/journal/science/internauka/102).

In our domestic practice, the issue of legal regulation of this Internet content has been raised repeatedly, for the first time in 2014, however, it has not received a logical conclusion. In 2021, the question arose again.

The second area that needs to be regulated in detail by the domestic legislator is the issue of the legal status of the information intermediary.

This concept is viewed differently by different countries. And again, Russia and Uzbekistan stand out. Thus, in the legislation of the Uzbek Republic, an information intermediary is considered as participants in e-commerce. Whereas in the Russian Federation, the concept of "information intermediary" is understood as:

- a person carrying out the transfer of material in the information and telecommunications network, including on the Internet;
- a person who provides the opportunity to post material or information necessary to obtain it using an information and telecommunications network;
- a person who provides access to the material on this network (https://online.zakon.kz/Document/?doc_id=30396612).

Conclusion

Currently, a number of serious transformations are being carried out in Kazakhstan in the sphere of regulating the activities of social networks. Thus, the norms of the amended Rules for the registration, use and distribution of domain names in the space of the Kazakh segment of the Internet, approved by the Order of the Minister of Digital Development, Innovation and Aerospace Industry of the Republic of Kazakhstan dated September 28, 2020 No. 354/NK, came into force. Namely, the Ministry of Digital Development, Innovation and Aerospace Industry (ICRIAP) Kazakhstan has established a requirement for Internet services that collect and store personal data of citizens of the Republic of Kazakhstan, as well as Internet sites with domain names KZ and .KAZ go to servers located in Kazakhstan.

In fact, the policy of strict state regulation continues, which is laid down by the norms of the Law "On Informatization", which regulates the legal status of subjects of informatization, namely state bodies, individuals and legal entities engaged in activities or entering into legal relations in the field of informatization. However, not all aspects are regulated by this particular regulatory act. In addition, not all relations in the field of information exchange, despite the fact that most of them actually take place on the Internet, are regulated by this NPA. There are many other relationships outside, without which information services are not complete today, for example, the work of various sites, of which there are a great many on various information systems.

Today, the domestic model of equating websites with the media is practically failing. Most lawsuits face the fact that not all sites can be recognized as aimed at the dissemination of mass media, the question of the responsibility of site owners for comments and other aspects is also relevant.

Once again, the question of the responsibilities of such intermediaries arises, whereas there is virtually no scientific research in the field of responsibilities.

Accordingly, we believe that in theory and in practice, including judicial information law, there is a huge layer of questions regarding the essence and essence of information legal relations, the recognition and legal status of their subjects, the consolidation of their rights and obligations, the distribution of functions between them now, when they are closely intertwined and conditioned by commercial interests.

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