

# THE INTERNET AS A LEADING INSTITUTION OF INFORMATION LAW IN THE XXI CENTURY

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## Abstract

The features of the Internet as a leading institution of information law in the XXI century have been studied in the article. It has been determined that a characteristic feature of the Internet is that geographical boundaries do not play any role here. The Internet space is an electronic information space of communications for which there are no borders. That is why it is difficult to ensure effective legal regulation of the Internet, as there is no systematic legislation regulating the relevant types of relations on the World Wide Web, besides, there are objective features of the Internet functioning. It has been stated that an important point of solving the problems of using the Internet is the adoption of the Laws: "On the protection of freedom on the Internet", "On e-democracy", "On distance learning on the Internet".

It has been noted that in modern society, the Internet has made it possible to influence greatly the life of every person. As a result of globalization processes, the World Wide Web performs the function of forming a person's world-view. Unfortunately, standards that do not conform to the ideas of humanism are often promoted on the Internet. New forms of communication on the Internet have led to the separation of the culture function of this means of mass communication, as a result of which a specific information culture is being formed. Thus, an important factor in building a global information society is the formation of the individual new information culture on the Internet network.

**Keywords:** information law, Internet, information security, electronic democracy, information society, digital rights

## Introduction

In the XXI century, the Internet has become an important communication medium that is constantly changing people's lives. However, very often there are problems with the legal regulation of relations in the network, the action of law in space, concerning the circle of persons, and the information culture of the individual. The problem of the same importance at the present stage of jurisprudence development is the problem of ensuring human rights when using the World Wide Web. Another key aspect of the problem of human rights in connection with the development of the information society is the problem of overcoming information inequality, which is still observed in many countries around the world

## Analysis of recent researches and publications

It is worth to mention the works, devoted to this problem, written by the next Ukrainian scientists: Shahbazyanova K. S., Glibko S.V., Litvinov Ye.P., Novitsky A.M., Prysyzhnyuk O.A., Hetman A.P., Honcharenko O.A., Davydyuk O.M., Baranov O.A., Yefremov K.V. Among foreign authors, the problem of legal regulation of the Internet was studied by Rosenblatt B., Rasted M., Finnemann N., Zittrain J., Zllison N., Zfroni Z., Yakushev M.V., Naumov V.B., Petrovsky S.V. and others.

Thus, the purpose and task of the article is to study the features of the Internet as a leading institution of information law in the XXI century and to develop proposals for improving the legal regulation of the Internet network.

## Research results

The Declaration on Freedom of Communication on the Internet was signed on 28 May 2003 in Strasbourg at the 840th meeting of the Deputy Ministers of the Council of Europe. This declaration sets out the basic principles in the field of communications, which must be followed by all parties that have signed this document. The scope of this document should extend to legal systems, and the basic principles should be implemented in the national legislation of states.

In particular, States Parties declare that they seek to adhere to the following principles in the field of Internet communication: rules on Internet content; absence of prior state control; removing barriers to human participation in the information society; freedom to provide services via the Internet; limited liability of service providers for Internet content; anonymity [1].

It was this Declaration and the principles approved by it that were the main ones that provided the greatest support for the development of self-regulatory systems on the Internet.

At the same time, it should be noted that over the ten years of existence of these principles, approaches to these principles have changed. More and more states and their governments are challenging the possibility and necessity of legal regulation of the Internet, legal protection of citizens on the World Wide Web from negative content, the possibility of prosecuting those who committed torts on the Internet, who submitted negative content, and so on.

Therefore, there is a need to revise these principles and establish new, more modern ones. The most risky is the principle of anonymity. To date, this principle is no longer fully ensured, even in the legal field of numerous countries in the world. For example, in China, and in some countries in the Asian region, and Europe, rules have been introduced for the mandatory identification of Internet users. In order to use the services of an Internet cafe, a prerequisite is the identification of a person - presentation of an identity card [2, p.115].

According to the Council of Europe's Internet Governance Strategy, the aim of all Council of Europe activities in the field of freedom of expression online is to "maximize the rights and freedoms of Internet users". The Internet Governance Strategy contains a wide range of commitments and measures for Council of Europe bodies that inform monitoring mechanisms.

In its Internet Governance Strategy, the Council of Europe has committed itself to providing effective measures of legal protection in cases of human rights violations, as well as to raising public awareness of human rights on the Internet. Besides, the Council of Europe decided to develop Guidelines based on human rights standards and to present a collection of the best modern practices. The guidelines are important for monitoring and directing the activities of both public and private entities on the Internet, in particular, social networks and information search engines.

The strategy also calls for further "search for opportunities for the positive use of information and communication technologies to combat human rights abuses, such as reporting to state authorities in cases of domestic violence or threats to informants" [3].

Judges in Strasbourg also play a central role in ensuring freedom of expression on the Internet in the territory of the member states of the Council of Europe. The Court performs the main function of judicial monitoring, and any person under the jurisdiction of a member state of the Council of Europe who considers that his or her rights have been violated may refer his or her case to the Court of Justice in accordance with the established admissibility criteria.

It should be noted that a number of international legal acts emphasize the minimization of state control and restrictions on the dissemination of information on the Internet, and deny the establishment of restrictions on content. These include documents adopted by the Council of Europe, such as: Resolution № 1120 "On the impact of new communication and information technologies on democracy" (1997); "Declaration on European Policy in the Field of New Information Technologies (1999)"; "Declaration on Freedom of Communication on the Internet" (2003); "Declaration of Human Rights on the Internet" (2005) [4, p. 9-10].

If to speak about the development of legal regulation of public relations on the Internet, it should be noted that at the present stage not only the sphere of state regulation of these relations is developing, but also the sphere of self-regulation. Self-regulatory relationships include elements such as the creation of special software that can be used to restrict certain types of content - for example, a ban on visiting sites with pornographic images. Self-regulatory relations should include compliance with certain rules of behaviour, developed and established by providers. Every user who wants to access a particular site is obliged to confirm his or her agreement with these rules and undertakes to comply with them. Otherwise, the user will simply not have access to information resources. In case of violation of these rules, the provider has the right to disconnect the user from the network and not to provide him with access to the Internet [2, p.117-118].

The Internet is a very complex legal entity. However, its complexity is not so much in the field of lawmaking, as in law enforcement [5].

"There is no such thing in the Internet media as responsibility for what is printed or for what is said. Because in the online media you can always go in, cut off a sentence, correct it in seconds - and pretend that everything was like that from the very beginning" (Valery Kalnysh). "On the Internet, a competent programmer or system manager will delete the information, and not everyone will be keeping it in cache memory in order to present it when needed. The Internet is something

that can be quickly corrected, and it is quite expensive to restore the truth afterwards". [6, p.127].

An obstacle to the perception of the Internet as a media is the lack of "a special legal act in the legal framework of Ukraine that would determine the status of online media, the order of their creation, principles, etc." and the lack of even their definition. But "today in the domestic professional journalistic environment there are tendencies to realize the need to recognize the affiliation of online media to the mass media" [7].

We completely agree with the opinion of scientists who identify such basic problems of the network society. The first is freedom itself. The Internet network provides global, free communication. But the infrastructure of networks can be owned, access to them can be controlled, and their use, if not monopolized, can be made dependent on commercial, ideological and political interests. As the Internet becomes the all-encompassing infrastructure of our lives, the question of who owns access to and controls this infrastructure becomes decisive for the struggle for freedom [8, p.277].

The second problem is quite the opposite: exclusion from the networks. In a global economy and in a networked society, where most of the really important things depend on the Internet, being excluded means being thrown to the sidelines. Such exclusion can be realized through various mechanisms: lack of technological infrastructure, economic or institutional barriers to access to networks, insufficient educational and cultural preparation for independent use of the Internet.

The third problem is to program each of us (especially children) to process information and gain new knowledge. That is, the acquisition of intellectual capacity for lifelong learning by obtaining information that is stored in digital form, its transformation and use to create knowledge. This simple statement raises many questions about the education system that emerged during the industrial era. There is no more fundamental restructuring. Only a few countries have really addressed this problem, because before we start changing technology, rebuilding schools and retraining teachers, we need a new pedagogy based on interactivity, personalization and the development of autonomous ability to learn and think [8, p. 277-278].

Ukrainian legislation, in particular the Law of Ukraine "On Telecommunications" provides the following definition of this concept: "The Internet is a global public access information system, which is logically connected to the global address space and is based on the Internet Protocol defined by international standards" [9]. However, fully agreeing with Zhilinkova I.V., we should admit the extraordinary manufacturability of the proposed concept. In particular, Zhilinkova I.V. argues that such an approach can not satisfy lawyers primarily because such a definition is based on non-legal terminology and therefore can not be included in existing legal structures, and can not be applied in legal theory and practice.

The obvious dominance of the technical side of the Internet should not interfere with the legal understanding of this phenomenon [10, p.124-128]. Yakushev M.V. notes that for lawyers, the Internet can be seen as a new object of legal relations, similar to such previously new objects as "radio frequency spectrum" or "outer space" [11].

It should be noted that in the legislation of Ukraine access to the Internet is not included in the list of publicly available (universal) telecommunications services. According to the Strategy for the Development of the Information Society in Ukraine, the formation of a modern information infrastructure involves, inter alia, the creation of broadband Internet access infrastructure throughout Ukraine, as well as the creation of conditions for Internet access in all the localities of Ukraine, including by building a network of collective access [12]. In

January 2015, the Ukraine 2020 Sustainable Development Strategy was published, which envisages the reform of the telecommunications infrastructure and protection of intellectual property, the introduction of an e-government program, the development of the information society and media, and more. One of the 25 strategic indicators for the implementation of the Strategy is the share of broadband Internet penetration, which as of 2020 should be 25 subscribers per 100 people [13]. Thus, online human rights protection mechanisms need to adapt Ukraine's law enforcement practices to global and European standards in order to increase their effectiveness by taking into account the technological features of cyberspace.

The Law of Ukraine "On Telecommunications" does not indicate a difference in the regulation of telecommunications networks and the Internet. The only difference is present in determining the status and powers of the organization that administers the address space of the Ukrainian segment of the Internet network. In particular, Article 56 of this law states that the administration of the address space by an authorized organization (Ukrainian Network Information Center) is carried out to create a register of domain names and network addresses of the Ukrainian segment of the Internet and to create a register of domain names in the "UA" domain [9].

One of the main priorities of Ukraine is the desire to build a people-oriented, open to all and aimed at the development information society, as it was defined by the Law of Ukraine "On Basic Principles of Information Society in Ukraine for 2007-2015" [14]. Besides, important regulations in this area are the Decree of the President of Ukraine "On measures to develop the national component of the global information network Internet and to ensure wide access to this network in Ukraine" of July 31, 2000 [15], Decree of the President of Ukraine "On Some Measures to Protect State Information Resources in Data Networks" of September 24, 2001 [16].

The Resolution of the Cabinet of Ministers of Ukraine "On the Procedure for Disclosure of Information on the Activities of Executive Bodies on the Internet" [17] of January 4, 2002, which determines the procedure for publishing information on the activities of executive authorities on the Internet, deserves attention. The normative acts that directly determine the areas of regulation of Internet relations in Ukraine include the Law of Ukraine "On Information" [18], "On Telecommunications" [9].

Except for this, there are a number of regulations that indirectly affect the development, formation and legal regulation of certain relations connected with the Internet. For example, the Tax Code of Ukraine [19] regulates the procedure for submitting tax reports by means of telecommunication networks (Internet).

Rassolov I.M. believes that the Internet can be compared with the revolutionary means of communication that have emerged in the past century, and it is absolutely clear why a significant role in the radical redistribution of political and economic power, which occurs consistently, i.e. imperceptibly, based on the fact creation of a new political economy, is credited to it [20, p.9]. In this regard, Eten Ketch states that law appears more often on monitor screens than on paper and calls into question the practice and classical legal concepts [21, p.4].

So, what are the possible ways to solve the problem of jurisdiction over the use of the Internet? First, these are international agreements that determine the status of the international information space and fix the relevant conflict rules for the application of the legislation of different states. Regional multilateral agreements, as well as bilateral legal aid arrangements, can be a partial solution to this problem. They need to be interspersed with conflicting norms that can stabilize international information relations. Besides, it is necessary to

unify the norms of national legislation on the use of the Internet. Appropriate national information legislation adequate to the level of modern information and technological development, which takes into account the latest world achievements in this field, is needed. It is also necessary to decide at the state level what should be the legal policy and ideology regarding the use of information space [22, 40].

Kaliushko I.B. and Demkova M.S. believe that e-government, which at first glance is only a mechanical connection of information technology and government, actually creates the conditions for the formation of a new philosophy of public administration [23, p.31].

In general, the main idea of the concept of "e-statehood" is the round-the-clock information impact of the state on society and the interaction of the state with each individual citizen. It is believed that using modern information and communication technologies, anyone can at any time give a request to a government agency, and obtain the necessary information, submit the necessary declaration or certificate using a computer or other terminal connected to the Internet, which will significantly reduce the volume of paperwork [24].

Closely related to the problem of ensuring legality on the Internet is the problem of state control over the processes taking place in this network. A comparative analysis of approaches to state control over the Internet in different countries shows different approaches to addressing this issue. Representatives of the United States and European countries are mainly opposed to regulating the content of information on the Internet, while representatives of Asian countries (China, Singapore, etc.) are in favour of such regulation.

Some states have imposed certain restrictions on access and networking. Many other states would like to do something similar. But what is possible in countries with a population of one to two million people or in countries where the number of nodes connected to the network does not exceed (yet) several tens or hundreds, is hardly achievable in other, more economically and information developed countries. Thus, total control over what happens in the network is, in principle, possible but is practically unrealistic due to technological and financial constraints.

In the context of our study we consider the question of Internet law existence. Rassolov I. M. argues for the existence of Internet law, which is the law of cyberspace and a new branch of jurisprudence. In this case, the terms "cyberspace law" and "Internet law" this author considers as equivalent [20, p.3].

Scientist Prisyazhnyuk O.A. notes that the use of the terms "cyberspace law" or "Internet law" instead of the term "computer law" is more justified because it more accurately and correctly reflects the specifics of legal mediation of public relations related to the use of computer Internet network, as well as the direction and nature of the rules of law governing these relations.

In favour of the use of the term "right to cyberspace" evidences the fact that cyberspace is a certain technological environment that has no material form of expression in the real world, and the computer is the object of the material world, a thing (someone's property, object of ownership), as well as means of access to this technological environment. To this we can add that if it were not for the Internet, there would be any relations in connection with the information circulation in this environment [22, p.66-67].

Today, there are two main approaches to understanding the category of digital rights. First, digital rights are the extension and application of universal human rights to the needs of an information-based society [25]. This position is supported by UN General Assembly resolution A/HRC/32/L.20, which confirms that the same rights that a

person has in the offline environment should also be protected in the online environment, and in particular freedom of expression, which may be applied regardless of borders and within any man-chosen media, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights [26].

In a narrower sense, digital rights refers to human rights that allow access to, use, creation and publication of digital works, or the right to access and use computers and other electronic devices or communication networks. In both interpretations, one of the basic digital rights is the right to access the Internet. When UN General Assembly resolution A / HRC / 32 / L.20 was signed, countries such as Russia, China, Saudi Arabia, South Africa and India spoke out against it. In particular, they demanded that from the text must be removed a passage which referred to "condemnation of measures to restrict and block access to information posted on the network" [27].

Several countries around the world have officially recognized the right to access the Internet (the right to access information on the Internet) and / or prohibited the state from unreasonably restricting human access to information and the Internet. In different ways - by definition in law, recognition by the decision of the Constitutional or Supreme Court, this right is enshrined in more than 10 countries of the world, such as Finland, Estonia, France, Greece, Spain, and Costa Rica.

In 2011, the Turkish government announced a new national policy for filtering materials on the Internet. It provided for a four-level system of censorship, under which citizens could choose the level of filtering (from the highest to the lowest: "children", "family", "home" and "standard"). The Turkish Information and Communication Technology Authority (TLC) said the scheme was aimed at protecting children, and promised that those who chose the "standard" level would have uncensored access to the Internet. Eventually, this plan provoked angry protests among the population and in more than thirty cities across Turkey people protested on the streets with the demand to cancel the proposed changes.

Under public pressure, the government abolished this scheme and introduced only two filters - "children's" and "family", which users could choose voluntarily. But this did not stop the controversy. Organizations fighting for media freedom protested against the censorship system and concluded that VTK was hiding how much material was actually being filtered. The new system was found to block not only pornography and violent material, but also regular news sites, articles with liberal or pro-Western views (for example, all those that mentioned the word "gay" or printed information about evolution) and keywords associated with the Kurdish national minority. International non-governmental organizations for the protection of human rights called Turkey's policy "hidden censorship" [28, p. 94–95].

Two important cases considered by the European Court of Human Rights have laid the foundations for finding a fair balance between freedom of expression and the need to protect the interests of children. In the case under the title *Perrin v. the United Kingdom*, [29] the European Court of Human Rights dismissed the complaint of the owner of the site, who had been convicted of misconduct, arguing that the owner could have avoided the viewing of obscene photographs by minors if he had posted information about age restrictions on the web-page preview. In the case of *K. U. v. Finland* an unknown person published the personal data of a 12-year-old boy on a dating site [30]. Of course, this created a risk for the child to become the object of sexual harassment. At the same time, as Finnish law did not allow the police to require the ISP to disclose the identity of the person who published the

data, this led to a finding of a violation of K.U.'s right to respect for private life. [31].

In Ukraine, the issue of blocking (filtering) Internet content today still remains unresolved. However, in 2016-2017, the President of Ukraine identified the main directions for resolving this issue in the context of information and cyber-security of Ukraine. In paragraph 3 of the Article 4.5 of the Cyber Security Strategy of Ukraine, it has been established that the struggle against cybercrime will provide for the implementation, in the prescribed manner, among other things, blocking by operators and telecommunications providers of a certain (identified) information resource (information service) by court decision [32]. In the Decision of the National Security and Defence Council of Ukraine dated 29.12.2016 "On threats to cyber-security of the state and urgent measures to neutralize them" the Cabinet of Ministers of Ukraine has been instructed to introduce blocking (restrictions) by the court of telecommunications of the defined (identified) information resource (information service), and operators and providers should be in charge of this [33].

While legal regulating this issue in Ukraine, it is necessary to establish a procedure for forming lists of websites with a detailed justification for the need to block each specific site. Any decision on which content should be blocked must be taken by a competent judicial body or a body that is not under any political, commercial or other influence [34, p. 93]. It should be clearly understood that the right to access the Internet is not limited to the physical possibility to access the Internet network. It is based on the communicative value of the Internet, which implies the connection of this right with other human rights and freedoms and the need to access the Internet for their implementation, including freedom of thought, expressions, beliefs, right for self-development, political rights, environmental and other basic human rights.

Human rights always presuppose a corresponding duty of the state to ensure access to the Internet of proper quality and appropriate price, as well as not to restrict access to the Internet without legal grounds [35].

That is, recognizing this human right, the state undertakes to create an appropriate infrastructure, ensure the adequacy of pricing policy for such services, provide equal access to all individuals (regardless of place of residence, health, age, etc.), create other legal and organizational guarantees of this right implementation. Mukomela I. V. draws attention to another important aspect of this right - the competence of the population, underlining its asymmetry in Ukraine [36, p.79]. However, digital rights are not limited to the right to access the Internet. The Association of Progressive Communications developed the Charter of Internet Rights in 2001. The charter focuses on such topics as: Internet access for everyone; freedom of expression and association; access to knowledge; joint learning and creativity based on free and open source software and technology development; privacy, surveillance and encryption; internet management; awareness, protection and realization of rights.

K. Becker, an Austrian theorist of information anti-globalization, believes that "basic digital human rights include the right to access the network, the right to communicate and express one's views freely online, and the right to privacy." [37]. The issue of restricting access to information, including the Internet information, has been constantly present in the jurisprudence of developed countries during the last decade. The precedent was the decision of the European Court of Human Rights in favour of the applicant in the case of *A. Yildirim v. Turkey*, where the court noted that "the Internet has become one of the main means of exercising the right to freedom of expression and freedom of information"[38].



In Ukraine, after the entry into force of the Presidential Decree of the National Security and Defence Council of Ukraine "On the application of personal special economic and other restrictive measures (sanctions)" of April 28, 2017 [39], a number of cases of violation of human rights and freedoms were considered. In particular, in the decision of the Supreme Administrative Court of Ukraine of 14 June 2017 in case № 800/198/17 [40] on violation of the right to freedom of expression in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as violation of right of the plaintiff for freedom of access to information, was denied a claim for invalidation of the provisions of this act, which established a ban for a certain period to provide services for access of network users to the resources of certain Russian services.

## Conclusions

A characteristic feature of the Internet is that geographical boundaries do not play any role. The Internet space is an electronic information space of communications for which there are no borders. That is why it is difficult to ensure effective legal regulation of the Internet, as there is no systematic legislation governing the relevant types of relations on the World Wide Web. In addition, there are objective features of the Internet functioning. An important direction of solving the problems of using the Internet is the adoption of laws: "On the protection of freedom on the Internet", "On e-democracy", "On distance learning on the Internet".

In modern society, the Internet has made it possible to radically influence the life of every person. As a result of globalization processes, the World Wide Web performs the function of forming a person's world-view. Unfortunately, standards that do not conform to the ideas of humanism are often promoted on the Internet. New forms of communication on the Internet have led to the separation of the cultural function of this means of mass communication, as a result of which a specific information culture is being formed. Thus, an important factor in building a global information society is the formation of a new information culture of the individual on the Internet.

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