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Approaches to Legal Regulation of Information and Information Technologies in the Digital Age

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Аннотация

This is a review of the session on "Approaches to Legal Regulation of Information and Information Technologies in the Digital Age" Challenges", which was part of the Postgraduate Legal Forum "Transformation of Russian Law: Trends, Benchmarks, Solutions", organized by the State Academic University for the Humanities, GAUGN (Russia, Moscow, June 14, 2023). The main topics for discussion were personal data protection, fintech, and the challenges of regulating artificial intelligence. The session participants noted the need for coordinated work by the academic community, legislature, and agencies to develop consistent legal regulation for new digital technologies that meets the current interests of citizens, businesses, and the state.

Ключевые слова: data protection, fintech, digital currencies, central bank digital currencies, artificial intelligence

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¹ Within the framework of the Postgraduate Legal Forum "Transformation of Russian Law: Trends, Benchmarks, Solutions", organized by the State Academic

University for the Humanities (GAUGN) with the support of the Institute of General History of RAS, the Federal Chamber of Lawyers of the Russian Federation, the All-Russian public organization "Business Russia" and Russian law firm «Innopravo», held on June 14, 2023, the session "Approaches to Legal Regulation of Information and Information Technologies in the Digital Age" took place. The session was moderated by Head of the Center for Legal Research of Digital Technologies, Doctor of Law, Professor L.V. Sannikova, Senior Researcher of the Academy of Management of the Russian Ministry of Internal Affairs, Doctor of Law, N.V. Kovaleva, Deputy Dean of the Faculty of Law, PhD D. Mazaev. The conference presenters and participants discussed issues related to the legal regulation of information and information technologies in the digital age, such as identity, personal data transmission, digital currencies, decentralized autonomous organizations, neural networks, smart contracts, investment platforms and others.

² Dr. N.V. Kovaleva began the session reporting the reconstruction of the structure of legal relations, their trends and prospects in the context of digitalization. The speaker noted that for many millennia in law the structure of legal relations is being reconstructed and, more specifically, its basic element - the subject. If the formation of the subject areas only partially affects the effectiveness of legal regulation, the incorporation into legal relations of a subject who does not have the necessary properties / characteristics, at a minimum, does not allow the participants of legal relations to exercise their rights and, therefore, have responsibilities. In the majority of cases the consequence of this is uncontrolled management models, destruction of already formed connections (especially in the industrial sector of economy), impossibility to protect one's rights both for an individual and for an economic entity, and the main thing - impossibility to build an effective legal regulation. The speaker used specific examples to illustrate the mechanisms of minimizing the above mentioned consequences, and suggested the principles of developing the NLA, where the role of the government institutions will be objectively strengthened, and a model will be built to balance the interests of the subjects involved. The regulation of relations applying algorithms should become a priority, capable of developing a conceptual approach to streamline most spheres of social life, a significant part of which takes place in the digital space. Theoretical constructions with interdisciplinary developments can minimize the existing adverse effects, create the basis for technological breakthroughs and competitive economy.

³ D.Y. Sapronov, post-graduate student of the Law Department of the Institute of Economics, Management and Law, Moscow City Pedagogical University, made a presentation on "Features of Identification of Individuals in the Digital Economy". He claimed that global digitalization has led to the fact that various electronic services have firmly entered people's lives, and even the identification of physical persons in them takes place in digital form. The speaker substantiated how the rapid development of big data and artificial intelligence technologies and the wide application of the above mentioned new technologies have a great impact on the sphere of personal data processing, so the issue at hand is more relevant than ever and the conclusions are practically applicable and important.

⁴ A.E. Stepanova, post-graduate student of the Department of Information Law and Digital Technologies of O.E. Kutafin Moscow State Law University (MSLU),

presented a paper on "Building Effective Practices for Management of Personal Data Collected by Unmanned Vehicles". Advancing knowledge in the field of artificial intelligence through interdisciplinary research may help get closer to the necessary level of technological independence and economic security of the state. The increased efficiency, scalability and transparency of artificial intelligence-based solutions enable their application in almost all spheres of life, impacting human well-being on a global scale. One of the most promising areas, where the capabilities of artificial intelligence systems are widely used, is the development of unmanned transport. The underlying idea here is the admissibility of transferring driver skills to cars in order to minimize the risk of road accidents caused by the human factor. The speaker suggested that the creation and commissioning of unmanned vehicles, as an advanced road technology capable of bringing about structural changes in the economy will transform traditional notions of comfort, functionality and safety.

⁵ I.A. Tereshchenko, post-graduate student of the Center for Legal Research of Digital Technologies, GAUGN, made a report on "Legal problems of personal data transfer to third parties to improve artificial intelligence technologies". The report outlined with the problematic aspects of the transfer of personal (private) data to the developers of systems using artificial intelligence (AI) technologies. The talk described cases where personal data is collected by government agencies or private companies and then transferred in the form of datasets to the developers of artificial intelligence systems. The importance and necessity of such use of data in the digital economy is related to the fact that data is a key element for creating and training effective artificial intelligence systems, without which it is impossible to create reliable and accurate AI models. In today's reality, making data available to the developers of AI systems - who are essentially third parties - raises concerns, mainly because of the risks of leakage and the lack of reliable protection against the possibilities of subsequent de-identification. As measures to solve this problem, the speaker suggested a clear and understandable approach to the legal regime of personal data as a civil object. Also, to increase the confidence of citizens it was stated the need to strengthen the information security measures when transferring personal data to third parties, including the developers of AI, for which, because of their special status, the higher requirements should be set for the processing of personal data. During the discussion participants have come to the understanding that the transparency of the transmission, processing and storage of personal data could be enhanced by mechanisms to track personal data processing consents (special technological platform), as well as informing citizens about the fact of their data processing performed on other grounds of the Law on personal data.

⁶ A.G. Boitsov, post-graduate student of the Center of Legal Research of Digital Technologies, GAUGN, presented a paper on "Decentralized Autonomous Organizations vs. Full Partnerships". The paper claimed that in modern business world, where corporate governance plays a key role in the success of an organization, there is a need to find new approaches to improve its efficiency and transparency. With the development of blockchain technology, the use of the decentralized autonomous organizations (DAO) model as a mechanism for organizing a company has become especially popular. In the Russian legal field one of the most comparable tools of corporate management organization is a general partnership. The speaker finished his speech with an important conclusion: DAO is an innovative approach based on the

principles of decentralization and autonomy, while general partnership is a traditional form of joint activity, therefore this instrument is useful and may soon become mass.

⁷ Mr. A.S. Biryukov, post-graduate student of the Center for Legal Research of Digital Technologies, GAUGN, made a presentation on "Digital financial assets as a legal instrument for tokenization of assets". One of the uses of distributed ledger technologies in the financial market is asset tokenization, which is usually understood as representation of rights to an asset in the form of a digital token. Therefore, the use of digital financial assets (DFAs) as legal instruments for asset tokenization is an acute issue. It was stated that the current list of types of DFAs was not sufficient to fully cover tokenization of different types of assets. Therefore, the speaker proposed to expand this list, in particular, with the possibility of tokenization of rights of participation in specialized companies.

⁸ The next speaker, A.E. Amzin, post-graduate student of the Center for Legal Studies of Digital Technologies, GAUGN, presented a report on "Comparative analysis of the legal approach to the regulation of digital financial assets in the Russian Federation and foreign countries". The work compared approaches to the regulation of digital financial assets in Russia and other countries, including the definition of financial instruments, the legal status of digital assets and the legal framework. The author primarily analyzed the regulation of cryptocurrencies and digital currencies, and specifically noted the lack of a unified approach among countries to this issue, as well as the need to create a balance between innovation and consumer protection. Therefore, the speaker proposed to develop a unified approach to the regulation of digital financial assets, guided by the full potential of new technologies, but taking into account the protection of human rights.

⁹ M.A. Uspensky, post-graduate student of the Center of Legal Research of Digital Technologies, GAUGN, spoke about "Legal problems of using digital currencies in foreign economic activity". Currently, there are difficulties in foreign economic settlements, and digital currencies can be used to solve this problem. Digital currencies, especially those that do not have a central issuer and are truly decentralized, can greatly simplify the process of international payments, as they minimize the intervention of banks and other financial intermediaries. Nevertheless, despite the absence of a direct prohibition in the relevant law on payments in cryptocurrency by domestic importers in foreign trade transactions, participants in foreign economic activity have problems with the application in practice of the legislation on digital financial assets. Such settlements do not exclude risks of negative interpretation by customs, tax and other authorities. Since the law seems contradictory, prohibitive and incomplete to many players, they advocate the adoption of a separate specialized law, the introduction of special legal regimes, and specifically for the settlement of foreign trade transactions. Therefore, the speaker stated that it is necessary to work through the existing legislation and remove gaps and contradictions to allow the use of digital currencies.

¹⁰ A.O. Kuznetsov, post-graduate student of the Legal Research Center for Digital Technologies, GAUGN, made a presentation on "Legal Risks of Using the Digital Ruble". The most recent legal risks associated with the introduction of the digital ruble were disclosed in this presentation. First, there is a lack of regulation. It is noted that not only the nuances, but also the regulations for resolving disputes related to the digital

ruble have not been defined yet. Among others, cybersecurity risk was noted: no country has yet developed methods for managing cyber risks associated with the use of the digital ruble. To solve this problem, the speaker suggested developing a system for the digital ruble regulation, as well as working through all possible cybersecurity risks to increase trust in the instrument among citizens.

¹¹ D.S. Biryukova, a post-graduate student of the Department of Commercial Law and Foundations of Law, Faculty of Law, Lomonosov Moscow State University, presented a paper on "The Significance of Dividing Artificial Intelligence into "Weak" and "Strong". Emergence and rapid development Artificial Intelligence (AI) raises a huge number of questions for non-technical community. The controversy of the problem arises at the stage when one is trying to understand how close artificial intelligence is to human consciousness, and whether AI can replace humans in making decisions and creating artefacts independently. Therefore, it was noted that it was necessary to understand the classification of artificial intelligence and the actual possibilities of this technology today. In addition, the speaker highlighted the main factors influencing the division of artificial intelligence into a weak AI and a strong AI. the issues of responsibility distribution for possible violations related to the activities, in which the artificial intelligence technology is applied and the issues of artificial intelligence definition as an object and/or subject of legal relations were discussed. Considering these factors will help to eliminate contradictions in the artificial intelligence classification and will give more opportunities for application of the technology in life. During the discussion it was also noted that at the moment developers had only reached "weak" level of artificial intelligence, and classification of artificial intelligence was aimed at preparation for further development of the technology. The participants mentioned that different types of artificial intelligence in the existing strategic regulatory documents of the Russian Federation entail both development of the subsequent scientific discussion and corresponding mistakes in understanding of terminology and essence of the phenomena.

¹² V.O. Kim, post-graduate student of the Department of Business and Corporate Law of the Kutafin Moscow State Law University (MGLA), spoke on "Prospects of using GPT technologies in professional legal activities". The speaker claimed that Artificial Intelligence (AI) introduced into many business, economic and technological processes in this period of digitalization impacts the market of legal services. Thus, the increasing popularity of GPT (Generative Pre-treated Transformer) technology presents an opportunity to somehow "substitute" a real person - a lawyer - in terms of advising on various legal issues. The speaker justified the need to clarify the actual prospects, as well as problems associated with the introduction and use of GPT technology in the professional legal profession.

¹³ G.O. Trifonov, post-graduate student of the Center for Legal Research of Digital Technologies, GAUGN, presented a paper on "The notion and scope of use of smart contract technology in the financial sphere". The speaker has analyzed the use of the "smart contract" technology in the financial sphere, mentioned the views formed nowadays in the scientific community about the legal nature of the smart contract, its correlation to the system of contract law, advantages and disadvantages of the technology itself. The speaker reviewed the variants of application of smart contracts in the financial sector. Having analyzed the issue, the speaker drew valuable conclusions

about how in the environment of implementation of a smart contract one can express different ways of securing and performing obligations, how interaction with the external world (banks, registries, etc.) occurs via services, responsible for connection to data sources (oracles).

¹⁴ A report on "Peculiarities of investment agreements concluded with the use of investment platforms" was presented by A.A. Zavertyaev, post-graduate student of the Center for Legal Studies of Digital Technologies, GAUGN. The speaker identified the main trends in the legal regulation of contractual legal relations of the parties of the investment process, carried out through investment platforms and formulated the main factors that have a significant impact on the specificity of the contracts concluded by the participants of the investment process using investment platforms. The necessity of detailed elaboration of the specifics of this treaty for greater popularity and better possibility of application of this construction in life was highlighted.

¹⁵ The main line of the session was based on the reports, and the most common comments from the participants were on:

- ethical issues in the development of new digital technologies;
- the rights of citizens to alternative access to services other than digital in order to preserve privacy and maintain a balance of interests;
- caution and consistency in the formation of legal regulation of new digital technologies in order to avoid mistakes due to lack of proper understanding of the essence and details of the functioning of such technologies.

¹⁶ Concluding the section, an open discussion summarized the experts' opinions on the ways of development of digital legislation in Russia and outlined the main directions for further scientific research on the issues raised in the field of digital law.

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Abstract

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