

**National Research University
“Higher School of Economics”**

**Human Rights on the
Internet:
Legal Frames and
Technological Implications**

Compendium on Internet
governance

Moscow
2012

УДК 342.7:004

ББК 67.404

H91

Human Rights on the Internet: Legal Frames and
H91 **Technological Implications: Compendium on**
Internet governance [Text] / ed. by A. K. Zharova;
National Research University “Higher School of
Economics”. – Moscow, 2012. – ISBN 978-5-7598-
1032-2 (pbk).

This compendium comprises articles on legal and technological issues of Internet Governance in sphere of human rights prepared by the group of legal and technical scholars of information studies of the Higher School of Economics. This compound is devoted to the workshop on ‘Human Rights on the Internet: legal frames and technological implications’ organized by the Higher School of Economics on the 7th Internet Governance Forum (Baku, Azerbaijan, 6-9 November, 2012).

УДК 342.7:004

ББК 67.404

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ISBN 978-5-7598-1032-2

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*Human Rights on the Internet:
Legal frames and technological implications*

**Human Rights on the Internet. Synergetic
effect of the technological and legal impacts.**

*Dr. Svetlana V. Maltseva¹,
Mikhail M. Komarov²,*

As it was called once – the internet at its current growth rate and development stands to be the greatest machine ever built in the history of humanity. And it is quite hard to complain about it, because this “machine” is the most reliable human beings have ever constructed. It has never crashed before and has always run uninterrupted because of its distributed nature. There are over 100 billion clicks per day online, many e-mails sent and web-pages viewed all around the planet. The internet also accounts for five percent of all electricity used on the planet to keep it running continuously. As Tim Berners-Lee thinks, in the future human beings will have a natural balance in using the creative and analytical parts of their brains by turning computer power loose through the power of notion of a semantic web. From Wikipedia – the semantic web is a collaborative movement led by the international standards body, the World Wide Web Consortium (W3C) – it is a web of data that can be processed directly and indirectly by machines.

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In terms of current technological progress it is necessary to remind that almost 20 years ago there were only few people around the world carrying the cell phones. Nowadays we have cell phones everywhere as not a luxury thing but a necessity. Legal aspects of using cell phones are still in progress depending on the different countries – somewhere you need to show you passport, somewhere you can buy SIM-card without any documents, which means that no one would know who is using that particular cell phone number. At the same time cell phones are our sensors and all we are part of the big global network – telephony network. Before the smart phones we were generally using just telephony functions of the cell phones, but after integration there additional features and expanding its functionality we're carrying micro PC as a small information bomb everyday with us. Typical cell phone today has GPS, camera, Wi-Fi modules, and 3G or LTE additional modems functionality – which means that it is easy today to get your position, to see what you see or doing with your cell phone and transfer all these data to the particular servers. This mobile era – which is called the Web 3.0 era – evaluates with the marketable support of innovation and higher necessities. The new technology has the capability to supply more real-time in turn. This information comprises location, weather, traffic, local business and visits a store frequency. This also provides new industry opening. No one can assure you that you are safe while using your cell phone. From the recent

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incidents it is necessary to remind about the incident with the Iphone or IPad – while they were recording your position, or incidents (which are still take place) when you might be connected to the fake base-station and pay additional money for the calls and texts, or transfer your personal data through them (only from the recent time, some applications were proposed to check the base station). There are many examples of how our rights for the private life were interrupted and how companies, or hackers break into our privacy.

The Web 3.0 concept has many different meaning, but all of them consider using information by the machines. It is hard to imagine how your fridge connected to the Twitter account sends you a twit to buy some specific food according to your customization. It is hard to imagine that while you are doing exercises you might receive a text or e-mail from your cooker or microwave that your breakfast is ready and waiting for you. All these are pictures from the future which is already here. According to the statistics some people carry their cell phone even to take care about their personal hygiene and some of them would stop buying a chocolate bar just to use the Internet on their cell phones. One reason why this progress is inevitable is it's simplicity. If everyone carries their own data connectivity they don't have to hassle with configuring new networks, getting credentials, witching authentication methods, and all the other hassles of trying to plug into someone else's network considering wired connection or 802.11

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standard. Web 1.0, or the information web, was straightforward enough. IT was full of static content and could be seen as an extension of offline media, such as print and TV. This version of the web was able to provide information to users in a broadcast model of information distribution. The next evolution of the web brought about web 2.0 or the social web which is characterised by users communications, contributing and collaborating. Web 2.0 has empowered users and consumers of the web to shift from being passive consumers of content and information into active producers of content and information. It allows users to equally participate in the production of content creation and in sharing that content with a wider audience online. Web 3.0 means that our things, our belongings will have the power to learn, intuit and decide. This version of the web derives its “wisdom” from the software that learns by looking at online content, analyses the popularity of that content and has the ability to draw conclusions. Web 3.0 has the potential to change the entire process by bringing machines closer to users and producers which would result in more dynamic, interactive and efficient creation of content online as well as the management of that content.

Today there are plenty things to prevent using particular web-sites by including them to the databases, asking the password and only allow particular web-sites which is called parental control, etc. But there are ten times more different ways how to cheat all these preventions. The important thing about Web 3.0 that the resulting information may be

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false or misleading, depending on the popularity by the society, which sometimes is not correct. Once it was mentioned that from a data-protection perspective, one of the main aims of the Semantic Web and Web 3.0 is to make data easier to process and re-use. But this leads to the question however, what becomes of the protection of personal data in such an open, universally accessible web on interlinked data? This is particularly important because applications according to the Web 3.0 are likely to be far more effective than even traditional search engines at piecing together personal information, thus increasing the risk of identify theft. It leads to special requirements for safeguards to protect user data, as well as policies to ensure people understood how their information would be used. Which also means that there should be special commissions which will allow publishing every new web-site to the Internet and issue special certificate for the particular information placed there to ensure people using that web-site they wouldn't see any not appropriate content. There also should be special policies for information distribution from the web-sites or hierarchical structure of the information on the web-site for the visitors of the web-site – for the internal use, and information for the search engines, machines – for the external use. Even now there are many questions about the mail-servers reading our e-mails and using that information for the more customized advertisements, or Vo-IP or SIP services recording our talks without our permission just because our data goes through that servers. It is

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necessary to said that we almost non-protected at the internet from the non-appropriate information, unfortunately there might be one-look rule – when once you will see and will get that information just to build the policy for the future not to show that information, because we don't have special governmental or international policies against placing that information to the Internet. In terms of Web 3.0 when our things will use information from the Internet, or they will generate the information and send it to the Internet we should specify the policy and special agreement of connecting things to the Internet, there should be clear identification field which would point particular human being to whom the thing belongs, otherwise we will have tons of uncontrolled information generators – bots – which will influence on the information dissemination.

Due to the fast growth in technologies area and in amount of data and types of data at the Internet there is slow reaction on it from the legal side of our life which leads to the lack in laws and policies protecting our privacy. It is the goal of international community to update current laws regulating data and information dissemination policy at the Internet in terms of checking the content of the web-sites and certifying them for the particular information placement.

**On information and educational environment
as an integral part of modern pedagogical
research.**

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In this article we consider it necessary to draw the attention of colleagues in research, in which the educational environment was crucial [1,4, 9-11,13 and others in the references in this article]. We consider several definitions of the adjective to the concept of environment.

"The cultural environment of the school as a space (space - a set of interrelated elements of a particular system (EH Bogdanov)) of the interaction of its subjects to create value, basic, functional form, material and practical components that provide development and self-development of the basic school culture, educational culture teachers and parents. The basic culture of personality - is the bare minimum common culture of personality (moral, environmental, aesthetic, physical, legal, work culture and consumption, cross-Maine relations, communication culture), general abilities, his values and life qualities without which there can be as socialization and the optimal development of genetically given talents personality (OS Gazman). Teaching cultural tour teachers considered as a set of moral and professional positions, approaches, content, forms and methods of work, corresponding to the modern paradigm of education, personal and

professional skills, developed on the basis of experiences and that individual personality traits »[1].

"The introduction of information technology in education has led to the term educational environment, you know, usual, as a set of computer tools and ways of functioning of systems used for the implementation of training activities. The structure consists of computer-hardware, software, and information components, methods, use of co-regulated in toryh methodical maintenance of educational process »[2].

"The most common representation of space due to the order of the (relative position), while co-existing objects. Speaking of of educational space, we mean a set of definitions related to each other conditions that may affect the formation of the person. In this case, within the meaning of the very concept of education space is not intended to include in his student. Educational space can exist independently of the learner.

The concept of "educational environment" also reflects the relationship of conditions providing education rights. In this case we assume the presence of the student in the learning environment, interaction, interaction with the subject of the environment (in this case students)» [3].

Ms. Rimareva believes that the educational environment is a complex concept, focus on individual personal aspect of teaching at compulsory intentions (from Lat. Intentio - desire), that is the intention, purpose, direction of consciousness, will,

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feelings on education [20] . A LP Belkovets notes that "Under of educational environment, we understand the complex environment that includes external content - is the presentation of educational material, instructor navigator, which translates external content-set of the educational environment, the internal environment of the student, which includes Paradise cognitive activity, as well as linguo-psychological mechanisms of development and self-regulation "[7, p. 70].

As you can see from the above definitions and descriptions epithet environment they have a lot of variety. In our research, it was decided the concept of information-educational environment. By this we mean - surrounding the person's physical and social space (as a whole - as the macro environment, in a specific sense - as the immediate social environment, as the microenvironment), which is uninterrupted exchange of messages, the nature of the interaction in the learning process, and the related processes the immediate area, the activity of the individual, his nearest development and action [5].

It should be clarified that the proposed environment to study teaching, ie narrower than the educational environment, otherwise it is a subset of the educational environment. This is because, in the area most conducive to individual learning, study subjects, such as schools and universities, is a pro-teacher, in a broader sense, a professional. In addition, it should be noted that in the pedagogical environment is all educational, scientific literature, internet resources [6, 7].

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In our research university environment, applying the concept in the study of minimal dictionaries (thus highlighting subject thesauri), identifying their common (nuclear or atomic dictionaries (by B. Russell)) were submitted in passport specialty knowledge of the future professional. The use of the same (minimal dictionaries) in various media schools: Humanities (RSUH PFUR RSUTS), technical (MSTU "MADI" MSTU "STANKIN") allowed to form a method of presentation of teaching material. The essence of this method is the optimal organization of independent work of students, using all means available to them to achieve the learning objectives for a particular course. In our experience, this method works in the medium of foreign students (Preparatory Office), and in the so-called humanists and techies.

"Niche" of teaching staff in this technique is determined: as mentors, interpreters professional knowledge, counselors in the search tasks of teaching and learning at the same time teaching undergraduate and heads research at the undergraduate university. In conclusion, the optimal organization of the learning process is that the information density was corrected as part of the student, and on the part of the teacher.

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Protection of the rights of intellectual property on the Internet

Zharova Anna K³.

In recent years the society manifested undoubted and considerable interest in the protection of intellectual property rights on a number of objective and subjective reasons.

Use of the results of intellectual activity has an increasing impact on the state's economy. Economic growth and modernization of the Russian economy are only possible in the case of increasing the rate of development of high-tech industries, for which the necessary public policies aimed at improving the investment attractiveness of the industries, support for Russian manufacturers of high technology products and services, promotion of these products in the domestic and on the world market, the development of intellectual potential in the field of high technologies.

So back in 2009 in the Council of the Federal Assembly of the Russian Federation stated that the original rights to the vast majority of the results of intellectual activities in science and technology are not fixed or open (through patents), or closed manner

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(through the know-how of a trade secret), it does not appear, intellectual property, and consequently, there is no formal object of market relations. According Rospatent 100% protectable intellectual activity results obtained with state funding, patents only to 10%⁴.

Because of these features must be clear of different legal arrangements for the protection and eligibility for the results of intellectual activity.

In the Russian Federation, Institute for Information Law, aimed at regulating, including innovative relationship is the intellectual property accumulated in the fourth part of the Civil Code, which defines the rules for protection, eligibility, use, created by the authors of intellectual property, is the legal basis for the innovative development of society . The scope of the institution of intellectual property issues get a results of intellectual activity, relationship, by definition, eligibility results of intellectual activity, classification, transfer of exclusive rights (license agreements and the alienation of the exclusive right of franchise agreements, etc.), the relations between the free use of intellectual property, rights of intellectual property, etc.

Resolution of the Council of Federation of the Federal Assembly of the Russian Federation from March 4, 2009 N 54-SF "The report of the Council of Federation of the Federal Assembly of the Russian Federation in 2008" On the status of legislation in the Russian Federation " / / information and the legal system «guarantor»

The Constitution of the Russian Federation (Article 44) are among the most important rights of Russian citizens the right to freedom in all spheres of creative activity. This means that the state undertakes to provide its citizens with an effective means of legal protection of these rights and freedoms. Does this mean that, in matters of intellectual property paramount interests of the individual. What is the place in which case the rights of third persons and their right to information? These issues are the rights of every relation with third parties are particularly relevant in the Internet. The global network is filled with its own characteristics that must be considered. Thus, it is difficult to determine the relationship of the subject party, jurisdiction of the legal fact, the mechanism of regulation of relations occurred, the availability of international agreements on the mutual recognition of judicial decisions, etc.

Above listed features put my mark on the issue of protection of intellectual property rights, as it is directly connected with the legal mechanisms provided by the law of a particular state. Violations occurring in the global network, often related and affect a number of different states.

In accordance with paragraph 1 of Art. 1250 of the Civil Code are protected by intellectual property rights in the means provided by the Civil Code, subject to all violations of law and the consequences of the violation of this right.

Lack of guilt of the offender does not exempt him from the obligation to stop the violation of intellectual property rights, and does not exclude the

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application to the offending action to protect those rights. On the basis of paragraph 23 of the Resolution N 5/29⁵ courts in cases of intellectual property protection should bear in mind that this rule should be applied to methods of protection of the rights not related to measures of accountability. Responsibility for violation of intellectual property rights (collection of compensation, compensation) occurs in relation to Art. 401 of the Civil Code.

As defined by Section 1, Art. 1252 of the Civil Code, the protection of exclusive rights to results of intellectual activity and means of individualization is carried out, in particular, by the request:

- Recognition of the right - to a person who denies or otherwise does not recognize the right, in violation of the interests of the right holder;
- Suppression of actions that infringe or threatening to infringe, - to the person performing the act or make the necessary preparations for them;
- For damages - to a person who unlawfully used the results of intellectual activity or means of individualization without an agreement with the copyright holder (non-contractual use) or otherwise violated his exclusive right and cause him harm;

Plenum of the Supreme Court and the Supreme Arbitration Court on March 26, 2009 N 5/29 "On some issues that have arisen in connection with the introduction of Part IV of the Civil Code of the Russian Federation

- The seizure of material support in accordance with paragraph 5 of Article. 1252 of the Civil Code - to its manufacturer, the importer, the keeper, the carrier, the seller, to another distributor, mala fide purchaser;

- The publication of the court decision on the violation, indicating the actual owner - to the violator of the exclusive right.

In cases provided for by the Civil Code for certain types of intellectual activity or means of individualization, in violation of the exclusive rights holder has the right to demand compensation for damages instead of an offender to pay compensation for the violation of this right. Compensation to be recovered in fact proof of the offense. In this case, the legal owner, applied for protection of the right is exempt from proving the size of losses (§ 3 of Art. 1252 of the Civil Code).

The amount of compensation is determined by the court depending on the nature of the offense and other circumstances of the case, taking into account the requirements of reasonableness and fairness. Right holder may require the offender to pay compensation for each case of misuse of the results of intellectual activity or means of individualization or for the committed offense as a whole.

Analysis of legislative and regulatory practice areas points to the following problem areas in the Russian Federation in the field of regulatory protection of rights in intellectual property, located on the Internet.

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The first step is to bring a common understanding of the rule of law. Currently, law enforcement practice for this category is heterogeneous and often contradictory. In the courts of the Russian Federation for civil and arbitration cases there is no uniform approach to the identification and assessment of the damage suffered by the right holder.

It is for this reason, in the Russian Federation in 2012 was the decision to establish the Court for intellectual property rights⁶. Court for intellectual property rights will be established no later than February 1, 2013

The powers of the Court of intellectual property rights as a court of first instance are the following cases:

1) cases challenging the regulations of the federal bodies of executive power, affecting the rights and interests of the applicant in the legal protection of intellectual activity and means of individualization, including in the field of patent rights and rights for breeding achievements, the right to integrated circuits, rights on secrets (know-how), the right to the means of individualization, goods, services and businesses, the right to use the results of intellectual activity in the same technology;

2) cases of disputes on whether or termination of legal protection of intellectual property and similar means of individualization, goods, works,

Resolution of the Plenum of the Supreme Arbitration Court on June 22, 2012 N 17 "On the determination of the residence of the Court for intellectual property rights"

services and businesses (with the exception of copyright and related rights, topographies of integrated circuits), including: challenging the non-normative legal acts, decisions and actions (inaction) of the Federal executive authority on intellectual property, the federal executive body for the selection achievements and their officers and agencies authorized by the Russian Government to consider an application for a patent for a secret invention;

challenging the decision of the federal antimonopoly body to recognize as unfair competition actions related to the acquisition of exclusive rights to the means of individualization of a legal person, goods, services and enterprises;

the establishment of the patent owner;

to invalidate a patent, utility model, industrial design or selection achievement solutions for legal protection for a trademark, appellation of origin and the granting of exclusive rights to a name, if federal law does not provide a procedure for invalidation;

early termination of the legal protection of a trademark due to its non-use.

Court for intellectual property rights as a court of appeal, consider:

1) The cases dealt with them in the first instance;

2) cases on protection of intellectual property rights, to the arbitration courts of the Russian Federation in the first instance, the appellate courts of arbitration.

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Court for intellectual property rights by reviewing new and newly discovered evidence and made them the force of law judicial acts.

Court for intellectual property rights:

1) apply to the Constitutional Court of the Russian Federation with a request to review the constitutionality of the law applied or to be applied to them in the present case;

2) examines and summarizes judicial practice;

3) prepare proposals for the improvement of laws and other legal acts;

4) analyzes judicial statistics.

The establishment of this Court is undoubtedly a positive development in the Russian Federation. But, at this point it can be argued that there is no common understanding of the courts counterfeiting, plagiarism, despite the fixed legal definition of counterfeit goods, and plagiarism. These definitions, in the formulation, as laid down in the legislation of the Russian Federation can be interpreted very broadly these concepts.

In addition, in the field of criminal - legal protection of this category of cases is almost not excited. This is due to the reluctance and, in most cases, and lack of understanding the problem and the lack of specialists in the field. Statistics disclosed initiated, completed cases vary considerably, reflecting the lack of attention to the affairs of a given category in the law enforcement agencies of the Russian Federation. Bodies of investigation and interrogation of criminal and administrative cases do

not have the necessary regulations for the application.

So, if the U.S. has, in the framework of the current legislation on ensuring copyright regulations interaction providers and rights holders or interested third parties, in Russia this normative document absent.

In this regard, the Russian Federation must develop rules of interaction and information intermediaries holders or other stakeholders. That would allow in case of conflict for intellectual property rights on the Internet, residual unambiguously determine the structure and mechanism of the relationship of subject of electronic documents.

Around the world is growing rapidly combating violations in the sphere of protection of copyright and related rights, including on the Internet. Proof of this are the provisions of the Convention on Cybercrime (ETS № 185), WTO challenges, the National Strategy Information Security of the Russian Federation and other normative documents. However, the existence of federal laws and other global acts will not solve the problem in the absence of regulatory documents locally - regulations, instructions, officially recognized techniques.

In this connection we can offer, and sometimes just need to develop guidelines for the assessment and management of the damage caused to the right holder, in connection with the unauthorized

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use of works posted on the Internet, including to determine the extent of exclusive rights.

Currently, of intangible assets (Form IA-1), defined by the Regulations approved by Decree of the Russian Statistics Committee 30.10.1997 N 71a (as amended on 21.01.2003) "On approval of the unified forms of primary records for accounting and remuneration, fixed assets and intangible assets, materials, low value items, works in capital construction" / "Regulations on finance, taxes, insurance and accounting", № 1, 1998. As well as provisions on accounting "Accounting for Intangible Assets" (AR 14/2007), letter e, paragraph 3, which determines the actual (initial) value of the object to be measured reliably. Evaluation of the intangible asset is determined by the amount calculated in terms of money, equal to the amount of payment in cash or other form or amount payable, paid or accrued by the organization of acquisitions, asset and provide the conditions for use of the asset in the planned order.

But, in any position does not take into account that the true value of these assets may be much higher in this case, re-evaluation of these facilities will be hindered. In accordance with the Accounting "Accounting for Intangible Assets" (AR 14/2007), there are time constraints in the revaluation - once a year in accordance with the market value.

Due to the fact that originally defined the binding normative instrument for development costs or purchase of an intangible asset (the result of intellectual activity), it is necessary to develop a methodology to assess the damage caused by misuse

of the products placed on the Internet, including to determine the extent of exclusive rights .

The next problem is the ambiguity site enforcement. In this connection, it should take steps to operating time of jurisprudence concerning the protection of copyright and related rights in civil, administrative and criminal cases in Russia. Positive results would be of a generalization of judicial practice.

Thus, in regard to the use of terms that define the subjects participating in the Internet in Russia there is the following situation:

1. Federal Law "On Information, Information Technologies, and Information Protection" defines the following entities:

- 1.1, the operator of the information system,
- 1.2. persons service providers.

Federal Law "On Information, Information Technologies and Protection of Information" Section 12. Art. 2, defines the operator of the information system as "a citizen or legal person involved in activities on the information system, including the processing of the information contained in its databases." The same law p.3. Art. 17 contains the term "entity that provides services," so in art. 17 stipulates that if the spread of certain information is restricted or prohibited by federal law, civil liability for the dissemination of such information shall not be a person providing services:

1), or the transfer of information provided by another person, provided that no transfer of changes and fixes;

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2) or for the storage of information and access to it, provided that the person could not have known of the illegality of information.

2. Federal Law "On Communications" defines the following entities:

2.1. operator occupying a significant position in the public network;

2.2. operators;

2.3. operator universal service;

2.4. operator mandatory public television and (or) radio channels.

Operator the Federal Law "On Communications" defined as a legal entity or individual entrepreneur, providing communications services under license. (V. 2)

3. bill in the fourth part of the Civil Code (which regulates the protection of intellectual property) of Art. 1253 'Civil Code included other subjects:

3.1. Internet provider, to make transfers of material on the Internet;

3.2. Internet service provider who provides services to place materials on the Internet.

Furthermore, the current enforcement practices and uses another term - the provider. Thus, the definition of the Presidium of the Russian Federation of 23.12.2008 № 10962/08. provider (within the meaning of the judgment, it is a hosting service provider) is not responsible if it does not initiate the transmission of information, do not select the recipients of information and does not affect the integrity of the data transmitted. Unless it is

determined that the provider knew or could have known about the illegal distribution of works, it does not have to prove the absence of a use of them works

Furthermore, the burden of proof of unauthorized accommodation provider in the network of copyrighted works is the original.

Following resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation of November 1, 2011 N 6672/11, also uses the term. So, in this resolution states that in the absence of the service provider within a reasonable period of action to stop these violations, or in case of passive behavior, demonstrative and public removal of content from the content the court may recognize an approved provider of guilt offense and bring him to justice .

Given the current development of the Internet, such a legal position could be applied in bringing to account holders social and file-sharing Internet sites.

However, the SAC recommended that other courts in proceedings to consider the action of the provider, ie Did the provider preventive measures to stop possible breaches its customers using its services or not.

Thus, the legal classification of subjects required for the services provided, and functions, operators should be presented as:

1. operators access to technology and
2. operators access to the content - the information referred to in the international practice providers.

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Insufficient use of mechanisms for the implementation of law enforcement in the digital environment. Due to the remoteness of the actors in the Internet environment, such courts, such as virtual courts would be the best solution. As part of their activities would be considered category of cases involving violations of the global network, the participating entities such relations are divided geographically.

In Russia, not guaranteed the rights holders organizations for collective management of rights that must be just to protect those rights. Thus, lacking the necessary organization to ensure the full protection, including from the point of view of self-regulation. Not available or are not sufficiently effective levers of economic policy that are directly associated with benefits, such as the maintenance of a patent. For example, a student of intellectual property, are not always registered in Rospatent, because initially high patent fees. And the benefits to such entities in the Russian Federation is not provided.

And in this case the question is about the government's ability to effectively address, and then use their intellectual resources.

The problem of protecting the rights of intellectual property on the Internet is in the existing mechanisms in the RF licensing agreements. For instance, in Russia there is no way to give up their rights in favor of an indefinite number of subjects. For example, this mechanism works in the GPL. Would bring a positive acceptance of the mechanism

of open licenses and the distribution of such a mechanism of open licenses for various RIA.

In Russia, there is only the target of subject agreements for a certain amount of rights, ie agreement that expressly provides for certain subject composition. Despite the adoption in 2011, the Russian Federal Law "On electronic signature" issues in this area still remain and need to be addressed.

In addition, the existing facilities to deal with online offenses, in some cases, are not sufficiently effective. What also does not affect the enforcement of rights.

In view of the above, it should develop a set of regulations in the Russian Federation Law "On information intermediaries"; Regulation interaction information intermediaries with the rights holders, as Currently, there are art. Federal Law "On information" is actually based only on the knowledge (awareness) of the person providing services of ongoing violations; Information Code, as well as other PPA in the field.

**Certain aspects of copyright protection of
open educational resources**

J.Taratukhina, I.Baranova

One of the most popular types of network communities today is knowledge exchange communities (practice communities) that represent social communities, members of which are involved in collaboration and the crucial condition here is their communication. The main components of knowledge exchange communities are the following:

- Knowledge area. As a rule, knowledge area is the ground for interaction that influences originality of the community and formation of its specific features that make community members participate in collaboration and contribute intellectually in community development.

- Group of people interested in this knowledge.

- Collaboration of participants and their common theoretic and practice tasks.

According to S. Bondarenko [1] there is a new principle in network communities in the view of pedagogic communication. According to the traditional model of educational communication there were used the models “one-to-many” in a team and “one-to-one” individually. In educational network communities the “all-to-all” principle is used. This communication model has a high value because participation in such communities forms tolerance, group and critical approach to task solution, adoption of decentralized models not to

mention formal and informal communication on professional topics, innovative approaches and exchange of educational experience. The author believes that educational network communities are structured groups of computer network users that communicate for educational purposes, have stable social roles and behave in the virtual reality in a certain way. As a rule, there are several types of educational work in such communities: network publications, competitions, consultations, comments on materials, distance education, creative laboratories, projects etc. S. Bondarenko [1] suggests classifying educational network communities according to the following: ***number of participants, types of collaboration, focus on certain groups of learners***. According to the number of participants the global social community Internet can be presented as consisting of macrosocial and microsocal network communities.[3]

According to the types of collaboration the author suggests the following classification of network communities:

1. Virtual network communities of teachers (tasks: planning, methodological cooperation etc.).
2. Virtual network communities of teachers and experts (tasks: two-way channel between teachers and experts on a certain subject that helps teachers train and get news and methodological help and experts know the real state of affairs in their professional interests).
3. Virtual network communities of learners and teachers (tasks: community members should

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carry out a proposed project; in this case the teacher is a participant, not the leader).

4. Virtual network communities of learners (tasks: discussion, carrying out projects, common problems solution, mutual assistance).

5. Virtual network communities of learners, teachers and experts, a cluster of virtual network communities

(tasks: learners get to know problems of the real world, so there will be an opportunity to fill the gap between acquiring new skills and using it in practice).

According to the focus on certain groups of learners the author suggests the following types of communities:

1. Preschool educational virtual network communities.
2. School educational virtual network communities.
3. Secondary and higher education virtual network communities.
4. Further training virtual network communities.

Efficiency criteria of educational network communities include the number of active participants; community life cycle; dynamics of its development that includes increasing number of active participants, amount and quality of

discussed topics; information, methodological, consultation, expert, educational, project activities; certain rules of behavior and designing in community; structured knowledge base

of community; information-communication activity of community (internet seminars, conferences, network meetings, informing of internal and external events of community, interaction with similar communities).

Some of Russian educational network communities are «Set tvorcheskikh uchiteley» (Network of creative teachers) <http://www.it-n.ru/>); «Sotsobraz» (Social image) (<http://wiki.iot.ru/index.php/>); Sodruzhestvo metodicheskikh obedineny (Methodological communities) (<http://center.fio.ru/som/>); Vserossiysky @vgustovsky Internet-Pedsovet (All-Russian @ugust Internet staff meeting) (<http://pedsovet.alledu.ru/>); «Internet – gosudarstvouchiteley» (the Internet is the state of teachers) (www.intergu.ru). Among foreign educational network communities there is European School Network (www.eun.org). Its purpose is the adoption of information and communication technologies in the European educational system. Some of significant parts of European School Network are Virtual School (<http://www.eun.org/vs>) and Collaboration Area (www.eun.org/projects/). Collaboration Area is intended for schools and teachers that participate in international projects and want to find correspondence partners. American program I*EARN (<http://www.learn.org>) offers learners to better understand our life, participate in joint research, scientific and creative projects, develop skills and desire for learning. Canada SchoolNet (www.schoolnet.ca) is an educational

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website that contains more than 7000 educational resources that are interesting for learners, teachers and parents. In Great Britain there is a school community server Windows on the World (www.wotw.org.uk). Learners from 5 to 19 years old are looking for partners all over the world to carry out educational projects together. The server is supported by the Education Department of the British Council.

Considering this way of information representation we can say that any educational network community is a regularly updated electronic edition for education, information and entertainment purposes that is available by using tools of the Internet. Educational network community is presented by World Wide Web as a website containing text and multimedia materials and articles on applicable topics of community. Access to these articles and transition through hypertext are available by internal and external links. In contrast to offline versions these network communities contain interactive elements such as tests, animations, games, online polls, distribution, blogs and search system.

As a rule, any educational network community as a web-resource has an Internet address that helps it to be found among other communities.

The structure of a network community is obviously integration of content, structure and design aspects into a multilevel structure that allows users to easily use resources of this web-resource. This is actually combination of website interface, text and

graphic materials and multimedia (sound, video) objects.

Considering the electronic form of presenting information of network communities, questions of graphic design of interface as well as content of web-resource become actual questions. Practice principles of e-edition layout design should be held with the help of approaches developed in the field of

linguistics and semiotics that reveal combination laws of text content, images, semantics of fonts and text marking (italics, spacing, indent etc.) .

When text semantic system is broken, the recipient becomes “semiotic (information) noise” quite often and interprets the content incorrectly. From the hermeneutic viewpoint it can be defined as partial loss of information truth.

Graphic presentation of the content should obviously be graphically expressive to stimulate complete transfer of pragmatic potential of verbal means when e-text is quickly read. One of the text readability features is ergonomic design of the text.

Our study is based on the protection theory of A. Reformatsky that sets a theoretical guideline of understanding semiotic possibilities of graphics in its correlation with the text and its content [1] and is a necessary application in computer design of hypertext, and specifically, different web-resources.

But the most interesting thing is the role of cognitive mechanisms and understanding of it during the graphic design of electronic text. The fact of the matter is that graphic expressiveness of text is based

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on laws of perception of graphic symbols. Psychological perception of the reading process should be analyzed to understand the laws of expressive means available to designers (editors) to transfer the whole meaning of text being created.

We understand the meaning of text when perceiving it or rather when seeing it.

External facts that are the base of visual perception consist of visible spots of different size, form and pattern and blanks that alternate with these spots.

The type, order and proportion between spots and blanks are not random, but logical. They are the context, a special system that closes a sequence of symbols, all the elements of which are interdependent.

There is a strict correspondence between visual irritation and awareness of it. The consciousness exactly catches the difference between capital and small, upright and inclined, thin and bold letters and recognizes the same cases in the text.

Certain graphic symbols, its order and interconnection are associated with a certain content and meaning. It follows from this that the base of the reading process is symbol recognition and its structural storage, translation from the language of visualization to the language of sense.

It's necessary to mention that ergonomic requirements are essential for two main components of the design of any educational network community: interface as a means of human-computer interaction and text organization itself as the linguistic

component. Within the bounds of this criterion there are four main elements that provide such human-computer interaction.

These are three menu types: local, global, service and navigation.

The purpose of designing ergonomic interface is to represent information using said elements as effective as it is possible for human perception and structure representation on the display to attract attention to the most important information items. The main purpose is to minimize general information on the display and represent the information required for user.

All the requirements to ergonomically design the interface of any network edition can be divided into three main groups:

- Navigation.
- Page structure.
- Colour solution.

Any person sitting in front of the computer starts the work with information receiving. In his consciousness the

properties of objects being perceived from the display are reflected and his sensory image is formed. Physiological base of sensory image formation is the functioning of visual analyzer.

Some conditions that define normal functioning of visual analyzer bring us to main criteria that are presented in the work of A. Reformatsky [2]:

- Font.
- Nonfont.

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–Graphic.

Text structure representation, hierarchy establishment, semantic proportion marking, representation of architectonic proportions system are realized by font and nonfont text features that are the most important text components.

But there is a problem in systemization of graphic norms because principles of graphic expressiveness of the text are based on font and nonfont features.

The protection theory of Reformatsky [Ibidem] solves this problem and marks text segments by changing graphic features to highlight its semantics.

In cases when semantic proportion is not perceived, its protection is not enough. It's necessary to add graphic features that are extra-protection of semantic proportion for reader's perception.

Basic principles of the graphic protection theory of Reformatsky are the following:

1. Every marked element of the text should be protected enough by graphic features for reader's perception.

2. To choose the most practical protection means it is necessary to represent all the elements marked by the same features and add graphic features to those elements that need extra-protection. Note: it is necessary to change one graphic feature only to strengthen or weaken this type of symbols. When two, three etc. features are changed the protection can be redundant.

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3. The accepted system of graphic features for certain symbol types should be kept over the whole text document to prevent symbol synonymy.

4. The context (quantity and proportion of text elements) is the main criterion for selecting the most practical option from some equivalent.

It is practical to mark an electronic text only after analyzing possible equivalent systems for marking different text segments and titles.

Almost every expert in website development has now his own design rules and these rules are not always the same. So the main task of ergonomic design of text and interface for educational network communities is the analysis of such criteria for developing a specific model, general text design aspects that are the most effective for perception of text information by users.

Now more and more educational technologies are welcomed in our everyday life. One of them is distant learning, which includes most common for students and learners open educational resources. There are many successful examples in USA (MIT OCW, Connexions), France (ParisTechOCW), China (CORE), Taiwan (OOPS), Turkey (METU), Spain (UNIVERSIA), UK (OpenLearn) and others.

Distant learning has many advantages. It widens and provides easy access to education, it makes it affordable for everyone, breaks geographical limits, saves time and money for world-wide companies on their corporate courses. Open educational resources (OER) improve quality of materials and which is now really topical – allow

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students to build their individual learning path (trajectory).

However, it's impossible to deny multicultural specifics of education. Looking closer there can be found difference in networking among group members, hierarchy and size of communities, types of tasks, interfaces, access characteristics and etc.

Cultural differences influence intellectual preferences and build personal learning style (frame), unique in every cultural group.

While studying cultural specifics we found that they hinder internet resources a lot from being comfortable in perception, use and understanding in multicultural communities. So we have distinguished 3 main components, which have to be taken into account while designing open educational environment on the Web.

They are:

1. Ergonomic design of OER;
2. Academic (pedagogic) specifics;
3. Content preferences and specifics.

Meanwhile, content preferences initiated by cultural differences make the problem of using OER even deeper.

While OER provide free official use and reuse of materials, we have to respect the rights of copyright user. As for western countries (cultures) the intellectual right and copyright questions are critical, they have already taken certain steps to form open-licensing framework. All their papers have to include references to all the resources and thoughts

involved. These resources should be recognized as reliable for being an official source. And when the author and copyright are absent, the resource cannot be considered as official source of information.

The opposite situation is common for eastern countries, including Russia and CIS. The problem of copyright is the last one to be taken into account. Nevertheless, official promotion, support and recognition of OER is not possible without established copyright policy. And now it's a huge deal to correctly adopt the mechanisms like Creative Commons licensing for Russia and CIS counties, to make them work correctly, ensure their relevance at all levels.

As a result, it's clear that cultural differences influence almost every detail in educational environment. They form certain patterns in behavior which in their turn influence even the legal components of OER.

Cultural adaptation of OER is one of basic principles mentioned in 2012 PARIS OER DECLARATION. The only problem is to make it work

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Changes of the ground of European Human Rights ideology caused by development of the Internet

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Abstract: The emergence of the Internet is a turning point in human history. However, being originally conceived as a tool for communication between scientists worldwide, the Internet rapidly has turned into its own virtual world living by its own laws and rules of the game, and its own original interpretation of the concept of human rights. Being initially a scientific product of Western scholars, the Internet is continuously impacting on liberal democracies. Moreover, development of the Internet changes the essence of liberal and democratic policy pursued by the EU member states.

The rapid growth of the socio-cultural complexities of society, also triggered by the fast development of scientific thought in the XXI century, in general, and the Internet, in particular, entails a sharp increase of the social diversity. This aspect is extremely important given that it creates very serious difficulties in the integration process. Modern European society could be considered as information and knowledge society.

Finally, the rapid development of Internet in Europe - is primarily challenge of identity, entailing the destruction of national ideologies. Identity moves from ‘congenital’ to ‘situational’ category This

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research considers the most important issues related to the rapid development of the social media and the user-governed websites in context of structural transformation of the human rights ideology and policy of the United Europe. It is also important to look through the user agreements establishing communities in cyberspace – being important part of the implementation of human rights online.

Basic roots of the European human rights policies

Human rights are understood in Europe as a cornerstone of all legal system of the European Union. It is based on the meaning of the essence of human being, dignity of humans, and individual freedom.

European Union member states need to be liberal and democratic. As Stanford University Professor Laura Donohue defines several criteria for states to be recognized a liberal democracy.

At first, state should recognize liberal values:

1. Individualistic approach: the ultimate importance of the individual, not society or state.
2. Individual rights: individuals have natural rights that are independent of and prior to state, community, society.
 - a. Aim of government is to protect these rights.
 - b. Fundamental rights: life, liberty, health, property.

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Also, states must be effective democracy, which means:

1. Effective political power vested in the people.
2. Previously reserved for systems in power directly exercised through general assemblies or referenda to decide the most important questions of law or policy.
3. More recently, broadened to also include what the Founding Fathers referred to as a republic: power exercised indirectly, through freely elected, representatives/government officials/delegates to a legislative assembly who are supposed to make government decisions according to the popular will, or at least according to the supposed values and interests of the population⁷.

European Union as entity has several institutions. All infrastructure of the Union is involved in cooperation in human rights protection, involving European Communities pillar of the Union.

The *Commission* - an appointed, non governmental body - is a major player in the making of EU law. In respect of 'political' law it is the formulator of legislative proposals and it exercises great influence over the progress of proposals as they make their way through the Council and the Parliament. In respect of 'administrative' law the Commission is itself the main decision-maker,

See Donohue, Laura. Terrorism and the Liberal, Democratic state // Stanford University Initiative of Distant Learning Programme, 2005.

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though its actions are monitored by, and can indeed usually be controlled by, committees of national government representatives.

The *Council of Ministers* can take many decisions on proposals for EU law by qualified majority vote. That is to say, many EU laws can be made against the wishes of one member state or a minority of member states.

The *European Parliament* is supranational by virtue of being composed of directly elected Members of the European Parliament (MEPs) rather than governmental representatives, by virtue of taking its decisions by majority - or, in some cases, by an absolute majority - vote, and by virtue of having real decision-making powers.

EU law takes precedence over national law should the two conflict. This long-established principle has inevitably become of ever-greater significance as EU law has steadily expanded in scope. There are now virtually no areas of public policy in which EU law does not have at least a foothold, and there are many in which it is either the main provider of law (notably external trade, agriculture, and various aspects of market regulation), or is a major provider of law (such as in the regional, social, and environmental policy spheres).

The *European Court of Justice (ECJ)* is the final authority on the interpretation of EU law and on 'boundary disputes' between EU law and national

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law. As EU law has broadened in scope so have the demands on the Court inevitably increased⁸.

The European commission developed several criteria for membership in the Union. This set of criteria has been developed in 1993 on summit in Copenhagen. One of them is political criterion meaning that the State should have stable institutions guaranteeing democracy, human rights, rule of law and protection of minorities. Besides measuring democracy in candidate states, these criteria must estimate how important basic values for Europe are.

Many international organizations, both of intergovernmental and non-governmental nature, are dealing with the issue of internet governance. Among the international intergovernmental organizations we could highlight, above all, the UN Forum on internet Governance, UNESCO, and regional international organizations such as the Council of Europe or Organization for Security and Cooperation in Europe (OSCE).

The UN internet Governance Forum holds annual international conferences in different parts of the world. Each of the conferences is aimed to establish and improve mechanisms for internet governance, with due account of international standards and principles in the sphere of human rights, such as the Universal Declaration of Human

See Neill Nugent, "Decision-Making," in *Developments in the European Union* eds. Laura Cram, Desmond Dinan, and Neill Nugent (New York: St. Martin's Press, 1999), 131.

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Rights (1948), the International Covenant on Civil and Political Rights (1966), and other fundamental documents in this area. Conferences are open for all stakeholders involved in global internet governance. In particular, at a conference held in 2008 in Hyderabad (India), it was stated that internet governance should be based, in all respects, on human rights, and primarily on the freedom of expression (IGF, 3rd meeting, 2008, P. 9).

The United Nations Educational, Scientific and Cultural Organization (UNESCO) plays a significant role in the development of international mechanisms of internet governance. In the process of implementation of intergovernmental programs, primarily *Information for All Programme (IFAP)*, the issues of freedom of expression and information accessibility rights are determined as strategic priorities.

It also spelled out the need to follow the principles of information ethics, to acknowledge that there are ethical, legal and social aspects of information and communication technologies (ICTs). Ethical principles for knowledge societies derive from the Universal Declaration of Human Rights, including freedom of expression, universal access to information, especially of public domain, the right to education, right to privacy and right to participate in cultural life. One of the most pressing issues is unequal access to ICTs from different countries, as well as urban and rural areas within countries (IFAP Strategic Plan, 2008, P. 10).

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In addition to global, there are also regional European initiatives on internet governance. The *European dialogue on internet governance* has been established and operating under the auspices of the Council of Europe. Second meeting of the Dialogue took place on 14-15 September 2009 in Geneva with the participation of about 200 representatives from the private sector, governments and parliaments of different countries, as well as the civil society. The dialogue participants noted with satisfaction that the forum was attended by representatives from all major groups of agents of internet governance, i.e. civil society, government, youth, academia, industry and parliamentarians. (EuroDIG Press release – 660 (2009)).

Human rights were treated as key issues in internet governance. Attention must be paid, in particular, to implementation and consolidation of existing human rights standards in the context of internet governance, especially in developing countries. The Dialogue promotes a developing idea of the internet as a public resource which also seeks to guarantee universal access to information.

In 2007, the Council of Europe and UNESCO, together with the National Commission of France for UNESCO hosted a conference titled “Ethics and Human Rights in the Information Society”. One of the pressing issues discussed at the Conference was effective regulation and enforcement of legal norms. It was stressed that society needs clear and precise rules and directives that internet users could observe and implement. Paradoxically,

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there was also a need for a dynamic and flexible international instrument drafted as a code of ethics of the internet with discovery of these principles, without any inhibition of future progress and new formats (Worhoff D., 2007, P. 37).

The position of the Organization for Security and Cooperation in Europe is that in a modern democratic civil society, citizens should be able to decide independently whether they want to have access to the internet. The right to disseminate and receive information is one of the fundamental human rights. Compulsory introduction of state filtering mechanisms assigning labels or blocking unacceptable content must be prohibited (OCSE, The Media Freedom internet Cookbook, 2004, P. 18).

Web 2.0 era provides new stage of the websites' content development. At present time the content of the most websites is created by their users. Internet is evolving to make all the content in future completely creative. Even today the most popular websites on the Internet are blogs (i.e. Livejournal), social networks (i.e. Facebook), video-hostings (i.e. Youtube), and other websites providing user-generated content.

Nowadays the Internet is characterized by ample opportunities for self-realization that continuously improves its value in society. Sometimes the internet is replacing traditional media and traditional channels of communication. It is a global trend, adjusted for the state of the information

environment, as well as the level of legal and information culture of Internet users.

Legal analysis of the user agreements of Internet resources in context of realization of basic human rights

There we should consider what would constitute the user agreement of web recourse, and what features of the internal rules of online communities could affect the exercise of freedom of speech and the right of access to information for individuals.

According to the I. Danilina, relations on the Internet can successfully be governed by internal rules. However, practice shows that different user agreements are necessary, but obviously insufficient condition, to set relationships in the Internet in legal framework⁹.

User Agreement (License Agreement, Terms of Service) is a document that regulates the entire spectrum of relations between the owner, administration, and users of web resource. According to I.M Rassolov, social (corporate) standards adopted by the subjects of Internet relationships are one of the socionormative regulators of relations on the Internet. They express the will of their subjects (participants) have the required value for them and, of course, regulate their behavior. In addition, they

See: *Danilina, I. V.* Information relationships in the Internet about the objects of copyright // *Laws of Russia: experience, analysis, and practice.* 2010, №4.

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provide the possibility of quasi-legal responsibility, established by special corporate group or an interested team. These rules do not come from any “central authority” (e.g. parliament) and can act as effective mean of regulation. Corporate norms, as a rule, regulate the social relations that are not covered by laws¹⁰.

Such User Agreements are legally binding contract concluded by public offer. According to opinion of the well-known constitutional law expert, professor of the Higher School of Economics, Andrey Medushevsky, in case of user agreements, such aspects of contract, as the will and its authenticity, are unclear. Could the expression of the will be understood in terms of the relevant provisions of the Civil Code, when it is transmitted over the Internet, in particular, in case of automated expression when it is carried out without direct human intervention in the process of expressing their will. Further, in terms of communication, could the error transmission of the will, be recognized as expression of the will in legal terms? There are two points of view: according to the first, this is not the will, but under certain conditions the person becomes obligated to pay damages. According to another, supported by a minority, existence of the will should not be questioned, but the will itself surely could be

See *Rassolov, I.M.* Law and the Internet. Theoretical problems. 2nd ed. Moscow: Norma, 2009. 384 p.

challenged. It is very important to separate the faulty expression from criminal intent¹¹.

It is important to reconsider the legal nature of these rules. The transaction that does not meet the requirements of law or other legislation, is negligible. Such transactions may limit freedom of speech and the right to access the information which is guaranteed by rules of international law.

S. Vasilyeva writes that in public-law relations, attributed to the subject of constitutional regulation, priority is given to human being as the basis of the constitutional model of relations between society, government and people. Public relations, defining the subject of the constitutional law, associated with a number of objective and subjective factors, such as historical traditions, level of economic development, political and legal consciousness of the ruling elite, legal culture of society, specific needs and interests of the state and society, etc. Constitutional law regulates the most significant relations for the state and society, in order to achieve the most important interests. Thus, the subject of constitutional regulation can be extended by the relations covered by the subject of other branches of law, like civil law¹².

See: *Medushevsky A. Law and New Technologies: parameters regulating the Internet (Runet) // Comparative Constitutional Review, 2006, № 1.*

See: *Constitutional Law of Russia: Textbook / S.Vassilieva, V. Vinogradov, V. Mazaev. Moscow, Eksmo-press, 2010. – 560 p.*

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It is seen that general protection of users' rights is only available for paid services of websites. Paid services are subject to the protection according to the civil law. Free-of-charge resources are used by «as is» mode. LiveJournal leads to a categorical position, stating that “You agree to indemnify, defend and hold harmless LiveJournal, as well as any of his associates and affiliated entities, its divisions and subsidiaries, as well as employees, agents, co-owners of a trademark, and other partners from any third party claims, including legal costs arising from third parties, and (or) arising from the content of your blog, your use of the Service, your involvement in development of LiveJournal services, failure to comply with this Agreement or your violation of any other rights of third parties, not depending on whether you are a registered user or not”¹³.

New understanding of jurisdiction in cyberspace

For Internet resources registered in foreign country there is a problem of mismatch of jurisdiction between their users and the administration. Relations between them are governed by the laws of the country where the resource is registered and the server is located. Generally conflict of laws rules couldn't be applied. Thus, the relationship between users and Google are governed

See: LiveJournal Terms of Use – URL: <http://www.livejournal.com/legal/tos-russian-translation.bml> (accessed: 02.20.2011).

by the laws of England. Any disputes with Google are in the exclusive jurisdiction of the English courts¹⁴. LiveJournal Terms of Service are governed by the laws of the State of California, without regard to the conflict of law rules¹⁵.

Existing standards of user agreements on jurisdiction substantially complicate lives of users from countries other than the one in which the resource is registered, makes it difficult or virtually impossible to protect the rights of those users legally. Even from the standpoint of civil law, presupposes the equal rights of contractors, such contractual inequality is questionable. If we consider that, by using of these resources, people could realize their constitutional freedom of expression, they become members of the constitutional relationships, as well as they could incur criminal liability for illegal content. It is clear that website user and the author of the custom content in this case states as figure whose rights are not really protected by the law.

User must agree with the text of the user agreement by registering on the website. Register serves as the user acceptance of a public offer.

In case of creation, deployment and use of user-generated content site users are prohibited to make certain acts for which liability may be imposed. Liability may range from denying access to

See: Google Terms of Service. – URL: <http://www.google.ru/accounts/TOS> (accessed: 02.20.2011)

See: LiveJournal Terms of Use – URL: <http://www.livejournal.com/legal/tos-russian-translation.bml> (accessed: 02.20.2011).

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the site (temporary or permanent), to more serious measures, like civil and criminal liability. In particular, on most websites, prohibited actions are: discrimination on racial, ethnic and social grounds, libel and insult, harm to minors, copyright infringement and illegal commercial activity, using websites for committing other crimes, as well as for collecting and storing personal data of other persons.

User agreements of many Internet resources provide possibility of pre-moderation and post-moderation of the user-generated content of resources. So, Google reserves the right (but not obliged) to pre-screen, review, mark up, select, edit, do not allow for placement or remove any or all of the content of any services. For some services Google may provide means for excluding information of explicit sexual content. Such means may include preferential SafeSearch settings. In addition, there are other services and software available on commercial terms, to restrict access to information you may find unacceptable.

Unclear wording and definitions create the illusion of informality and absence of the mandatory force of the rules, which can be easily circumvented. This fact endangers rights and interests of websites users, as well as other people. It is inconsistent with the Constitution and laws, as well as with international principles and norms governing human rights. Sufficiently the powers of administration of resources could be loosely interpreted. This fact leads to confrontation between users and

administration on these resources. Very often there is no mechanism for resolving disputes.

Only one website demonstrates the best practice of self-regulation. Wikipedia, which has 30 million active users, has unique in the Russian segment of Internet community of active users. This community set their own principles of conduct with a low degree of formalization, proclaiming only “five pillars” of Wikipedia, governing relationship between its participants. Even formal registration is not required for fully-functional service of the website. Also Wikipedia has specially designated institutions of self-governance, like conflict commissions.

The rules are not rigid and designed by the user community. Even users who have not participated in the creation of rules, could monitor their compliance. Also here established a hierarchy of users, having rights higher than rights of the average user. Access to the logs (history of changes) of each Wikipedia article is available to all users – so that all users may keep track of each other's work on updating articles.

YouTube broadcasts also declares that it has created a full-fledged community of users. Its user agreement setting principles of community based on mutual respect and activity of users of the resource¹⁶.

See: YouTube Community Guidelines. – URL: http://www.youtube.com/t/community_guidelines (accessed: 20.02.2011).

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***Delineation of responsibilities between users
and content providers***

The problem of the delineation of responsibility for the content of messages on the Internet is another important aspect which requires detailed consideration.

From a legal point of view of relationships on the Internet is relationship between the user (physical or legal entity) and provider, legal entity providing access to Internet or Internet resources. In this case, the problem arises in connection with the division of responsibility for the dissemination of information between the author (for instance, a user who placed a comment on the forum website of electronic media) and the administrator of the resource, *i.e.* the owner of the domain name of the website or its representative. It is the administrator of the resource in this context, we call the provider because it provides users with access to both the content of website, and the possibility to make change of the content.

Content provider should be distinguished from the provider of Internet access as a service connection. These services relate to the telematic services, organization of which are outside the scope of the consideration in this paper.

The website owner is usually not economically viable to sue end users for Internet violations, which in any case can not be a good advertisement for the respective site. Therefore, many owners of intellectual property rights are

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claiming for protection of their rights against the owners of the site, rather than users.

Owners of sites hosting user-generated content, usually seek the appropriate safeguards in order to obtain compensation from the users, but in most cases it is inefficient – most often no compensation could be achieved. Therefore, when the IP-address of the holder of illegal content is challenged, the administration of the resource usually uses secure conditions of the “removal” of illegal content, provided by the law of the European Union or the United States¹⁷.

Thus, the European Directive on electronic commerce provides that the administration of websites should:

- Promptly remove infringing content;
- To be passive, that is not directly participate in the activities of the user;
- Does not control user;
- Tend to receive remuneration for services rendered.

Conclusions

1. The need to streamline regulation. In our point of view, following a three-tier division of Internet governance (supranational, national, and community level) in order to realize freedom of

See: Directive 2000/31/EC of the European Parliament and Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

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expression and the right to access information, it is necessary to provide necessary conditions for participation of online communities in the governance on separate web resources. For that reason it is required to streamline regulation of the rules of behavior on these resources, and introduce strict system of monitoring.

2. Revaluation of the legal nature of user agreements. It is possible to challenge the civil-law nature of the user agreements. The realization of the freedom of expression and the right to access information on the Internet is undoubted constitutional law value. Civil law cannot settle number of public law by nature of social relations connected with the implementation of human rights and freedoms, if freedom of expression on the Internet could be considered in this context. According to Article 9 of the Civil Code of Russia, the refusal of citizens and legal entities from exercising their rights does not entail the termination of those rights, except for what is provided by law. In accordance with article 168 of the Civil Code, a deal which doesn't meet requirements of law or other legislation, is negligible. Such deals may include transactions that illegally limit realization of the freedom of expression and the right to access information guaranteed by the Constitution of the Russian Federation and provisions of the international law.

3. New understanding of jurisdiction in cyberspace. Cyberspace should be treated as separate jurisdiction with their own rules, which

reflect its unique character. Internal rules were designed as horizontal, in which the subjects of law are standing as their creators. Consequently, there is need for a new understanding of the Internet governance and territoriality in cyberspace.

4. Establishment of the web communities.

In social networks and other sites hosting user-generated content, user agreements do not contribute to the establishment of competent user communities. In this case, the term ‘competent’ includes such community of users, which user agreements have links to legislation and universally recognized principles and rules of the international law, as well as clear procedures for resolution of disputes by the appointment of responsible persons in an open and democratic manner. In this context it is also required to increase level of legal and information culture of users and administration of web resources.

5. Revision of the standards of responsibility. Rules on liability in the Internet, which existed in the era of ‘static’ web, should be reconsidered, because of the significance of the user-generated content. Resource owner is often just provides technical conditions for the activities of users. Thus, the responsibility of the owner of the resource is his need to establish rules of the website, to draft such rules for discussion of interested stakeholders, and comply with the conditions for their implementation. These rules shall not conflict with the law and impede the realization of the freedom of expression and the right to access information on the Internet. The administration of the

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resource is an intermediary between the owner and resource users. Its main task is monitoring of the implementation of user agreements, avoiding abuse of the freedom of expression and the right to access information on the Internet.

Evidentiary value of electronic documents in the Russian procedural law

Elin Vladimir M.*

Abstract:

In the article the concept of the electronic document to the Russian legislation, describing the legal status of an electronic document that specifies the location of the electronic document in proof system of criminal and civil procedure, the range of problems in terms of raising the evidentiary value of electronic documents and on the basis of existing international agreements and practical experience in the U.S. this area, offers ways of improving legislation to overcome this legal conflict.

Keywords:

Electronic document, proof process, cybercrime, Data message, electronic document value evidentiary.

A novelty of the Russian legislation defines requirements for state agencies, local governments¹⁸, courts, the Judicial Department and its organs¹⁹ that to provide information on their activities should use the

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Federal Law of 09.02.2009 N 8-FZ "On Access to information on the activities of state and local governments" // WP, № 25, 13.02. 2009.

Federal Law of 22.12.2008 N 262-FZ "On Access to information about the courts in the Russian Federation" / / NW, 29.12.2008, № 52 (Part 1), Art. 6217 .

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Internet, placing it in the appropriate information and create official sites showing e-mail addresses, which may be sent to. Thus, the transition to the distribution of information on the Internet, once again confirmed the thesis of the importance of information systems in public life. Policy documents of the Information society in the Russian Federation²⁰ aimed at identifying strategic objectives and reinforce the status quo.

This increases the need of the society, not only in the non-contact communication, but also to accelerate the transfer of legally significant information.

Art. 2 of the Model Law on Electronic commerce, approved December 16, 1996 by resolution 51/162 at the 85th plenary meeting of the General assembly Organization of the United Nations, the term "Data message" which refers to the information generated, sent, received or stored by electronic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex, etc. Electronic data revealed as the electronic transfer of information from one computer to another in accordance with the agreed standards framework information²¹.

Thus, an electronic document in the sense of the law is the information in a form suitable for storage and transmission by electronic means of communication.

See, for example: Strategy of the Information Society in the Russian Federation (approved by the President of the Russian Federation 07.02.2008 N Pr-212 // WP, № 34, 16.02.2008, Order of the Government of the Russian Federation of 20.10.2010 N 1815-r "On state program the Russian Federation, "Information Society (2011 - 2020 years)" // NW, 15.11.2010, № 46, art. 6026

"The United Nations Commission on International Trade Law." Yearbook. 1996. T. XXVII. - New York: United Nations, 1998. Pp. 319 - 323.

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This point of view is also supported Directive 2000/31/EC of the European Parliament and of Council of 8 June 2000 on certain legal aspects of information society services, in particular, e-commerce in the Internal market (Directive on electronic commerce).

In the Russian Federation, the first steps in this direction were taken in 1984, the provisions of the State Standard GOST 6.10.4-84 USSR "Giving effect to the documents on storage media and mashinogrammes created by means of computer technology", to determine the requirements for the composition and properties of documents on the machine carrier and mashinograms.

The Civil Code of the Russian Federation, revealing the written form of the transaction, paragraph 2 of Art. 160 of the Civil Code states that the use in transactions facsimile reproduction of the signatures by means of mechanical or other copying, electronic signature or other analogue of a handwritten signature is allowed in cases and in the manner provided by law, other regulations or by agreement of the parties.

Par. 2 of Art. 434 of the Civil Code established that a written contract may be signed also by the exchange of documents by mail, telegraph, telex, telephone, electronic or other communication that allows reliably establish that the document comes from a party to the contract.

Russian law defined legal concept of an electronic document.

No longer effective (from July 1, 2013) the Federal Law "On electronic digital signature" defines an electronic document as a document in which information is presented in an electronic digital form²².

Federal Law of 10.01.2002 N 1-FZ "On electronic digital signature" // NW, 14.01.2002, N 2, p. 127.

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Section 11.1 of article 2 of the Federal Law "On Information, Information Technology and Information Security" N 149 electronic document specifies how to document the information in electronic form, i.e. in a form suitable:

- Human-readable using electronic - computers;
- For transmission of information and telecommunications networks;
- For processing in information systems.

Law N 63 "On electronic signature" meets the requirements of the UNCITRAL Model Law "On electronic signature", does not reveal the concept of electronic document, however, section 1, Art. 2 defines a digital signature information in electronic form, which is attached to the other information in electronic form (signed by information) or otherwise relating to such information and is used to identify the person signing information. The law provides for the recognition of the base documents with an electronic signature – a document on paper.

The Act focuses not on the recognition of equivalence of electronic documents and paper documents, and to determine the conditions of equivalence of electronic document (only electronically signed) document on paper. The consequence of this is to simplify the procedures for the recognition between writing transactions and certified electronic signature, which is a significant concession to some participants of the business turnover, who believe that electronic documents are just text documents, "made with the help of a computer"²³.

About the term "documents produced by a computer," see, eg, § 6.1. Unified system for design documentation. The major labels. GOST 2.104-2006 (introduced Rostechregulirovanie Order of 22.06.2006 N 118-st) // M., Standartinform, 2006; The Information

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Modern practical approach to the electronic document focuses on his part as documented information that is suitable for human perception, using electronic - computers, ignoring its representation in a form suitable for transmission of information and telecommunication networks and processing in information systems. As we can see, the theory of electronic documents get itself in the practice contracts. So, in Russian Federation got the problem not to use electronic documents, but to get them evidentiary value.

A particular problem in the study of electronic documents is the fact that in the process of proof should be given considerable attention not only to the content of the file information, and other information contained in a computer, computer system, or their network. It should be borne in mind that the electronic document as a computer information can be represented at several levels: physical (on a physical medium, and is in the process of interaction with the carrier), logical, syntactic, semantic, etc²⁴.

When cases are involved in process, evidence obtained using high technology and equipment, such as: tape and videos with audio and video, floppy disks, CD-ROMs, memory sticks, hard drives, and even the computer

Right: actual problems of theory and practice: coll. Monography / ed. by I.L. Bachyilo – M., Izdatelstvo Urait, 2009. P. 48; Zharova AK Low Problems of circulation of information of Internet (On example of Uzbekistan). PhD dis., M. 2002. P. 187; Kovaleva NN, Holodnaya EV Commentary to the Federal Law of 27 July 2006 N 149-FZ "On Information, Information Technologies and Protection of Information (itemized). M. Yustitsinform, 2007; Commentary on the Civil Code of the Russian Federation: In 3 vols 1. Comment to the Civil Code of the Russian Federation, of the first part (itemized) (3rd edition, revised and enlarged.) ed. Abov TE, AJ Kabalkina. M. Yurayt-Izdat, 2007.

Dulenko VA On the probative value of the computer information // Legal communication, 2006, № 2

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system unit with records files , reports in various formats, database records, which are the actual data text, graphic and photographic, tables, audio and video-document information or combination²⁵ . therefore remains an open question of the applicability of the evidence "alternative forms" in the procedural activity.

Part of proof in civil and arbitration proceedings, the use of an electronic document has quite a long history, and developed very thoroughly.

Since the beginning of the eighties of the 20th century, the USSR State Arbitration Guidance on June 29, 1979 "On the use as evidence in the arbitration proceedings papers prepared using computer technology", identify the parties to arbitration proceedings in support of their claims and defenses submit documents prepared using computer technology. These documents, as they contain information about the circumstances relevant to the case should be taken by the authority of arbitration on the same basis as written evidence²⁶ .

In the area of civil procedure decisions of the Plenum of the Supreme Court on April 3, 1987 № 3 "A strict observance of procedural law in the administration of justice in civil matters"²⁷ identifies that, if necessary, the court may be taken as evidence of written documents

Semiletov SI Use of electronic documents as evidence in court proceedings // Citizen and Law, № 1., 2007

Soviet state arbitration. Guidance on June 29, 1979 N I-1-4 "On the use as evidence in the arbitration proceedings papers prepared using computer technology" // Collection Guidance USSR State Arbitration. 1983.

It is now recognized as invalid.

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received by computer technology, what materials are evaluated in conjunction with other evidence "²⁸.

Guiding instructions to claim 6 Resolution of the Plenum of the Supreme Court of the USSR № 7 of 9 July 1982 "On the court decision," states that the reasoning of the Court, if necessary, the right to refer to the written evidence in the form of documents obtained by the electronic - computer technology. These documents are accepted as proof when properly clearance in accordance with established order ²⁹.

With the adoption of Civil Procedure and the Arbitration Procedure Code, the electronic document in a separate category of evidence has not been selected, but the exact place in the structure of evidence in civil and arbitration cases are now defined.

Thus, in accordance with paragraph 1 of Art. 71 Civil Procedure Code of the Russian Federation to written evidence includes documents and materials made in the form of digital, graphic records, including those received via fax, email or other communications.

Article 60 of the Arbitration Procedure Code directly points to the possibility of using as a source of written evidence in arbitration agreements, memos, business letters, and other documents and records, including those received via fax, email or other means of communication (eg electronic documents - author.).

The requirements of Part 3 Art. 75 Criminal Procedure Code of the Russian Federation determined that the documents received by fax, email or other communications, as well as documents signed by electronic

Resolution of the Plenum of the Supreme Court on April 3, 1987 № 3 "A strict observance of procedural law in the administration of justice in civil matters" // Bulletin of the Supreme Court. 1987, № 3.

"Bulletin of the Supreme Court, № 4, 1982

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signature or another analogue of signatures accepted as written evidence in the cases and in the manner required by the federal law, other normative legal act or contract.

It should be emphasized that in the Russian civil and arbitration process, acquired a special significance not to relate electronic documents - paper documents, and the selection of an electronic document in a separate category of evidence (relating to formal written evidence).

In criminal proceedings, part 2 of article 74 Criminal Procedure Code of the Russian Federation contains a list of types of evidence, which is exhaustive and is not subject to interpretation. These include the testimony of a suspect, accused, victim and witness, opinion and expert evidence, expert opinion and testimony, physical evidence, records of investigation and trial, other documents containing information relating to the criminal case.

It should be borne in mind that according to the legal definition of art. 81 Criminal Procedure Code of the Russian Federation, any material evidence of recognized items:

- Which served as instruments of crime or retained traces of the crime;
- Which were sent to criminal acts;
- Money, valuables and other property derived from the commission of the offense;
- Other objects and documents that can serve as a means for the detection of crime and establishing the circumstances of the criminal case.

Article 84 of the Criminal Procedure Code of the Russian Federation states that other documents admissible as evidence if the information contained in them are important to establish the circumstances relevant to the case.

The documents may contain information, as documented in writing or in another form. These may

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include materials photography and filming, audio and video recordings and other media, received, obtained on demand or presented in accordance with the art. 86 of the Code.

In this case drew the attention clearly expressed "material form" evidence that might be or objects (Article 81 of the Code), or the information fixed in writing or in any other form (material photography and filming, audio and videos and other media).

Thus the electronic document can be considered as evidence in criminal matters only in the form of an exhibit, or as any other documents relating to the proceedings.

Currently, Russian Federation has refused to participate in the Convention on cybercrime³⁰, under which since 2011 a number of countries of the Old and New World provides a set of agreed actions aimed at improving the integration process in the fight against cybercrime, implementing the unification of the national criminal-procedural law within defined above international agreement.

The above-mentioned measures to improve procedural law should be included:

- Expedited preservation of stored computer data (Article 16);
- Expedited preservation and partial disclosure of traffic data (Article 17);
- Production order (Article 18);

The Convention on the crime in the computer information (ETS N 185) concluded in Budapest 23.11.2001. Decree of the President of the Russian Federation of 15.11.2005 № 557-p Russian Federation decided to sign the Convention, a statement about the condition of a possible revision of the provisions of paragraph "b" of Article 32 of the Convention. In 2008, the Order of the President of the Russian Federation of 22.03.2008 № 144-p, the Order of the President of the Russian Federation of 15.11.2005 № 557-p invalidated.

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- Real-time collection of traffic data and search and seizure of stored computer data (Articles 19, 20).

Perhaps when the issues of the evidentiary value of electronic documents in a variety of process should study the experience of the United States, long and quite successfully resolve this issue as a standard - the legal level, and at the level of judgments precedent.

In the USA, the main sources of American law governing the use of evidence obtained by a computer, are adopted Federal Rules of Criminal Procedure and the Federal Rules of evidence³¹. In addition, a number of provisions contained in the USA Patriot Act, Federal Criminal Code Related to Computer Intrusions, numerous court precedents.

Federal Rules of Evidence do not contain direct references to computer evidence. However, comments and case law suggest that the rules were created with the expectation of their application to the "non-traditional" evidence, which also include electronic documents.

In regard to the Federal Rules of Criminal Procedure, it should be borne in mind that the electronic documents as evidence are divided into direct (non-hearsay), indirect (hearsay), and combine the properties of both³².

Federal Criminal Code and Rules. Federal Rules of Criminal Procedure. West Group. St. Paul, Minn. 1997. P. 257, 342, 379. Federal Rules of Evidence for United States Courts and Magistrates // Federal Rules of Evidence, 2004 - 2005 Edition. Also including California Evidence Code (with selected comments), Uniform Rules of Evidence, Westlaw Electronic research guide, Report on caselaw divergence from FRE. West Group; 3d Bk & Map edition, 2004.

Searching and obtaining electronic evidence Manual. Chapter 3 // United States Department of Justice // cybercrime. Gov/ ssmanual/05 ssma.html

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The direct evidence include those that are generated by a computer without human subdivided into two categories:

- Computer - generated records;
- Computer-stored records).

There is also quite a reasonable view on the allocation of the third category, which includes a combination of two this³³.

Hearsay contain the result of human activity (personal letters, memos, documents, accounting, etc.), created by people, not the magazines or computer record of the processes that the rules of the study of indirect evidence. Some computer data is fully compliant with hearsay.

The classification is determined by the form of presentation of the fact that there are two formats of electronic information: hard copy (hard or hard copy) and machine readable format (machine-readable copy).

The shape of the proof electronic documents are divided:

- Raw data (source data) including data entered by the person and related documents in general;
- Databases (database);
- Codes necessary to interpret computer information (codes needed to decrypt the e-information);
- Commercial software (commercial software);
- Computer systems (computer systems), which are defined as computers, servers, local area networks, magnetic media of various kinds.

The U.S. experience in the form of an electronic document as evidence of procedural shows that Federal

Orin S. Kerr Computer Records and Federal Rules of Evidence
// United States Department of Justice // cybercrime. Gov

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Rules of evidence³⁴ require the provision of information in a usable form. In many cases such recognized hardcopy-print file contents on the paper. However, the rule does not contain any provision prohibiting or restricting the use of the second format. Sets a number of precedents that, under certain circumstances, hard copy can not be recognized as "fitness for use" and requires parties to provide data in machine-readable format - in the form of punched cards, magnetic tapes, floppy disks, CD-ROMs, zipp-drive or directly to your hard drive.

So, Russian Federation can use results of the experience of other countries, or recommendations of International organizations for using electronic documents to cover matters arising from all relationships of a commercial nature, whether contractual or not. Of course, we need to integrate our actions with other countries in this question for the best results of using an electronic document as evidence.

Thus, the possibility of using an electronic document as evidence in Russia complicated by the existence of problems:

- At present the conditions for the equivalence of only electronic document (only electronically signed) - paper documents, without proper equality between electronic documents and paper documents;

- The use of an electronic document as evidence in criminal cases the focus is on the material component of an information object, but not on its information component;

- Not the place and role of the electronic document as evidence in criminal cases;

Federal Rules of Evidence. 34

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- No measures for the integration of approaches in this regard to existing international agreements and practical achievements in this field in other countries.

The elimination of these problems be overcome as changes in procedural law, and through the development and adoption of the Information Code, the Law "On Electronic Document". Of course, such a problem must be overcome as a result of integration of the lot of countries and their scientists.

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Problems protection of information,

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Scientific publication

Human Rights on the Internet

Legal Frames and Technological

Implications

Technical Editor: Dr. Anna K. Zharova

Passed for print 26.10.2012. Format A5

Type Times New Roman

Press sheet 4,4

Pressrun 200 copies

National Research University
"Higher School of Economics"
101000, Moscow, ul. Myasnitskaya, 20