

UDC 340: 004

DOI <https://doi.org/10.32849/2663-5313/2021.7.10>**Tetiana Mikhailina,***Doctor of Law, Professor, Professor at the Department of Theory, History of State and Law and Philosophy of Law, Vasyl' Stus Donetsk National University, 21, 600-richchia street, Vinnytsia, Ukraine, postal code 21021, mihaylina@donnu.edu.ua***ORCID:** orcid.org/0000-0002-1129-2470**Yurii Hotsuliak,***Doctor of Law, Associate Professor, Acting Head of the Department of Theory, History of State and Law and Philosophy of Law, Vasyl' Stus Donetsk National University, 21, 600-richchia street, Vinnytsia, Ukraine, postal code 21021, y.hotsulyak@donnu.edu.ua***ORCID:** orcid.org/0000-0001-6765-4592**Andriy Hel,***PhD in Law, Associate Professor, Associate Professor at the Department of Forensic Medicine and Law, National Pirogov Memorial Medical University, 56, Pirogova street, Vinnytsia, Ukraine, postal code 21018 appel1956@gmail.com***ORCID:** orcid.org/0000-0003-2612-4530

Mikhailina, Tetiana, Hotsuliak, Yurii, Hel, Andriy (2021). Protection of the rights of subjects of information legal relations from violations on the Internet. *Entrepreneurship, Economy and Law*, 7, 62–68.

PROTECTION OF THE RIGHTS OF SUBJECTS OF INFORMATION LEGAL RELATIONS FROM VIOLATIONS ON THE INTERNET

Abstract. *The purpose* of the scientific article is a theoretical and applied analysis of protecting the rights of subjects of information legal relations from violations on the Internet, as well as making suggestions for eliminating individual problems. **Research methods.** Research methodology consists of a complex of general scientific and special methods of data acquisition, as follows: systems approach, cybernetic and synergetic methods, formal legal method, legal comparativism, and observation as the common sociological method. **Results.** It is noted that peculiarities of the Internet environment create significant risks to human rights violations, so they should be in state focus. This forms the basis for the solid support of the need to regulate Internet legal relations emphasizing the guarantee and protection of the participants' rights without resorting to Internet paternalism, which impedes the technological development of the state or puts major segments of relations in the shade. **Conclusions.** The authors propose to change the terminological approaches and apply the phrase "protection of the rights from Internet violations" or "protection of the rights from violations on the Internet" instead of "protection of the rights on the Internet", which mediates both the scientific side of the problem and the exclusively practical side of such protective legal relations. The article substantiates a viewpoint on the necessity to enshrine in law the obligation for transnational information companies to have an official representative office in Ukraine. The above would provide additional opportunities to protect the rights of subjects of information legal relations, incl. by litigation. At the same time, it is supported legislative initiatives on taxation of multinational information companies in Ukraine, which is now a global trend. The authors have elucidated that strict state control over the information space is possible and widely implemented in totalitarian (authoritarian) regimes, but is not tolerated by democratic societies. Self-protection measures are being strengthened within information systems, including at the corporate level. If one uses financial levers, then the means of a financial liability are most acceptable, taking into account the profits of information giants.

Key words: human rights protection, information legal relations, subjects of information relations, offenses, legal liability, legal regulation, digital society.

1. Introduction

According to the worldwide trend, our country is heading to informatization – these

days, according to quarantine measures caused by the COVID-19 pandemic as well – that inevitably transforms a living and business

environment and will turn the best part of habitual acts into a distance mode. This trend seems to be kept even after the quarantine's termination. Thus, the information society is no longer just a set of information technologies inuring to the benefit of humanity (Mikhailina, 2016, p. 167), it has escalated into a synergetic mechanism, almost an organism developing under its own, sometimes very specific, laws. Moreover, the adoption of strategic documents like the Concept for the Development of the Digital Economy and Society of Ukraine for 2018–2020 and approval of the Action Plan for its implementation dated January 17, 2018, № 67-p (Kontseptsia, 2018) is undoubtedly a significant and necessary step. However, the abovementioned strategic directions for the development of the digital society risk remaining declarative without actual upgrade of Internet security and advancement of protection and defense of the rights of subjects of information legal relations, including intellectual property rights and personal data of persons. Those who not only communicate using information technologies but also conduct business via the Internet are particularly vulnerable. Therefore, the issue under study is definitely relevant nowadays and will gain momentum in the long run.

The purpose of the scientific article is a theoretical and applied analysis of protecting the rights of subjects of information legal relations from violations on the Internet, as well as making suggestions for eliminating individual problems.

Research methodology is a complex of general scientific and special methods of data acquisition, as follows: systems approach (since information technologies can and must be considered under the systems theory), cybernetic and synergetic methods (given that regulation and self-regulation processes of the above systems influence the peculiarity of an environment and opportunities for the rights' protection), formal legal method (in light of the fact that the quality of legal drafting methodology and the adequacy of legal remedies essentially stipulate the option of effective protection and defense of human rights) legal comparativism (to find out international best practices and analyze ways for their borrowing), and observation as the common sociological method.

2. Theoretical and terminological issues of the defense and protection of rights from violations on the Internet

The theoretical protection of rights in information relations consists of several dimensions. The former is the very opportunity and necessity to defend and protect the rights of persons from offences on the Internet

(or, on the contrary, the lack of them) which took the shape of two diametrically opposite tendencies, between the extreme points of which there are many intermediate ones. As A. Kostenko emphasizes, cyber-libertarianism and Internet paternalism are paradigms developed due to the controversial consideration of the powers of public authorities to control the Internet environment and its subjects. Freedom and safety are fundamental values represented by the paradigms, the degree of implementation of which practically relies on balance. Internet rights of a man are highly dependent on the solution of this problem. Internet rights, by their nature, are more realized through the prism of freedom, and Internet statism and Internet paternalism are the greatest threat to them. However, on the other hand, it must be recognized that a full-fledged availability of Internet rights and their use also requires sufficient Internet security (Kostenko, 2019, p. 63). Therefore, it is essential to search for a balance between the extreme points of libertarianism and statism, that is reasonable not only for information legal relations, to achieve sufficient security in the technical environment where people spend a large percentage of their life. A well-structured approach can guarantee zero-restraint of technical progress and, in addition to that, protection of human rights.

The expediency of the above thesis is supported by such scientists as O. Petryshyn and O. Hyliakawhostatethat“thesphereofdigital relations is described by signs of virtuality and cross-border nature, requires special attention to the sphere of fundamental human rights from the standpoint of their provision, taking into account the special properties of this environment, where subjects and objects very often act as a kind of “simulation”, and the limits of the exercise of individual rights and interference in them are not always unambiguously identified” (Petryshyn, Hyliaka, 2021, p. 16). In other words, the listed particularities of the Internet environment create significant risks of human rights violations, so they should be in state focus. This forms the basis for the solid support of the need to regulate Internet legal relations emphasizing the guarantee and protection of the participants' rights without resorting to Internet paternalism, which impedes the technological development of the state or puts major segments of relations in the shade.

Another dimension of the issue under study is heterogeneity or even ambiguity of the established conceptual framework. The analysis of scientific literature permits ascertaining the terminological phrases

“protection of the rights on the Internet” (Atamanova, 2014, p. 8; Kapitsa, Rassomahina, Shakhbazian, 2012, p. 130; Kuts, Ivanov, 2018, p. 616–617; Ianytska, Ambrush, Koval, 2019, pp. 147–148) and “information security on the Internet” are conventional in the relevant sphere. If the phrase “information security on the Internet” seems fairly admissible because that sort of security can be carried out not only by legal but also technical, organizational means, which do ensure the protection of information resources directly on the Internet, and “protection of rights on the Internet” raises some questions.

In accordance with the law, the protection of the violated right is implemented in particular forms and order. The methods of protecting one’s rights is accurately regulated by normative legal acts. However, the analysis of such forms, methods, and order highlights that the protection of rights doesn’t take place on the Internet, while there are misconducts in the information environment. As for the protection of the rights of information legal relations, solely self-defense (which is ineffective enough in a virtual environment) can be realized directly on the Internet. Thus, as one can see that the use of the phrase “protection of the rights on the Internet” is totally erroneous, unjustified and doesn’t render procedural essence. Recent scientific publications have made careful attempts to give up on the established terminology, and it has appeared a low number of phrases like “protection of the rights from violations on the Internet” (web-fix.org) that are essentially much closer to the facts of such cases. In this regard, the authors propose to change the terminological approaches and apply the phrase “protection of the rights from Internet violations” or “protection of the rights from violations on the Internet” that mediates both the scientific side of the problem and the practical side of such protective legal relations.

3. Issues of the parties of information legal relations and their influence on the protection of human rights

Nowadays, legal doctrine and practical recommendations are characterized by many recommendations on technical terms of the protection of the rights on the Internet (including the way one can identify the website’s owner, what one should regard as electronic evidence etc.). However, in practice, there emerges a good deal of violations of the rights of the participants of legal relations on the Internet when these pieces of advice may not come in handy at all due to fundamental infeasibility to protect one’s violated right by litigation in Ukraine. The

point at issue is the violations of the rights, for instance, on Facebook. It is quite evident that such violations are numerous (they embrace an illegal use of copyright works, violations of data confidentiality, unlawful distribution of advertising, unreasoned blocking of ads managers etc.), but the only security tool today is a complaint about malpractice submitted to Facebook customer service which, upon the results of the examination, either blocks a page (content) that is under appeal or doesn’t. It is often very difficult to influence a decision of the staff of the company’s customer service through communication. It is also difficult to influence a particular decision if, on the contrary, an erroneous blocking of a page or ads manager happened.

When it comes to the protection of the rights violated on social media, its application is impossible since there is no a Facebook office in Ukraine (<https://thepage.ua>). Thus, only pretrial protection is available for Ukrainian users. Moreover, if a page (group) is blocked, first, an offender is not prohibited to create similar groups in the future and, second, it stands to reason that the recovery of costs due to the rights’ violation is not regarded (Mikhailina, 2020, pp. 151–152).

A statutory obligation of transnational information companies to have a representative office in Ukraine could become a solution in this case. This would ensure additional opportunities for the rights’ protection of the subjects of information legal relations, incl. by litigation. The beforementioned viewpoint appears in the scientific discourse from time to time. Therefore, H. Fedyniak asserts that “as transnational companies locate their manufacturing facilities in the states the legal systems of which allow them to gain the highest income, national legislation of host countries or international treaties should provide for a norm which would make it possible to exercise the country’s right to base a transnational company if it largely contributes to protecting one that ancient Romans called “*summum bonum*” (the highest good). The author further specifies the highest good in this context means human rights (Fedyniak, 2019, p. 170). This is extremely relevant to transnational information giants because the risks of violating human rights by both these companies and participants of legal relations within such a system are incalculable.

The Ukrainian legislator, at least for now, has introduced a tax for transnational information companies. Before that, in addition to the lack of an official representation office of information relations under study, there was another problem: the country’s budget

received less than due from the activities of such companies in Ukraine. The critical comments of the Ukrainian League of Industrialists and Entrepreneurs on the above initiative claiming that “the Ukrainian version of “Google tax” (the law № 4184) is the most radical and raises concerns about whether attempts to raise funds for the budget don’t cause significant embarrassment for small and medium businesses. The so-called “Google tax” (generally on transnational IT companies) has been available in the EU long now. It has been facing a storm of discussions in Europe, as well as in the United States, and some adjustments in company pricing policy. It is worth mentioning that in the European context, it refers to 2-3-5%, on average, not 20%”. Thus, the Ukrainian offer is the most rigorous (www.fixygen.ua). However, criticism turned to be hasty because, in July 2021, G7 leaders agreed to introduce a global digital tax. Apple, Google, Amazon, Facebook and other corporations are obliged to make monetary contributions to the budgets of the countries where they render their digital services. The G7 countries have reached a history-making agreement: global IT companies are subject to additional taxes at a rate of at least 15%. This fact means that large corporations, such as Apple, Google, Amazon or Facebook, pay taxes to the treasury not only of the country of incorporation but also other countries where they officially provide their services, making a profit. The new tax reform will terminate the practice of registering companies in offshore zones or countries with lower levels of taxation (<https://psm7.com/uk>). Thus, Ukraine is leaning towards the world trend in the realm of taxing transnational information companies; hence, the above initiative is fully supported.

4. Efficient tools of protection and defense of the rights of subjects of information legal relations

In recognizing the most optimal means of the protection and defense of the rights of subjects of information relations, the issue of a balance between freedom of information, zero censorship and concurrent observance of basic human rights and freedoms is updated.

At the same time, one reveals various controversial points of means as follows: legal, social, technical, corporate, and others. Thus, in 2020, Donald Trump wanted ByteDance to get rid of US assets related to TikTok. The US president reasoned that there were threats to national security. The document prohibits ByteDance (TikTok owner – editor’s alteration) to purchase musical.ly. In his decree, Trump gave the company 90 days to give up all assets and get rid of personal data of users that

had been collected in the United States through TikTok or musical.ly. As reported earlier, Microsoft suspended negotiations on buying a stake of the US TikTok division from the Chinese company ByteDance. The ground was the negative attitude of US President D. Trump towards TikTok (<https://ua.news/ua>).

The response was not slow in coming. On January 10, 2021, 12 social media apps and platforms banned Donald Trump due to disorders in Washington and Capitol riot dated January 6th, namely: Facebook, Twitter, Google, Spotify, Snapchat, Instagram, Shopify, Reddit, Twitch, YouTube, TikTok, and Pinterest. Social media officials banned the accounts of the 45th president of the United States, accusing him of inciting violence and spreading false information (<https://suspilne.media>). It seems that such banning is not only an outcome of the riot but also of D. Trump’s consistent struggle against media and freedom of speech that results in a natural response of a democratic society and the mechanisms of synergetic development of information systems.

In other words, strict and “manual” government control over information space with a technical component is possible and widely realized within totalitarian (authoritarian) regimes but is not tolerated by democratic societies. Information system strengthen the measures of self-protection of rights, incl. at the corporate level.

If one uses financial levers, then financial liability measures are thoroughly acceptable, taking into account the profits of information giants, inclusive and effective prevention of human rights violation on the Internet. The above fact is confirmed by international practice. In August 2020, a class action lawsuit was filed with the Court of California in Redwood City accusing Facebook of illegal collecting and using the biometric information of as many as 100 million Instagram users. Moreover, according to the lawsuit, the users were not informed and didn’t provide their consent, and the company was profiting. If the company’s guilt is proven, it could be forced to pay between \$ 1 000 and \$ 5 000 for each victim. The lawsuit concerns collecting data to develop a facial recognition technology. It would seem the app automatically scans the faces of the people pictured in photos in correspondence, even if they don’t use Instagram and, therefore, have never had the opportunity to provide their consent (<https://bykvu.com>). The Hungarian Competition Authority fined Facebook \$4 million. They state that the company misled its users in Hungary by claiming the use of its services was free. However, the Hungarian authority believes that despite people didn’t

pay a use fee, they “paid” by Facebook collection and use of their personal data. Using that information, Facebook sold advertising opportunities to its clients (<https://hromadske.ua>). The Italian Competition Authority (Autorit Garante della Concorrenza e del Mercato, the AGCM) fined Facebook 7 million euros for failing to comply with a previous order related to improper use of its subscribers’ data. The fine was imposed for “non-compliance with the order to stop mishandling users’ data and publish a statement about error fixing, under the authority’s demand”. The order was issued in November, 2018: the body determined that at the registration stage, Facebook had had to warn users that they would collect data about their activity for commercial purposes, in fact, in exchange for the free use of the app. According to the authority, users had not been informed properly and the issues of data required for service personalization – comfortable interaction with others on social media – and data collected for targeted advertising had not been clearly distinguished. The competition watchdog fined the company 5 million euros and ordered to give up on such a practice and publish a statement on the Italian page of the company, as well as disseminate it among all Italian Facebook users (www.pravda.com.ua). Based on the above, one can conclude that financial levers (financial liability) along with measures of administrative liability can become the most effective in counteracting the violation of the rights of subjects of information legal relations on the Internet.

In the context of effectiveness of types and forms of protection, the judicial remedy has turned to best-performing in world practice. However, in this regard, it is essential to advance the identification mechanism for users of the information environment to catch violators and make transnational information companies subjects of protected legal relations

through the obligation to have a representative office in Ukraine.

5. Conclusions

Taking into account the conducted analysis, the authors have concluded that peculiarities of the Internet environment create significant risks to violating human rights, and thus, they must be in the state focus. This forms the basis for the solid support of the need to regulate Internet legal relations emphasizing the guarantee and protection of the participants’ rights without resorting to Internet paternalism, which impedes the technological development of the country or puts major segments of relations in the shade.

It is proposed to change the terminological approaches in the relevant sphere and apply the phrase “protection of the rights from Internet violations” or “protection of the rights from violations on the Internet” instead of “protection of the rights on the Internet”, which mediates both the scientific side of the problem and the practical side of such protective legal relations.

The article substantiates a viewpoint on the necessity to enshrine in law the obligation for transnational information companies to have an official representative office in Ukraine. This would guarantee additional options for the protection of the rights of subjects of information legal relations, in particular, through judicial procedures. At the same time, legislative initiatives on taxation of multinational media companies in Ukraine are supported, that is now a global trend.

It has been established that strict state control over the information space is widely implemented in totalitarian (authoritarian) regimes but is not tolerated by democratic societies. Self-protection means are being strengthened within information systems, including at the corporate level. If one uses financial levers, then financial liability measures are the most acceptable.

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Тетяна Михайліна,

доктор юридичних наук, професор, професор кафедри теорії, історії держави і права та філософії права, Донецький національний університет імені Василя Стуса, вул. 600-річчя, 21, Вінниця, Україна, індекс 21021, mihaulina@donnu.edu.ua

ORCID: orcid.org/0000-0002-1129-2470

Юрій Гоцуляк,

доктор юридичних наук, доцент, в. о. завідувача кафедри теорії, історії держави і права та філософії права, Донецький національний університет імені Василя Стуса, вул. 600-річчя, 21, Вінниця, Україна, індекс 21021, y.hotsulyak@donnu.edu.ua

ORCID: orcid.org/0000-0001-6765-4592

Андрій Гель,

кандидат юридичних наук, доцент, доцент кафедри судової медицини та права, Вінницький національний медичний університет імені М. І. Пирогова, вул. Пирогова, 56, Вінниця, Україна, індекс 21018, argel1956@gmail.com

ORCID: orcid.org/0000-0003-2612-4530

ЗАХИСТ ПРАВ СУБ'ЄКТІВ ІНФОРМАЦІЙНИХ ПРАВОВІДНОСИН ВІД ПОРУШЕНЬ У МЕРЕЖІ ІНТЕРНЕТ

Анотація. *Метою* статті є теоретико-прикладний аналіз проблематики захисту прав суб'єктів інформаційних правовідносин від порушень у мережі Інтернет, а також внесення пропозицій щодо усунення окремих проблем. *Методи дослідження.* Методологія роботи являє собою комплекс загальнонаукових і спеціальних способів отримання даних, зокрема системного, кібернетичного та синергетичного методів, формально-юридичного методу, методу правової компаративістики, а також методу спостереження як елементарного соціологічного методу. *Результати.* Наголошується на тому, що особливості інтернет-середовища створюють значні ризики порушення прав людини, тому повинні перебувати у фокусі держави. Це дає підстави для однозначної підтримки позиції щодо необхідності регуляції інтернет-правовідносин, а також для акценту на гарантованості й захищеності прав учасників, проте без звернення до інтернет-патерналізму, який створює перешкоди для технологічного розвитку держави або переводить значні сегменти відносин у тінь. *Висновки.* Пропонується змінити термінологічні підходи в досліджуваній сфері та застосовувати словосполучення «захист прав від інтернет-порушень» або «захист прав від порушень у мережі Інтернет» замість «захист прав у мережі Інтернет», що опосередковує не лише науковий бік проблеми, а й суто практичну сторону таких охоронних правовідносин. Обґрунтовується позиція щодо необхідності законодавчого закріплення обов'язку для транснаціональних інформаційних компаній мати офіційне представництво в Україні. Це забезпечило би додаткові можливості для захисту суб'єктами інформаційних правовідносин своїх прав, зокрема, у судовому порядку. Водночас підтримуються законодавчі ініціативи щодо питання оподаткування інформаційних транснаціональних компаній в Україні, що наразі є загальносвітовим трендом. Виявлено, що жорстке державне управління інформаційним простором є можливим і широко реалізується в тоталітарних (авторитарних) режимах, при цьому для суспільств демократичних воно є неприйнятним. В інформаційних системах підсилюються заходи самозахисту прав, зокрема й на корпоративному рівні. Якщо ж використовувати фінансові важелі, то найбільш прийнятними є заходи матеріальної відповідальності.

Ключові слова: захист прав людини, інформаційні правовідносини, суб'єкти інформаційних відносин, правопорушення, юридична відповідальність, правове регулювання, digital-суспільство.

The article was submitted 15.07.2021

The article was revised 05.08.2021

The article was accepted 26.08.2021