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DIGITAL LAW IN THE SYSTEM OF UKRAINIAN LAW: ANALYSIS OF PARTIES

Abstract. ***Purpose.*** The purpose of the article is to establish the role of digital law in regulating social relations and to outline the main issues of determining its legal nature from the perspective of actor analysis. ***Results.*** The article analyses the criteria for distinguishing digital law as an independent branch of law. It is emphasised that the use of digital technologies leads to the formation of a separate branch of law which, so to speak, "autonomously" regulates social relations in the field of digitalisation independently of other branches, using its regulatory methods through digital technologies. Digital technologies are not only a way to give a new form to existing social relations, but also a tool for qualitative changes in the conduct of parties to legal relations. In addition, modern digital practice leads to a certain blurring of the boundaries between absolute and relative rights, in particular in the context of the implementation of legal remedies. In the context of distinguishing digital law as an independent branch, it is important to emphasise that some legal relations exist only in a special digital environment, which significantly changes the nature of interaction between their participants, sometimes actually creating a new digital legal reality characterised by the integration of the digital and real worlds, public and private platforms, private and public networks, etc. Obviously, this circumstance cannot be ignored by the national legislator. ***Conclusions.*** It is concluded that Ukraine's digital law is specific and independent in nature. The basis for this statement is the criteria enabling to state that digital law is relatively independent. It is not only about using a specific conceptual apparatus, determining the legal status of the parties to legal relations, which are essential for the exercise of digital rights, but also about the formation of a system of regulatory framework for digital legal relations, in which self-regulatory acts, technical and even ethical provisions that ensure the formation of their own arsenal of means of interaction between participants in digital legal relations continue to occupy a special place. Modern legal relations, based on digital technologies, actively influence relations outside the digital world. In fact, we mean a qualitatively new development of law and regulatory framework that fundamentally changes traditional approaches to building social relations in the context of interaction between individuals, society and their contacts with public authorities. However, this new digital legal reality poses additional risks for parties to legal relations, as it requires to be regulated systematically and consistently, and therefore the issue of forming digital law, defining its legal nature and place in the Ukrainian legal system is relevant and timely.

Key words: law, digital law, digital environment, digital legal relations, parties to legal relations, digital actors, digitalisation, information technology, digital state.

1. Introduction

The digitalisation of all sectors of society and the state has led to the transformation of relevant social relations, which have taken on new forms. This, in turn, has led to the formation of a new regulatory framework and amendments to existing legislation. These trends are further complicated by the transformation of digital relations themselves, the emergence of new forms of interaction between legal entities in the digital environment.

Digitalisation provides new opportunities to improve welfare and address social issues in education, business, healthcare and environmental protection, public administration, transport and other sectors of human life (Haltsova, 2021). Modern legal relations, based on digital technologies, actively influence relations outside the digital world. In fact, we mean a qualitatively new development of law and regulatory framework that fundamentally changes traditional approaches to building social relations in the context of interaction between individuals, society and their contacts with public authorities. However, this new digital legal reality poses additional risks for parties to legal relations, as it requires to be regulated systematically and consistently, and therefore the issue of forming digital law, defining its legal nature and place in the Ukrainian legal system is relevant and timely.

The scientific research in the field of digital law and the legal status of participants in

the digital environment includes the works of domestic legal scholars who have studied these issues at different times, including O. Barabash, M. Baimuratov, O. Batanov, D. Bielova, Yu. Bysaha, O. Bernaziuk, V. Voronkova, O. Karmaza, Yu. Razmetaieva, N. Parkhomenko, T. Podorozhna, O. Skrypniuk, O. Streltsova, Y. Tikhomyrov, Yu. Shemshuchenko, D. Yatskiv, and others.

The purpose of the article is to establish the role of digital law in regulating social relations and to outline the main issues of determining its legal nature from the perspective of actor analysis.

2. Actors in the information space

With the development of information technologies, the Ukrainian state is increasingly seeking to establish itself as a legal state with the aim of regulating the activities of legal entities that are currently 'unusual' for perception. For example, the current legislation introduces the following new actors and provides their definitions: "website owner," "hosting provider," "blogger," "search engine operator," "owner of an audiovisual service," etc. (Barabash, 2022).

Among the actors in the information space, several groups of actors can be distinguished, depending on their role in this environment: information producers, information recipients, actors that systematise and store information, and actors that provide information distribution (transmission) services. The state seeks to regulate their legal status in relation to all of these actors. For more effective supervision of the actions of some of the most active entities, the state enters information about them into the relevant registers. According to scholars, the list of legal relations arising in the field of IT law is quite general, but it is obvious that they are heterogeneous in their legal nature, and therefore it is very difficult to find clear criteria that would allow for a certain classification. The only unifying factor is the virtual environment in which these relations arise, change and terminate (Urtaiev, 2022).

Recently, through amendments to the current legislation, the state has been trying to regulate the activities of entities that do not directly create new information themselves, but provide services to content consumers by systematising and transmitting this information. These are information intermediaries. An information intermediary is a person or organisation that sends, receives or stores electronic documents, messages or provides other services using information and telecommunication technologies on behalf of another person (Varenko, 2014). This means a person who transmits material in an information and telecommunication network, in particular the Internet, a person who provides the possibility of placing material or information necessary for its receipt using an information and telecommunication network, a person who provides access to material in this network. By establishing prohibitions and restrictions on entities providing information dissemination services (information intermediaries), the state imposes obligations on them that are actually a continuation of state functions.

The mass media (hereinafter referred to as the media) are particularly important among the entities that create and disseminate information. In Ukraine, the media are institutions and forms of public and open dissemination of information for a wide range of users, which is carried out with the help of technical means. The mass media is a complex system in which there are two main types: electronic (radio, television, film, audio) and print (press) (Makeieva, 2019).

Nowadays, the media are institutions created for the public, open transmission of various information to different people with the help of special technical tools. This relatively independent system (remember that they are classified as the fourth branch of power in Ukraine) is characterised by its many elements: properties, content, methods, forms and levels of organisation (Sikorskyi, 2021). Furthermore, the state should consider the influence of the media on society, while controlling these levers of influence. It should be noted that the media are subject to mandatory state registration. In the modern world, the media are actively using the Internet, namely creating websites, TV and radio channels, organising online broadcasting, having their own print media, etc.

A widespread use of digital technologies leads to the formation of a separate branch of law which, so to speak, "autonomously" regulates social relations in the field of digitalisation independently of other branches, using its regulatory methods through digital technologies. In this regard, the views of the well-known Harvard Law School Professor L. Lessig should be noted, who criticised the position of the US Court of Appeals Judge F. Easterbrook, who opposed the idea of defining cyber law as a unique section of legal research and litigation (Easterbrook, 1996), consistently defended the idea that legal concepts and rules will inevitably evolve as cyberspace develops and expands. The researcher focused on the specifics of cyberspace, where there are special mechanisms of interaction and identification of participants in relations is complicated (Lessig, 1999).

It should be emphasised that the controversy over the sectoral separation of legal provisions regulating social relations in the context

of digitalisation is a consequence of the discussion about the system of law and the criteria for its construction. As is well known, the criterion for distinguishing branches of law is the subject matter and method of regulatory framework.

3. Specific features of digital law separation

Modern researchers believe that a prerequisite for the allocation of a new branch is the formation of a qualitatively different sector of social relations that will potentially be the subject matter of regulatory framework (Hetman, 2023). Moreover, it is important to distinguish such processes from the usual transformation of existing relations related to the use of their new forms.

Another element of this debate is the views of scholars on the allocation of new human rights – digital rights. According to some scholars, digital rights are not a new type of property rights, but only a digital form of binding and other rights, not all, but only those directly specified in the current legislation (De Hert, Kloza, 2012). Therefore, the digitalisation of certain property rights does not change their legal (civil law) nature: it is not the subjective rights themselves that become digital, but only the forms of their consolidation (existence) and the ways of exercising these rights, including the ways of disposing of them, that are determined by this circumstance (Marwick, Boyd, 2014). This perspective is supported by other scholars who believe that digital law is not a separate sub-branch in the legal system, but only a digital form of private and public digital relations that requires new regulatory approaches, but not the substitution of the content of digital relations with their form (Reventlow, 2020).

It is possible that the relevant groups of relations (intellectual property, e-commerce, personal data, information security, etc.) are already included in the subject group of existing branches of law, without constituting a new branch of law in the form of Internet law, cyber law, digital law, etc. Nevertheless, does this mean that it is impossible to identify the specifics of legal relations related to the acquisition, exercise and protection of rights, and to form a new branch of law on this basis? According to O. Bratasiuk, in the modern world, electronic information media, namely, the Internet resources to which they provide access, play an important role in a person's daily life. Few people can imagine their lives without digital devices, which are a way and a tool for obtaining information, and for some it is a mandatory attribute for making a profit. Therefore, the issue of regulating digital rights in the shortest possible time arises. A significant contribution to solving this problem would be to enshrine basic digital rights at the constitutional level or to include these rights in relevant legislation, and it is urgent to develop effective mechanisms for the implementation and protection of these rights (Bratasiuk, 2021). This can be demonstrated by the correlation between civil and financial law. In both cases, the matter subject to regulatory consideration is property relations, but the subject matter of legal relations and the methods of their regulatory framework give grounds for their sectoral delineation even in inter-sectoral institutions, such as government loans, where the issue of government bonds is the subject matter of financial law, and the relationship between the state, represented by its authorised bodies, and the borrower under a government loan agreement is the subject matter of civil law.

In addition, modern digital practice leads to a certain blurring of the boundaries between absolute and relative rights, in particular in the context of the implementation of legal remedies. Therefore, digital technologies are not only a way to give a new form to existing social relations, but also a tool for qualitative changes in the conduct of parties to legal relations.

In the context of distinguishing digital law as an independent branch, it is important to emphasise that some legal relations exist only in a special digital environment, which significantly changes the nature of interaction between their participants, sometimes actually creating a new digital legal reality characterised by the integration of the digital and real worlds, public and private platforms, private and public networks, etc. Obviously, this circumstance cannot be ignored by the national legislator. In addition, as is well known, there has long been an "Internet law," "cyber law" and "network law." Foreign researchers have even come up with a new name for this law: "platform law" (Lobel, 2016), that is, the law of digital technologies. In fact, all of these types of law are used as a synonym for digital law and are based on a mixture of traditional and "new" legal institutions that have emerged and developed due to the existence and widespread use of the Internet, which actually raises the question of the place of the relevant legal provisions in the system of national law.

4. Conclusions

Therefore, the analysis of specifics of Ukraine's digital law enables to conclude that it is independent in nature. The basis for this statement is the criteria enabling to state that digital law is relatively independent. It is not only about using a specific conceptual apparatus, determining the legal status of the parties to legal relations, which are essential for the exercise of digital rights, but also about the forma-

tion of a system of regulatory framework for digital legal relations, in which self-regulatory acts, technical and even ethical provisions that ensure the formation of their own arsenal of means of interaction between participants in digital legal relations continue to occupy a special place.

All these factors together create objective prerequisites for the sectoral separation of digital law. The potential inherent in digital technologies can not only significantly transform existing, but also create fundamentally new social relations, which confirms the above thesis about the possibility of considering digital law as an independent branch of law. Namely, digital law is related to: the specifics of the relations constituting its subject matter, the emergence and existence of which is impossible without the use of certain digital technologies; the peculiarities of the method of their legal regulation, characterised by a combination of mandatory and dispositive regulation; the legislative framework while maintaining a significant role of self-regulation and the need to allow for the specifics of national jurisdiction in the Internet space; the formation of a special system of legal relations based on the specifics of the information space.

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ЦИФРОВЕ ПРАВО В СИСТЕМІ УКРАЇНСЬКОГО ПРАВА: СУБ'ЄКТНИЙ АНАЛІЗ

Анотація. ***Мета.*** Метою статті є з'ясування ролі цифрового права в правовому регулюванні суспільних відносин та окреслення основних проблем визначення його правової природи з точки

зору суб'єктного аналізу. ***Результати.*** У статті зроблено аналіз критеріїв виокремлення цифрового права як самостійної галузі права. Зазначено, що . Наголошено, що використання цифрових технологій зумовлює формування окремої галузі права, яка так би мовити «автономно» регулює суспільні відносини у сфері цифровізації незалежно від інших галузей, використовуючи свої способи правового регулювання за допомогою цифрових технологій. цифрові технології є не тільки способом надання нової форми вже існуючим суспільним відносинам, а й інструментом якісної зміни поведінки суб'єктів права. Крім того, сучасна цифрова практика зумовлює певне розмивання кордонів між абсолютними і відносними правами, зокрема в контексті реалізації заходів правового захисту. У контексті виокремлення цифрового права як самостійної галузі, важливо вказати на те, що деякі правовідносини існують тільки в умовах особливого цифрового середовища, яке помітно видозмінює характер взаємодії їхніх учасників, іноді фактично створюючи нову цифро-правову реальність, для якої характерні інтеграція цифрового і реального світу, публічні та приватні платформи, приватні та загальнодоступні мережі тощо. Вочевидь, ця обставина не може бути проігнорована вітчизняним законодавцем. ***Висновки.*** Зроблено висновок про специфіку цифрового права України та його самостійний характер. Підставою для такого твердження є саме критерії, які дають змогу говорити про відносну самостійність цифрового права. Йдеться не тільки про використання специфічного понятійного апарату, визначення правового статусу суб'єктів правовідносин, без участі яких реалізація цифрових прав стає об'єктивно неможливою, а й про формування системи нормативного регулювання цифро-правових відносин, у якій особливе місце продовжують посідати акти саморегулювання, технічні та навіть етичні норми, що забезпечують формування власного арсеналу засобів взаємодії учасників цифрових правовідносин. Сучасні правовідносини, спираючись на цифрові технології, активно впливають й на відносини за межами цифрового світу. Фактично йдеться про якісно новий розвиток права, правового регулювання, що кардинально змінює традиційні підходи до вибудовування суспільних відносин у контексті взаємодії людини, суспільства та їх контактів з органами державної влади. Утім, така нова цифро-правова реальність породжує додаткові ризики для суб'єктів права, адже потребує системного та послідовного правового регулювання, з огляду на що питання про формування цифрового права, визначення його правової природи та місця в системі права України є актуальним та своєчасним.

Ключові слова: право, цифрове право, цифрове середовище, цифрові правовідносини, суб'єкти права, цифрові суб'єкти, цифровізація, інформаційні технології, цифрова держава.