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THE APPLICATION OF LEGISLATION ON PERSONAL DATA PROTECTION IN THE FIELD OF E-COMMERCE

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Abstract

The prospects of the development of the legislation in the field of personal data in electronic commerce are analyzed in this scientific article with the support of the current legislation and judicial practice. The author gives an exhaustive analysis of modern provision of the legislation on electronic commerce and human rights. Suggestions for improvement of this institution are made as an improvement of the current legislation, and development of essentially new provisions concerning electronic money, the activity of the operator of electronic currency and its legal status. Although future of institution was considered as a positive, some questions remain unsolved in the area, which can possibly jeopardize the prospective of e-commerce. In the conclusion authors support the idea of continuation of development of electronic commerce, assuming its inevitable progress, especially in relations with participation of natural persons.

Keywords: personal data, electronic commerce, electronic currency, authentication, digital signature, human rights.

Theoretical and historical base of the institute of electronic commerce

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Although, this article is dedicated to analyzing the problems of e-commerce, especially the ones connected with trafficking of electronic money, especially regulating the activities of issuers of electronic currency, the possibility distribution of the provisions of the Civil Code's contract law [1], we have decided to concentrate on history and theory of current institution.

This institute arose in the USA in the early nineties, and which was ignored for several years both most of researchers, legislatives and administration of the USA. Only in 1997 the government designated the relation to electronic commerce for the first time, which was made in the form of the scientific article by authorship of the President and Vice President of the United States - "A Framework for Global Electronic Commerce" [2]. It is necessary at acquaintance with the content of this work to pay attention to the liberal approach, which was elected by authors which furthermore have found reflection in the fundamental principles of development of institute of electronic commerce output by them: 1) «The private sector should lead.» The Web Industry and the W3C has been proactive in addressing concerns of those using the Web (including content control, Web privacy, intellectual property, access for the disabled, etc.) 2) «Governments should avoid undue restrictions on electronic commerce.» The Web is growing and changing very quickly -- often for the better, consequently it is often better to allow the Web to mature on its own rather than to potentially impede its development. 3) «Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce. » Stability leads to user and market confidence, key elements to the Web's success. 4) «Governments should recognize the unique qualities of the Internet. » The Internet and Web are unique. 1) «Electronic Commerce over the Internet should be facilitated on a global basis. » The Web has no boundaries or borders; the W3C is a global consortium.

These principles were underlain by tendencies of development of electronic commerce for the years ahead, but there is a serious defect at these basic provisions which though was partially corrected subsequently, but, nevertheless, laid the foundation for numerous violations and abuses of the right of operators of electronic money. And even, in spite of the fact that lack of control from government bodies, this could be apprehended as the benefit for development of electronic commerce in the short term, the practice of its use unambiguously showed, that similar approach is unambiguously vicious and demands reconsideration in the medium-term and long-term periods . The acts of terrorism, which had

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happened in New York at September 11, 2001, lead to edition "Patriotic act" [3], which became on the first act that pushed the introduction of restrictions. Nevertheless, it is impossible to agree, for example, with A. I. Savelyev who specifies in his article: "... from the moment of adoption of this Law implementation in the USA of activity in the sphere of the translations of electronic money turned into a nightmare ..." [4]. This statement is not only very categorical, in view of heterogeneity of jurisprudence on the matter, but also it is incorrect in general. Pursuing the main objective fight against terrorism and its financing, the specified law interfered with money laundering (anti-money laundering program) mainly through introduction of the principle "know the client" (know your customer) that directly contradicts one of the principles, which was stated above.

Now by number of authors [5] Russia the position of roughening of the legislation in this sphere is defended. In our opinion, to toughen the legislation, it, at least, needs to be had as, on our deep belief; this institute actually isn't regulated in the Russian Federation. But before we are going to proceed to analyzing of the legislation of the Russian Federation, we provide the short analysis of the legislation of the EU, which, as it is necessary to recognize, remain the most developed today comparing to other countries. Unlike the USA, which initially elected a course to the most liberal regulation of electronic commerce, fierce discussions [6] rather legal statuses of issuers of electronic money and possibility of their control were conducted from supervisory authorities in the sphere of currency and bank activity in the EU for several years. As a result supporters of their licensing and giving of the status of banks to them were appeared to be a minority, and, on the matter, the similar position wasn't reflected in any one of the subsequent directives EC[7]. In interests of objectivity of research it is necessary to recognize, that the level of control of their actions also increased in each subsequent directive with improvement of quality of rule-making equipment at a regulation of features of activity of the specified issuers.

The matter was already raised by us in the previous works [8] where this position was defended, which conclude the need of return to this discussion consistently. Really, the problem of regulation of a turn of electronic currency still remains very important, as well as the problem connected with lack of accurate jurisdiction of the these cases to concrete supervisory authority, that can also cause serious fears. Especially brightly it is shown in the Russian legislation: a regulation of institute of electronic commerce by the one and only law (Federal Law "About National Payment

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System" [9]) and only by means of the indication of the most general provisions, many of which, at least, are disputable, hardly allows to speak about existence of effective legal regulation in the specified sphere. As for possibility of application of the Civil Code of the Russian Federation, electronic money can be referred to the concept "money" only at rather broad interpretation of the last, that is hardly justified by the point of view of rules of logic and methodology of scientific research; the similar position is widely reflected in the last publications on a subject [10]. Besides, it is necessary to pay attention to that, as general the provisions on transactions and contracts can be hardly applied to electronic commerce, in view of features of their nature and order of emergence. The specified conclusion is supported in the works on a case of point, which are widely recognized by scientific community in foreign literature [11] (certainly, in relation to the national laws of the respective countries).

Thus, on the basis of told, we come to a conclusion, that currently regulation of institute of electronic commerce in the legislation of the Russian Federation actually is absent – the exit, in our opinion, consists of this situation in development of the specialized legislation which need of existence is already proved by experience of foreign countries. It is possible to give "The model law adopted by the Commission of the UN on the international trade law on electronic commerce" which underwent not one edition [12] as an example. In our opinion, it is necessary to consider a set of aspects at a regulation of the relations in the respective sphere. In particular, it is required to fix legislatively the conceptual row inherent in institute of electronic commerce. Nevertheless, the special attention has to be paid to the qualitative party of a question. Within this work, we will pay attention to the two basic concepts - "the issuer of electronic money" and "electronic money". The first term was development by us in earlier works [13] the concepts of «virtual bank». We suggest defining it through the category "virtual organization of bank type". It should be noted, that we don't identify completely this organization with bank; however the indication of a bank component will allow not only to distribute provisions of currency and partially bank right for activity of this sort of the organizations, but will also satisfy the need of obtaining the license by them on implementation of the activity, that is represented quite reasonable. In the solution of a question of the concept "electronic money", in our opinion, it is expedient to address to formulated other of our research of [14] definitions of "Bitcoin" was created through which it is quite possible to output concept of "electronic money", as « an universal virtual monetary substitute representing quasi-currency containing in

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a digital form on any electronic medium or the server, which, through the established exchange rate, can be traded or be expressed in any currency or conventional unit.

Based on the foregoing issues, which were affected by us in this paper, we can conclude, that this problem which is not properly developed in legislation and research papers, situated as a great field for research with many accompanying problems, some of which will be analyzed in this article.

Respect for human rights in the sphere of e-commerce

It's not a secret that one of the major reasons for the increasing popularity of e-commerce is that widely used telecommunication technologies allow not only to avoid a number of costs, but also to reach a very high speed, accuracy and efficiency of information exchange.

However, there is a very serious problem connected with using of digital technologies – the security of personal data. Indeed, entering the relationships buyer has to specify the information needed to implement the order. It includes not only the name but also a mobile phone number, mailing address, etc. Sometimes much more serious information is requested: passport data, bank account etc.

The security of personal data is in trouble nowadays. And it's not only about sending spam. Spreading of e-commerce is prevented by unprecedented level of cybercrime [15]. The most common types of fraud in this sphere are: the implementation of transactions with using someone else's card details; the creation of so-called «butterfly shops» which stop their activities immediately after receiving cash from customers for non-existent goods or services; debit of funds from the customer's account or withdrawal of a larger size; burglary of database or the interception of messages containing customer's personal data.

In view of the above, it is understandable why users and experts still do not consider the Internet as a secure environment. According to the information gathered by the developers of VISA, about 23 % of transactions in e-commerce is not made for fear of the clients to enter their own personal information when using, for example, an online store [16].

The relevance of the stated problem cannot be overestimated. The issues related to ensuring privacy in the digital age has been the subject of discussion at the international level for the past few years. In particular, General Assembly in 2013 adopted a resolution called «The right to privacy in the digital age», which states that the same rights that a person has in real life, must be

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protected in the Internet. Illegal or arbitrary tracking of messages and/or interception, as well as illegal or arbitrary collection of personal data... violates the right to privacy... and could violate basic principles of a democratic society» [17].

It should also be noted that in 1981 the Council of Europe adopted «Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data», which describes the requirements for storage and processing, as well as operation of payment systems in general. Among these requirements are provisions that information must be received and processed entirely legitimate and in bona fide manner; must be kept strictly according to the defined goals and not be used for illegal operations; mustn't include redundant information; must be stored in a well-covered form. In addition, everyone has the right to know about the inclusion of their personal data in a particular data base and to demand its immediate removal [18].

The value of the above provisions cannot be overestimated – in practice this means that when entering into a relationship in the field of e-commerce, buyer is not required to enter the number of passport, insurance policy or other documents, as its providing is not dictated by necessity. It also means that the user should be warned about the inclusion of his data in the database and must be asked for his consent to that submission. Strict observance of these guarantees, in our opinion, allow us to avoid a huge number of violations in the future and to solve the problem of personal data security in the field of e-commerce.

However, it would be naive to believe that the protection of data can be achieved solely by legal means. Obviously, the technical aspects of the issue play very important role in the decision of this problem. There are a lot of problems such as authentication of counterparties, integrity of information (its protection by damage and unauthorized changes) and confidentiality in the sphere of e-commerce. These problems should be solved with the help of digital signature and encryption of information.

It's interesting that in 2000 one of the world's largest payment systems VISA International published its proposals for the safety of the subjects of e-commerce. Among them – Payment Authentication Program designed to reduce the risk of unauthorized use of the card holder's account and Global Data Security Program designed to extend the common safety standards for the companies in the field of e-commerce [19]. Today SET (Secure Electronic Transaction) allows us to confirm the authenticity of all the parties of the transaction with the help of cryptography and the use of digital

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certificates [20], which seems to be the most appropriate solution in these circumstances.

Thus, payment systems are the most vulnerable part of e-commerce. Existence of e-commerce depends on the capabilities of information security in the Internet. Conducting of commercial transactions should be based on the principles of confidentiality, authorization, authentication and guarantee of secrecy. And if some of them can be provided only by technical means, others depend on the responsibility of individuals and organizations. This problem should be solved immediately because the future of e-commerce depend on this.

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**THE APPLICATION OF LETTERS OF
CREDIT IN THE FIELD OF
INTERNATIONAL E-COMMERCE**

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Abstract

The prospects of the use of the letter of credit in electronic commerce are analyzed in this scientific article with the support of the current legislation and jurisprudence. The author gives an exhaustive analysis of modern provision of the legislation on electronic commerce. Suggestions for improvement of this institution are made as an improvement of the current legislation, and development of essentially new provisions concerning electronic money, the activity of the operator of electronic currency and its legal status. The conclusion regarding almost complete integration of institute of the letter of credit into the sphere of electronic commerce is drawn and further steps are offered with an aim to achieving the mentioned purpose.

Keywords: letter of credit, electronic commerce, electronic currency, authentication, digital signature, economic-torrent.