

ПРАВА ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ

УДК 347.77/78

Kharitonova Olena Ivanivna,

Doctor of Law, Professor, Head of the intellectual property rights and company law department of the National University «Odesa Law Academy»

Pozova Dina Dmytrivna,

Candidate of Juridical Sciences,

Assistant Professor of the intellectual property rights and company law department of the National University «Odesa Law Academy»

SOME ASPECTS OF THE LEGAL NATURE OF THE INTERNET NETWORK

Formulation of the problem. Technical progress, based on results of intellectual activity, in its turn, creates new opportunities for expanding areas and ways of using intellectual property rights, their expressing in new forms, including digital. A positive feature of digital form is not only simplifying the processes of copying and distributing of intellectual property rights objects on physical media, but it is also creating conditions for their transfer to electronic networks. Placement of intellectual property rights objects on the Internet under present conditions has become perhaps the most common method of their distributing.

Due to the emergence of the global information infrastructure a number of issues that need urgent solution have arisen, because the network exists and it is developing in an active way. Copyright holders face significant risks because of the existence of information technologies. Cross-border nature of the Internet and digital form of fixing works that are placed on the Internet considerably complicate the process of realization author's and their successor's rights.

Therefore, scientific research relating to the intellectual property rights is of huge importance. It is aimed at the creation of scientific and theoretical basis, the formation of the doctrine of intellectual property, which will more effectively regulate appropriate relations in the future.

One of the theoretical problems that needs to be immediately solved, is determining the legal nature of the Internet, of the legal relations that arise there, defining the range of participants, their specificity, content and more.

Analysis of the recent literature on the research topic. It should be noted that the issue of definition and specific of the relations that occur on the Internet has been the subject of scientific analysis in numerous publications, master's and even doctoral theses [1, 2, 3, 4]. In particular, there is an opinion, according to which online relations are the special one, resulting from the impact of international and other branches of law, international treaties, court decisions on the behavior of individuals and organizations (subjects) [5, p. 145-149]. In addition, Internet relations are a new type of social relations that arise, change and stop to exist in cyberspace. However, the problem of the legal nature of the Internet network hasn't been taken up properly.

The purpose of the article. The aim of this article is to find out the essence and legal nature of the Internet and to formulate its legal definition.

Basic research material. First of all, it should be noted that there is no definition of such fundamental concept as «Internet» in international acts. Recommendation of the International Telecommunication Union (hereinafter – the ITU) «Global Information Infrastructure terminology: Terms and definitions» gives following technical definition of the Internet: a collection of interconnected networks using the Internet Protocol which allows them to function as a single, large virtual network [6, p. 7]. The Handbook on Internet Protocol (IP)-Based Networks and Related Topics and Issues, which has been developed by ITU Council, characterizes the Internet as a logical architecture that is independent of any particular network, but which permits multiple different networks to be interconnected in such a way that computers and people can communicate without

the need to know which network they are using or how to route information to them. In other words, the Internet is a conceptual creation consisting of protocols and procedures, which are then used by the constituent networks to interconnect. This notion was captured in a definition by the United States Federal Networking Council (Resolution 1995), as submitted to the United Nations Working Group on Internet Governance with a proposed amendment to reflect the evolving nature of the Internet [7, p. 2-3].

At the 36th plenary meeting of The Commonwealth of Independent States (CIS) Interparliamentary Assembly a Model Statute on the Basics of Internet Regulation (Resolution No. 36-9 of 16 May 2011) was enacted. The Model Statute (Art. 2) provides such definition of «Internet» as a global telecommunications network that combines information systems and telecommunications network in different countries using global address space based on the use of complex Internet protocol (Internet Protocol, IP) and data transmission protocol (Transmission Control Protocol, TCP) and allows the implementation of various forms of communication, including posting information to the public. Model legislation, as it is known, has a recommendation character and plays the role of a guide for national legislative bodies.

As for the current legislation of Ukraine, the definition of «Internet» is enshrined in Article 1 of the Law of Ukraine «On Telecommunications», according to which it is the world information system of general access which is logically connected by global address space and an internet protocol established according to international standards. Under information system of general access it is meant a series of telecommunications networks and facilities for storage, processing and transmitting data.

Analysis of the above definitions leads to the conclusion that all they characterize the Internet primarily as technical means of information transfer. They focus on the technical side of the network, leaving aside legally significant aspects.

Speaking of the Internet as a legal category, it should be noted that still there is no single approach to determining its legal nature in the legal doctrine: whether it is an object of rights or a subject or an object of legal regulation.

Thus, considering the potential ability for the Internet to serve as the object of law, most scientists eventually come to the conclusion about the absence of sufficient grounds for declaring this statement true because of the fact that the Internet in general can not belong to anyone on the right of property and can not be an object of civil circulation.

Indeed, the software used on the Internet, belongs to its developers; digitized works of science, literature, music performances, etc. placed on the Internet belong to their right holders; computer equipment used for access to the Internet belong to users; servers belong to specialized companies. Internet is not an object of law as a kind of property or an object of intellectual property, the Internet can not be sold or bought.

In our view, generally the Internet is neither material nor immaterial good, due to which occur certain relations. Relevant relations arise about that individual objects that are somehow involved into the Internet in its broader sense.

Talking about the ability of the Internet to be a subject of law, it should be understood that the network does not possess such common features of the legal entity, such as: organizational unity, the presence of separate property, the ability to participate in civil circulation on its behalf, and the ability to be a plaintiff or defendant in court. The absence of organizational and structural design of the Internet as a specific organization is proved by the fact that there is no single network management as well as there is no single organization that owns, manages or controls the Internet.

However, there are some non-profit organizations that provide operation of the Internet, including, in particular, the Internet Corporation for Assigned Names and Numbers (ICANN), responsible for the global coordination of the unique elements of the network system and safe and stable operation of the organization; Internet Society, which promotes the development of the Internet, the development of new Internet technologies and ensuring the availability of the World Wide Web on a global scale; Internet Architecture Board (IAB), which oversees the architecture of the Internet, including its protocols and associated procedures, and the creation of new Internet standards and includes an engineering group that is addressing technical issues Internet (IETF) and the research team (IRTF).

Moreover, the Internet has no property-based autonomy because, as it has been noted above, the material (technical) and immaterial resources of the network are owned by different entities. There is also a view that all users involved in Internet technology communication form the Internet Society as a social structure. However, there is no sufficient basis for the identification of the entire Internet with the Internet community and presenting in this way the features of the Internet as an entity.

According to the basic provisions of the theory of jurisprudence, the subject of legal regulation is public relations, while the object of legal regulation

is any object of knowledge – material or immaterial. Thus, it is possible to determine the legal nature of the Internet as an object of legal impact, while due to the use of the Internet there are a variety of social relations that are the subject of legal regulation of various branches of law.

Listing the main characteristics of the Internet, which in our opinion are important for understanding the essence of this phenomenon, will help us to formulate a definition of the Internet as a legal category.

Firstly, the Internet is an information and telecommunications network. However, apart from the Internet, there are other multi-service networks, which are also based on the protocol IP, such as Next Generation Network. In this regard, the doctrine fairly draws attention to the importance of determining on technical level differences between the Internet and other similar networks that use similar software and technology, but are not the Internet [8].

Secondly, the Internet is a global computer network that connects millions of users worldwide in over 150 countries using various communication channels.

Thirdly, the Internet provides the universal access to users. Adopted at the 32nd session of the General Conference of UNESCO, Recommendation concerning the promotion and use of multilingualism and universal access to cyberspace provides a number of measures to ensure such access: developing appropriate policies by Member States and international organizations; the establishment of local, national, regional and international mechanisms that promote universal access to the Internet through affordable prices for telecommunications and Internet services; encouraging ISPs to provide preferential tariffs for Internet access to certain categories of users.

In addition, the right of access to the Internet as a universal (public) service is established in the Directive of European Union on universal service (2009/136/ EU), which states that everyone in the EU should have access to a minimum list of electronic communications services of good quality and affordable price, including access to the Internet.

Fourthly, one of the principles of information exchange on the Internet is the anonymity principle enshrined in the Declaration on freedom of communication on the Internet adopted by the Committee of Ministers of the Council of Europe on 28 May 2003. Anonymity means that in order to ensure freedom of expression and the exchange of information and protection of network surveillance the will of the user not to disclose their identity should be respected. Among other principles enshrined in

the Declaration – the rules on the content (content) for the Internet; self-regulation or joint regulation; no previous state control; elimination of barriers to the participation of individuals in the information society; freedom to provide services via the Internet; limited liability of service providers for the content.

However, despite the proclaimed principle of anonymity arises the question of identification of users of the global network, operators of services provided using the Internet and holders placed on the Internet information. Resolving this issue is necessary in terms of prevention of illegal actions on the network as well as for enabling the regulation of the relations arising in the virtual space. In this regard, at the international level should be clearly defined acceptable limits of anonymity on the Internet and outlined the cases of legal restrictions.

Fifthly, the Internet has a complex multi infrastructure. At the lowest level there are physical infrastructure, communication channels, infrastructure access, than goes the address space (IP-address), above which there is domain name system DNS, and on the uppermost floors of the hierarchy of the Internet there are mail services, search engines, websites etc. Network architecture is based on the principle of multi-level messaging: at the top level of reference model of open systems ISO/OSI interacting a message is formed, than it goes through all equal levels of the system to the lowest level (physical), on which it is transmitted to the addressee.

Sixthly, the functioning of the Internet has transboundary nature that requires transborder network management control while within national jurisdictions issues of using the Internet should be regulated. Thus, Internet Assigned Numbers Authority (IANA) performs such functions, as the coordination of the assignment of technical Internet protocol parameters performed by the Internet Engineering Task Force (IETF); the administration of certain responsibilities associated with Internet DNS root zone management; the allocation of Internet numbering resources to the Regional Internet Registries (RIRs); and other services related to the management of the ARPA and INT top-level domains. In addition, among key organizations involved in transboundary management of the technological infrastructure of the Internet, there are five regional Internet registrars responsible for the destination IP-address to the end users in certain areas, as well as local Internet registrars, such as the Internet Providers. Administration of address space of the Ukrainian Internet segment is carried by associations of enterprises «Ukrainian Network

Information Center» (UNIC) in coordination with the international system administration on the Internet.

Seventhly, the extraterritorial nature of the construction and operation of the Internet requires combination of international and national regulation.

Currently, international legal regulation of relations on the Internet is carried through the means of so-called «soft law» in the form of various recommendations, resolutions and declarations issued by international organizations (International Telecommunication Union, World Intellectual Property Organization, the United Nations, UNESCO, the Council of Europe, the Internet Corporation for Assigned Names and Numbers, etc.). The provisions of these documents are not formally binding and their compliance by states is based solely on the authority of the subjects they are adopted by. However,

currently it is necessary to accept the international agreement, which would resolve the question of the notion of the Internet, its legal regime, structure, applicable law, dispute resolution, and other aspects of the network at national, regional and global levels. Certainly this kind of regulation of the Internet and the relations that occur on it should take into account principles of decentralization and self-regulation underlying network operation.

Conclusions. To sum up, the following definition of the Internet as a legal category could be proposed: the Internet is a global publicly available information and telecommunications network with a complex multi infrastructure, which operates on the basis of cross-border management and gives opportunities for creating, posting information and access to it and also for providing related information services.

LITERATURE:

1. Рассолов И. М. Право и Интернет: теоретические проблемы : дис. ... докт. юрид. наук. / И. М. Рассолов. – М., 2008. – 357 с.
2. Глушков А. В. Проблемы правового регулирования интернет-отношений : дис. ... канд. юрид. наук. / А. В. Глушков. – Санкт-Петербург, 2007. – 198 с.
3. Бабкин С. А. Интеллектуальная собственность в глобальной компьютерной сети «Интернет»: проблемы гражданского правового регулирования в России и США (сравнительно-правовой анализ) : дис. ... канд. юрид. наук. : 12.00.03 / С. А. Бабкин. – М., 2004. – 210 с.
4. Мамон З. В. Деякі аспекти захисту авторських прав у мережі Інтернет. [Електронний ресурс] – Режим доступу: <http://www.yurlex.com.ua/print/ua/company/contact/index.htm>.
5. Литвинов Є.П. Правовідносини в Інтернет-праві / Є.П. Литвинов // Часопис Київського університету права. – 2013. – № 3. – С. 145-149.
6. Recommendation Y.101 (03/2000) «Global Information Infrastructure terminology: Terms and definitions» / International Telecommunication Union. [Електронний ресурс] – Режим доступу : <https://www.itu.int/rec/T-REC-Y.101-200003-I/en>.
7. A Handbook on Internet Protocol (IP)-Based Networks and Related Topics and Issues / International Telecommunication Union. – ITU, 2005. [Електронний ресурс] – Режим доступу : <http://www.itu.int/ITU-T/special-projects/ip-policy/final/IPPolicyHandbook-E.pdf>.
8. Пазюк А. В. К вопросу о необходимости определения термина «Интернет» в международном праве / А. В. Пазюк. [Електронний ресурс] – Режим доступу : <http://iir-kiev.academia.edu/AndriiPaziuk>.

Kharytonova Olena Ivanivna, Pozova Dina Dmytrivna

SOME ASPECTS OF THE LEGAL NATURE OF THE INTERNET NETWORK

The article is devoted to the research on the Internet as a legal category. The legal nature of the Internet is determined as an object of legal impact. The main characteristics of the Internet, which are important for the understanding of this phenomenon, are listed. It is suggested author's own definition of this category as a global publicly available information and telecommunications network with a complex multi infrastructure, which operates on the basis of cross-border management and gives opportunities for creating, posting information and access to it and also for providing related information services.

Keywords: Internet network, Information and Telecommunications Network, legal nature, the object of the legal impact.

Харитоновна Олена Іванівна, Позова Діна Дмитрівна

ДЕЯКІ АСПЕКТИ ПРАВОВОЇ ПРИРОДИ МЕРЕЖІ ІНТЕРНЕТ

Стаття присвячена дослідженню мережі Інтернет як правової категорії. Визначено правову природу мережі Інтернет саме як об'єкту правового впливу. Наведено основні характеристики мережі Інтернет, які мають значення для розуміння сутності цього явища. Запропоновано авторське визначення цієї категорії як глобальної загальнодоступної інформаційно-телекомунікаційної мережі зі складною багаторівневою інфраструктурою, яка функціонує на засадах транскордонного управління та надає можливості для створення, розміщення інформації і доступу до неї, а також надання пов'язаних із цим інформаційних послуг.

Ключові слова: мережа Інтернет, інформаційно-телекомунікаційна мережа, правова природа, об'єкт правового впливу.

Харитоновна Елена Ивановна, Позова Дина Дмитриевна
НЕКОТОРЫЕ АСПЕКТЫ ПРАВОВОЙ ПРИРОДЫ СЕТИ ИНТЕРНЕТ

Статья посвящена исследованию сети Интернет как правовой категории. Определена правовая природа сети Интернет именно как объекта правового воздействия. Приведены основные характеристики сети Интернет, которые имеют значение для понимания сущности этого явления. Предложено авторское определение этой категории как глобальной общедоступной информационно-телекоммуникационной сети со сложной многоуровневой инфраструктурой, которая функционирует на основе трансграничного управления и предоставляет возможности для создания, размещения информации и доступа к ней, а также предоставления связанных с этим информационных услуг.

Ключевые слова: сеть Интернет, информационно-телекоммуникационная сеть, правовая природа, объект правового воздействия.