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The Problem of Individualization of Legal Entities in Terms of Innovative Development of the Russian Federation and the European Union Economy

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Abstract:

This article is a comprehensive analytical study of the problem of individualization of legal entities in terms of innovative development of the Russian Federation and the European Union.

Using the latest methodology of scientific research, the authors provide a justification of the legal institution of individualization, as well as offer a wide range of means of individualization of innovation actors and participants, including in the virtual space of the Internet.

Key Words: *Legal entity, means of individualization, innovative economy, innovation, intellectual property, virtual prostanstvo Internet, individualization of legal entities.*

JEL Classification Codes: *O31, O34, M13, M21*

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Introduction

Building an innovative economy as one of the strategic objectives of national development brings together most of the countries in the modern world, including the Russian Federation (RF) and the European Union (the EU). The EU and Russia are currently engaged in the creation of four common spaces: economic; an area of freedom, security and justice; space of cooperation in the field of external and foreign security; space science, culture and education. The difficulties of solving this problem arise due to the need to implement systemic reforms relying, currently achieved level of technological relationship, intellectual and social innovations, qualitative impact on the dynamics and direction of development of social relations. Innovation does not only satisfy the constantly growing needs of mankind, but also creates new knowledge and ways of commercialization as the basis for the development of the productive forces.

Transfer of innovation in today's globalized world, simultaneously accelerates and complicates innovative processes. One of the main ways to stimulate and promote innovative development in the Russian Federation and the EU is via the recognition of intellectual property rights. Intellectual property rights are international by nature, which involves the cooperation of States and nations to guarantee convergence and harmonization of legislation and social institutions. Transition of States to a new level of innovation development is impossible without modernization of the regulatory mechanisms that would provide maximum opportunities to each person in order to open his creative and intellectual potential and resolve individual atypical relationship (Thalassinos *et al.*, 2013; Thalassinos and Pociovalisteanu, 2009).

In this study, we proceed from the recognition of the absolute value of the individual and the need for full and all-round development of the human personality.

Survey Methodology

Based on the fact that modern legal knowledge should develop not in the direction of deepening of differentiation, but instead take the path of integration of scientific and practical knowledge, we will be basing the study on the generally accepted tenets of humans as the cornerstone of the entire political system of society. The right is the beginning of a formal definition of external daily life of society, via establishing solid and precise boundaries for each person. The content of these principles is generated by the development of all aspects of human activity (Akopova, 2016; Frank *et al.*, 2016; Nechaev and Antipina, 2016).

Understanding of the new legal forms of exercise is based on reconstructive methods of knowledge. In particular, the method of "interpretation", which recreates the patterns of lawful and unlawful construction by human everyday reality. Constructivist method, i.e., evaluation of existing concepts and models of life through the reconstruction of forms of social reality (Stroeva *et al.*, 2016; Sibirskaya

et al., 2016). The statistical method, used to monitor the social innovation in order to identify the motives determining the behavior of actors in the innovation economy.

Expert prediction method is used for intuitive and logical analysis and development on this basis, where it is estimated that it possible to establish the essential quality of the subject of innovation - its level of innovation activity (Sultanova and Chechina, 2016). The method of analogy as a comparison of two or more objects of study for some identity attributes used to identify the similarity of some events in the past and predict the future state of the objects under such consideration. Institutional contact method used to analyze the "embedding" of the mechanisms of new institutions and social phenomena existing in the social organism, and their mutual influence.

The study widely uses comparative legal method to understand and clarify the features of national legal systems, identify common roots and principles that allow consolidating the efforts of the scientific community to develop approaches to the regulation of cross-border legal phenomena.

The concept and position of individualization institute in terms of innovative development of the economy

Most modern researchers understand individualization as a separate subject or object due to a number of specific features. As their main mistake we consider the narrowing of the legal category of "individualization" down to the concept of "identity" and, accordingly, the restriction of means of identification, such as person's legal entity, nationality, name and family relations.

We believe that , individualization of the subject as a legal category, is understood as a set of legal rules governing the process of isolation and subsequent synthesis of certain legal qualities of the person, as well as the scope of legal livelihoods, which are connected with ones existence as an independent human being, opposed to each legal entity.

Legal institute of individualization performs a protective, informational, cognitive (stimulates the development of new technologies to ensure that the subject is protected from unfair users, providing the participant with additional innovative entrepreneurship distinctive means, simplifying administrative procedures); identifying, advertising and communicative functions. In the context of the virtual environment globalization and the emergence of the network economy, virtual entity in the real world becomes the new special function of the institute.

An important element of individualization of a subject is generally considered to be the concretization of legal relations in which the legal entity is represented. The way they are carried out can be judged on their party, aspirations and interests, as well as by the level of legal consciousness of the person. Since the formalization of the will, the organization of interaction of subjects is the legal basis for communication; the

means of individualization of legal entity must have a legal, rather than an administrative nature. They maximize freedom for conditions for the implementation of the subject's will, the creation of social institutions, organizations and their legal registration. Means of individualization of legal entity should have such characteristics such as certainty, recognizability and stability.

Means of individualization of subjects as determined by the volume of their legal capacity (general or special). Individual legal regulation allows for application of ad hoc, alternative or optional means of identification, such as a subjective evaluation of the legal experience of the individual. Furthermore, it should be taken into account that the subject of law, as the external expression of a person or group of individuals is able to influence the personal qualities of the individual, and exist independently of it, as well as develop the new qualities. This excludes the existence of a specific set of permanent means of individualization of a subject.

Experience of individualization of legal subjects is most systematized in a modern intellectual property law. In this area, the problem of individualization of subjects has two main aspects. Firstly, the result of the author's intellectual establishment, subject to legal protection. Secondly, the individualization of the intellectual property right owner to protect his individual rights; third parties interested in the intellectual product and the prevention of any unfair competition in this particular area.

Due to the existing differences between the rules of international law and national legislation in terms of the principle of primacy of national law on its national territory an important point in the regulation of the intellectual relations becomes the identification of the subject of law on the grounds of nationality. Thus, pursuant to Part 4 of the Civil Code Art. 1337 a person is entitled to enjoy protection equivalent to the economic rights of authors only in the case of lawful publication of posthumous works in the public domain, due to the fact that it is not protected by copyright. According to Article 4 of the EU Directive number 93/98 / EEC of 29 October 1993. on the harmonization of the term of protection of copyright and certain related rights, the person receives the equivalent not only in the case of publication, but also in the event if the facility was to be brought public. The validity of the publisher's rights under Russian law shall be calculated from 1 January of the year following the year of its publication in the European Union from the date of publication.

Personalization of innovation subjects

The subjects of innovative activity in the Russian Federation operate in the organizational-legal forms, regulated by the Civil Code of the Russian Federation. The legal regime of some of the participants of innovative activity is governed by separate laws. For example, the legal status of the investment partnership is

regulated by the Federal Law of 28 November 2011. № 335-FZ "On Investment Partnerships»⁵.

Subjects of innovative rights are divided into several groups: creators, producers and distributors of innovation. Moscow Law "On innovation activity in Moscow", dated July 7, 2004. №45 separates subjects of innovative activity to innovators and stakeholders within the system of infrastructure innovation. The concept of the subject of innovation activity is limited to organizations of any kind, carrying out research and development with scientific achievements, or mastering a completely new manufacturing process. Organization of innovative structures, in accordance to the provisions of these acts provides support, funding, promotion and implementation of innovative products and projects.

Russian legislature while in search for the definition of the subject innovation adheres to civil doctrine of legal subjects, namely the natural and legal persons engaged in scientific and technological innovation⁶.

According to current Russian legislation the right to participate in the "Skolkovo" project can be granted to a Russian legal entity after its inclusion in a special register. This decision is the responsibility of the «Skolkovo" Management Company. The main conditions for participation are: registration of a legal entity (manufactured in compliance with the norms of the Russian legislation) fixation in the constituent documents of innovation as the core, the obligation to carry out scientific research in accordance with current regulations. In addition, the Criminal Code of "Skolkovo" has the right to establish additional requirements to the participants of the project. Member loses its status upon expiration of ten years from the date of inclusion in the register. A similar approach can be found in the legislation of the CIS countries⁷.

Attempts of modern Russian scientists to highlight the qualities of the legal entities of innovation, lead to artificial restriction of the circle of participants. Amongst the signs there are: the presence of the relevant registration, the state support measures business activities, availability of expert advice on the nature of activities, etc. At the same time, the subject of innovation is not always an active protagonist. He cannot have economic interests and is not always involved in all stages of the innovation process.

⁵ Federal Law as of 28 November 2011. № 335-FZ "On Investment Partnerships" // Meeting of the legislature of the Russian Federation, 05.12.2011, № 49 (1) of Art. 7013.

⁶ Law of Moscow of 06.06.2012 №22 «About scientific-technical and innovative activity in the city of Moscow» // Bulletin of the Mayor and the Moscow Government №36, 29.06.2012

⁷ Law of the Republic of Kazakhstan "On Innovation Activity" from 09.07.2002 (rev. from 20.12.2004)

Innovation activity has a complex structure, including scientific, technical, artistic, commercial, industrial, institutional and other activities. Team of participants varies depending on the nature of innovation - they are the subject of activity. Therefore, rigid regulation regarding the participants count and requirements related to subjects, limit the creative and intellectual potential of innovative development of the country. The study considers an important criterion for the individualization of the subjects of innovation as their level of innovation activity. This is defined by qualitative (availability of personnel potential, patents, trade secrets (know-how), and other types of intellectual property, as well as production infrastructure, material and information resources, and others.), and quantitative (number of implemented innovative projects, the share of innovative products in the total volume of production, and others.) criteria.

Within the regional acts of the RF subjects, quantitative criteria are provided, as for example the share of innovative products in the total annual volume of innovation products of domestic production. In different subjects it ranges from 5 to 30%⁸. The problem lies in the fact that within the legislation of subjects of the Russian Federation, quantitative criteria of individualization of the subjects of innovation are different, which prevents the implementation of innovative projects in several Russian regions. It is obvious that the establishment of uniform criteria at the federal level will increase the efficiency of investments, including those distributed in the development of innovation budget.

Among the means of individualization of innovation entities their organizational-legal form should be included. In addition to the common organizational and legal forms of business entities that actively developing today, small innovative enterprises, investment partnerships, partnerships, may emerge based on self-governed groups and corporations, for example, the Internet. Cross-border network system of modern society creates new forms of institutional interaction and new organizational and legal, network forms of organization amongst their participants.

As an example consider, licensing the reputation of the person as a form of "personal merchandising," or the use of fictional characters and real people, creating conditions for the emergence of the desire of the consumer to purchase goods. Unlike other types of licensed activities, licensing reputation is characterized by the presence of such specific areas as the technology licensing (including trademark transaction) and image licensing (including transactions associated with the reputation of the firm and author rights). Commercial implementation of the image

⁸ Resolution of the Tomsk Oblast Administration from 07.04.2009 Number 65a "On the register of innovation-active organizations of Tomsk oblast" // Meeting of the legislature of the Tomsk region. 15.04.2009. №4 / 1 (45); Resolution of the Leningrad Region Government from 16.11.2009 № 345 "On the long-term target program" Support of innovation activities in the Leningrad region for 2010-2015" // Bulletin of the Leningrad Region Government. № 17. 23.04.2010

happens through: release of books, films, a variety of activities, identified by the name of the license. When licensing a representative, image, trade skills, appearance of staff are transmitted to the licensee⁹.

The choice of legal form is explained by the subject's motives for participation in innovation and its organizational and legal capabilities. However, legislation should not contain restrictions on the composition of the subjects engaged in innovative activity. We agree with O.A. Gorodov, who defines quality criterion of integral subjects of innovative activity, as the participation of the person in implementing these innovative projects, as well as in creating innovative infrastructure and ensuring its activity¹⁰.

Personalization of subjects of law in cyberspace Internet

Internet should be considered as an extraterritorial information space that hardly obeys government regulations on trans-border networks and virtual types of legal communications, based on the dynamically changing information technology. The virtual environment is a form of spontaneous order resulting from actions of decentralized, informal entities.

As a general rule the use of the network is carried out anonymously. The main means of individualization of Internet are the IP address and domain. IP address is required for the detection, identification, computer connection, and a domain address contains the information about the owner's computer. However, some types of services provided by the network are regulated by the law, including the individualization of entities providing services within the network. Thus, Art. 27 of the Media Law establish the requirement to media and websites sites.

We believe that the implementation of the legal regulation within the Internet network exclusively by conventional legal means is impossible. This means that to solve the problem of individualization of legal entities in the virtual environment, new legal tools are required. A number of well-established and generally accepted definitions that are widely used and clearly understood in the real legal relationships have different meanings and application within the virtual space. Thus, according to Art. 19 of the Civil Code the term "name" includes surname, first name and middle name unless stated by the law or national convention otherwise. Nicknames, used the Internet subjects, are only limited only by one's own ideas and creativity, and (or) the technical requirements of the provider. Applied changes to 4 of Art. 19 provide the citizens of the Russian Federation with the right to use your name or nickname in the creative, entrepreneurial or other income-generating activities. This

⁹ Kravets L.G. Trademarks, trade names and other designations in business. M., 1999. P. 12, 13.

¹⁰ Gorodov O.A. Legal provision of innovation: a monograph. M., 2012. C.29.

right is limited by the legislator via the inadmissibility of the introduction of third parties, regarding the identification of citizens and abuse of the right in other forms¹¹. However compared to the citizen's name, users pseudonym and nickname information and telecommunication network are not recorded. As soon as the user closes the account, the right to use the nickname terminates, while other users may or may not be informed.

Features of behavior of the subjects of information and telecommunication networks have become the means of individualization. So, from September 1, 2015, Part 5 of Art. 18 of the Federal Law "On Personal Data» was put into practice. It provides for the obligation of personal data operators to provide location databases containing personal data of Russian citizens on the territory of the Russian Federation, including the Internet. Data collection by the operator includes record, systematization, accumulation, storage, updates, modification as well as retrieval using database data within the territory of the Russian Federation¹².

As part of the legal liability of Internet service provider (Art. 1253.1 of the Civil Code) to the state and the rights holders, it is the provider's responsibility to take measures to establish the persons who unlawfully posted the results of intellectual activity on the website¹³.

Principle 7 of the Declaration on the freedom of exchange of information on the Internet as of 28 May 2003 secures anonymity, which is expressed in the desire of registered users not to disclose their identity. However, for the application of the legal responsibility when dealing with crime, and in order to maintain public order, the state as well as the EU Member States shall take all the measures enshrined by national legislation and international instruments. According to the directive 2000/31 / EC "On e-commerce", adopted by the European parliament on June 8, 2000, provider shall allow the competent authorities access to user's personal data, in case one is subject of any illegal activity.

To date, the most common and affordable means of individualization are Internet domain names. The current system of delegation of domain names was formed by a kind of tacit agreement amongst thousands of service providers around the world to

¹¹ The Federal Law of 30.12.2012 302-FZ "On Amendments to the head of 1,2,3 and 4 of the Civil Code of the Russian Federation" // Meeting of the legislature of the Russian Federation. 31.12.2012. №53 (Part 1), st.7627.

¹² The Federal Law of 21 July 2014. № 242-FZ "On Amendments to Certain Legislative Acts of the Russian Federation to clarify the order, the processing of personal data in information and telecommunications networks // Meeting of the legislature of the Russian Federation. 07/28/2014. №30 (Part 1), st.4243.

¹³ Decree of the Federal Arbitration Court of Moscow District on the case number 40-66954 // A 11-110-550 from 8.05.2013

use a specific set of domains. The rights to the domain name can only belong to one user.

In our opinion, the Russian legislation presents only a very narrow meaning of domain name as the designation for addressing the network in order to ensure access to the information posted on the Internet¹⁴.

Conclusions and Recommendations

The emergence of innovative products requires maximum freedom for creativity and cognitive activity subjects as well as reduction in bureaucratic obstacles to innovation. Therefore, legal instruments aimed at protecting the rights of subjects and promoting their innovative activity should be framed, while restrictions and administrative procedures should be brought to minimum.

Innovative models of doing business are always associated with Internet. The virtual space of the Internet has become a new medium of human life, which ignores the existing real-life legal restrictions and regulations. However, from a technical point of view, the Internet - is a telecommunication system located under the jurisdiction of individual states, which is indicative of the dualistic nature of the Internet. Therefore, individualization of subjects, the activity of which aims at emergence, modification or termination of civil rights and obligations in the territory of the Russian Federation shall be in accordance with the norms of the Russian legislation.

In order to individualize a subject, the possibility of using technical methods (devices and software) to determine the party affiliation relationships to any state should be legally secured. However, the claim 5 of Article 6, "the United Nations Convention on the Use of Electronic Communications in International Contracts" must be taken into account (as it does not create a presumption of business in the country upon the subject of the use of a domain name or e-mail addresses associated with a given country)¹⁵.

The problem of anonymity of subject's participation in the Internet network refers to the ongoing debate over the centuries of the relationship between freedom and order. Members of public relations enter into the sphere of interests and rights of other participants. The opportunities for protection of state-guaranteed rights within the Internet community are currently limited by technical means. Therefore, Russia and the EU Member States should develop a national strategy for the individualization within the Internet network, similar to the existing one in the United States. The

¹⁴ Federal Law as of 27.04.2006 № 149-FZ (From 06.07.2016 "On information, information technologies and information protection" // Meeting of the legislature of the Russian Federation.

¹⁵ United Nations Convention on the Use of Electronic Communications in International Contracts, concluded in New York 23.11.2005// ATP "Consultant Plus".

strategy provides for the creation of "e-passport" system and platform authentication (Identity Ecosystem), which allows each user of the Internet to voluntarily identify them. The system operates on the basis of the principles of confidentiality, voluntary cooperation, safety, economy, ductility and ease of use.

References

- Akopova, S.E., Przhedetskaya, V.N. 2016. Imperative of State in the Process of Establishment of Innovational Economy in the Globalizing World. *European Research Studies Journal*, 19(2), 79-85.
- Application of FinCEN's 2013. Regulations to Persons Administering, Exchanging, or Using Virtual Currencies. // Department of the Treasury Financial Crimes Enforcement Network. URL: http://fincen.gov/statutes_regs/guidance/html/FIN-2013-G001.html.
- Baudrillard, J. 2015. *Simulacra and Simulation*. M: 240c.
- Dashyan, M.S. 2007. The right to information highways (Law of information highways): the legal regulation in the sphere of the Internet. - M: "Wolters Kluwer", 248 p.
- Frank, V.E., Mashevskaya, V. O., Ermolina, V.L. 2016. Innovational Mechanism of Implementation of Cluster Initiatives in Business. *European Research Studies Journal*, 19(1), 179-188.
- Gorodov, O.A. 2012. *Legal provision of innovation: a monograph*. M: 290 c.
- Kornev, G.N. Yakovlev, V.B. 2016. *The virtual economy. Monograph*. Saarbrücken: Lambert Academic Publishing, 80 p.
- Kravets, G.L. 1999. *G.L.Trademarks, trade names and other designations in business*. M: 190C.
- Leger, R. 2010. *Great legal systems of modernity: A comparative legal approach*. M: 387 p.
- Nechaev, A., Antipina, O. 2016. Analysis of the Impact of Taxation of Business Entities on the Innovative Development of the Country. *European Research Studies Journal*, 19(1), 71-83.
- Pokrovsky, I.A. 1913. Abstract and concrete people in the face of civil law // *Herald of civil law*, № 4. P. 34, 37.
- Stroeva, O.A., Mironenko, V.N., Lyapina R.I. and Petrukhina, V.E. 2016. Peculiarities of Formation of Socially Oriented Strategy of Economic Growth of National Economy. *European Research Studies Journal*, 19(2), 161 – 170.
- Sibirskaya, E., Yamykh, E., Eldyaeva, N., Dubrova, T. and Oveshnikova, L. 2016. Strategy of Systemic Development of Entrepreneurial Infrastructure of Regional Economy. *European Research Studies Journal*, 19(2), 239-262.
- Sultanova, V.A., Chechina, S.O. 2016. Human Capital as a Key Factor of Economic Growth in Crisis. *European Research Studies Journal*, 19(2), 72-79.
- Thalassinos, I.E., Venediktova, B., Staneva-Petkova, D. 2013. Way of Banking Development Abroad: Branches or Subsidiaries. *International Journal of Economics and Business Administration*, 1(3), 69-78.
- Thalassinos, I.E. and Pociovalisteanu, M.D. 2009. The Structural Funds and the Economic and Social Cohesion Process. *Annals-Economy Series 1*, 313-330.
- Transformatsiya copyright on the Internet. 2013. Foreign trends, business models, recommendations for Russia // Ed. I. Zasurskogo and V. Kharitonov. M.: "Association of Internet publishers". P. 213.
- Vlasov, G.B. 2013. The genesis of the legal position of the map of Europe and her legal system of Russia // *Science and Education: Agriculture and economics; entrepreneurship; law and governance*. №10. S. 21-26.