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**Problems of legal regulation of the Internet in national and international  
information law**

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Currently, the global network, the Internet is an essential element in the development of the information society. "In particular the world wide web is becoming important today in forming business, culture and society itself"<sup>1</sup> – rightly noted national researcher E. E. Marupov. "Especially, probable progress in the formation of unified global communication system, which combines national and international network of data banks by consolidating satellite, telephone and fax communications, television broadcasting, etc."<sup>2</sup>

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<sup>1</sup>Marupov, E.E. Regulation of information relations in Uzbekistan based on standards of international organizations// Uzbekistan and the international community: integration of political, legal and organizational aspects. The collection of materials of scientific-practical conference that organized The Ministry of higher and secondary specialized education of the Republic of Uzbekistan. Tashkent, on March 24, 2011 / Editors: Sh.A.Yovkochev, B.E.Ochilov. – T.: Tashkent State Institute of Oriental studies, 2011. – P. 113.

<sup>2</sup>Bekyashev, K. A. and Volosov. M. E. Public International law. The workshop scheme. – 2nd ed. Rev.

By considering, that the regulation of relations connected using the Internet in the third Millennium becomes one of the first places in politics, researching of national and international legislation, information strategies and programs of information developed countries, international legal mechanisms in this sphere. Moreover, a comparison of state regulation mechanisms of circulation of information on the Internet requires priority reveal<sup>3</sup>.

As fairly noted by associate professor of Institute of international relations of Kyiv National University named under Taras Shevchenko A. Pazyuk, "Globality and ubiquity of information and communication

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and extra – M.: TK Velbi, Publishing house the Prospectus, 2006. – P. 373.

<sup>3</sup>Jarova, A.K. Legal problems of information circulation on the Internet. The Experience of The Republic of Uzbekistan: dissertation of doctor of philosophy in law – M.: Institute of state and law of Russian Academy of Sciences, 2002. – P.4.

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technologies providing access to each person in cyberspace, causes the transformation of pre-existing social relations and the widely development of *transnational* legal relations between individuals. At the same time, existing institutions of modern society, including law, as the bearer of social values and a regulator of behavior of subjects of legal relations, which are particularly realized in cyberspace, cannot be transformed, adapting to the changing regulatory environment. This factor completely applies to both national (within a state) and international law. The problem of the regulation of transnational legal relations in cyberspace, the role of international law in the execution of the specified task that require scientific understanding and the creation of proposals for future implementation in international law"<sup>4</sup>.

Note that, just now it is formed completely new social relations, unconditional, it would be governed by the norms of law. Primarily features that

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<sup>4</sup>Pazyuk, A. International legal characteristics of the legal relations in the Internet // <https://digital.report/pravovoye-otnosheniya-v-internete/>. – 2016. – 20 Aug.

gives them a specific environment of formation and existence such as information environment distinguish these relations. They represent the social relationships occurring in the information (electronic) form in the virtual space. It is not a relationship of information turnover, but it is the relationship in the information environment<sup>5</sup>.

As E.V.Mikhailenko rightly pointed, "Internet relations should be regulated through law and other social regulators"<sup>6</sup>. This postulate is correctly determined by Yu.A.Rodichev, who notes, "Developing global information society raises a number of principal new legal problems in connection with the groundswell of the use of the Internet"<sup>7</sup>. There are a number of fundamental theoretical problems in the sphere of legal regulation of using Internet.

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<sup>5</sup>Tedeev, A. A. Information law (law of Internet): manual. – M.: Publishing house Eksmo, 2005. – P. 7-8.

<sup>6</sup>Mikhailenko, E. V. Problems of information and legal regulation of relations in the global computer Internet network: dissertation of doctor of philosophy in law – M., 2004. – P.4.

<sup>7</sup>Rodichev, Yu.A. Information security: legal aspects: manual. – SPb.: Peter, 2008. – Pp. 50-51.

As George Nesbitt wrote: "Computer technology has become for information century what was mechanization for industrial revolution"<sup>8</sup>. Along with the positive aspects, computer technology and the Internet network has problematic issues. In this regard, the problems connected with legal regulation of the Internet network are becoming more important.

The initial problem, which is related to the legal regulation of the Internet network, is the lack of unified theoretical approach to recognize of the virtual space of the Internet from a legal point of view<sup>9</sup>. The Russian researcher A. K. Zharov rightly noted on her the dissertation work, "It is already used the term "Internet" for many years, but common understanding of it has not developed. Many of its definitions leads to understand of the global network for information communication as technical and technological object, and to a lesser

extent, reveals its social purpose and consequences"<sup>10</sup>. In this regard, A. Pazyuk noted that "important terminology distinction between the concepts of the *Internet* (capitalized), *the internet* (with a lowercase letter) and *cyberspace*, which poses not only technological regulatory burden, but also significant political and legal implications. The last is related to such issues as field of competence of the States, other concerned parties, such as businesses (ICT industry), civil society and existing international organizations in matters of Internet governance which is covering the concept of so-called "multilateral cooperation" (**eng.**– *multi-stakeholder approach*)<sup>11</sup>.

It is thought of the reason for these discrepancies are the insufficient development of the specific fundamental regulations. The global network is not under any sovereignty,

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<sup>8</sup>Neisbitt J. Megatrends: Ten New Directions Transforming our Lives. – New York: Futura, 1984. – P. 28.

<sup>9</sup>Safunov, I.M. Problem of legal regulation of the Internet in the framework of national legal systems // Problems of legal Informatization. – Minsk, 2005. – No. 8. – P. 23.

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<sup>10</sup>Jarova, A.K. Legal problems of information circulation on the Internet. The Experience of The Republic of Uzbekistan: dissertation of doctor of philosophy in law – M.: Institute of state and law of Russian Academy of Sciences, 2002. – P.3.

<sup>11</sup>Pazyuk, A. International legal characteristics of the legal relations in the Internet // <https://digital.report/pravovye-otnosheniya-v-internete/>. – 2016. – 20 Aug.

moreover, each state may provide some form of control in accordance with its legal framework not over the Internet directly, but for users of its resources, wherein the set is available for this purpose is small<sup>12</sup>.

In this regard, pay attention to the fact that, according to ideas of most researchers, the Internet has a dual nature—technical and social. One of the first systematic research of D.V. Gribanova, which deals with the theoretical conceptualization of the Internet from the point of view of legal science. It indicates the unity of the social and technical sides of cyberspace as the totality of informational relations as well as the necessity of complement the existing regulation provisions, taking into account specifics of information relations<sup>13</sup>. I.M. Rassolov, based on the already mentioned duality, concluded that cyberspace is a "sphere of social activity connected with

circulation information on World Wide Web and other information-communication networks"<sup>14</sup>.

By the point of view of M.B. Kasenova and M.V. Yakushev, *the dichotomy* of the Internet is that the network is not only a technical invention as a means of information-communications, but also "influences the formation of national and international regulation of economic and social development"<sup>15</sup>.

The search of optimal parameters definition of the Internet, its fundamental aspects has been given considerable attention during the world summit on the information society (WSIS) in 2003 in Geneva and 2005 in Tunis. The problem of understanding the essence of the Internet sheds light proposed by the working group on Internet governance (WGIG), who worked among the specified phases of the world summit definition of the term "Internet governance", which, in fact,

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<sup>12</sup>Nugmanov, N.A. Theoretical problems of legal regulation of the Internet in national and international information law // International relations. Politics, economy and law— T., 2010. —No 3. — P. 66.

<sup>13</sup>Gribanova, D. V. Legal regulation of cyber space as a totality of informational relations: dissertation of doctor of philosophy in law. — Ekaterinburg: YSU, 2003. — P.4.

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<sup>14</sup>Rassolov, I.M. Law and the Internet. Theoretical problems. — M.: Norma, 2003. — P.6.

<sup>15</sup>Kasenova, M.B. and Yakushev, M.V. Internet Governance. Documents and materials. — SPb.: Center for humanitarian initiatives, 2013. — P.7.

reveals the wide and narrow understanding of the term "Internet".

In a narrow sense, Internet governance is a "process of technologic coordination of elements of the Internet, including managing the domain name system and allocation of IP addresses, as well as the elaboration and application of protocols and standards"<sup>16</sup>.

According to the broad definition, developed by the WGIG, "Internet governance is the development and application by governments, the private sector and civil society, in discharging their respective roles, of shared principles, norms, rules, decision-making procedures and programs that govern the evolution and use of the Internet"<sup>17</sup>.

As Y.Kurbalijafairly says, "in favor of the use of the term "Internet" shows the rapid transition of global communication towards the use of

communication protocols of the Internet as a primary technical standard"<sup>18</sup>.

Thus, it is permissible to use the term "Internet" (as a unity of social and technical phenomenon), for denotation the continuity of the information bearer and the information in the global network such as info-communication infrastructure (technical aspect) and the virtual cyberspace as a social information environment, the basis of which is specified infrastructure, implemented through the technology (protocols) of networking, "Internet protocols" (IP/TCP).

It is necessary to define the number of significant for national legal systems postulates for the construction of the conception of legal regulation of the Internet relations.

1) Internet as a special space cannot be neither an object nor a subject of legal regulation. Subject of regulation is the legal relationship between operators and Internet users both among themselves and in relations

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<sup>16</sup>Internet governance // [http://ru.wikipedia.org/wiki/Управление\\_интернетом](http://ru.wikipedia.org/wiki/Управление_интернетом). – 2016. – 20 Sep.

<sup>17</sup>Report of the working group on Internet governance // [http://www.un.org/ru/development/ict/wgig\\_report.pdf](http://www.un.org/ru/development/ict/wgig_report.pdf). – 2016. – 22 Aug.

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<sup>18</sup>Kurbalia, Y. Internet Governance – M.: Coordination center of national domain of the Internet, 2010. – P.12.

with other persons and state bodies in connection with the transfer of information and services via the Internet<sup>19</sup>.

2) The legal relationship, which related to the Internet have international character. The application of local legal norms to that legal relationship without taking into account and the laws of other countries may not be effective<sup>20</sup>. This requires priority attention to the development of legal norms of the Internet on the international legal level by signing and executing (including incorporation of appropriate rules in national legislation) the universal international agreements.

3) A number of regulatory problems related to the Internet, can and should be solved without using methods of state legal regulation, including at the level of organizational interaction of participants of Internet relations, as well as on the level of algorithmization and

automation of procedures used on the Internet<sup>21</sup>.

4) The social importance of the Internet as a means of almost unlimited access to global information resources requires legislative (legal) consolidate the norms and rules governing aspects of the Internet that directly affect the most important rights and legal interests of individuals, society and the state.

5) The diversity and heterogeneity of legal relationship that connected with the Internet, do not allow for the creation of appropriate legal framework limits with only formation of relatively isolated, “special” unity of legal norms. Simultaneously with the carrying out of new legal norms related to specificity of functioning of a network, it is necessary to amend acting national legislation<sup>22</sup>.

The task of theoretical-legal justification of the Internet network as a special legal area is assigned primarily on the common theory of law. It is difficult to imagine the solution of

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<sup>19</sup>Safunov, I.M. Problem of legal regulation of the Internet in the framework of national legal systems // Problems of legal Informatization. – Minsk, 2005. – No. 8. – P.25.

<sup>20</sup>Tedeev, A. A. Information law (law of Internet): manual. – M.: Publishing house Eksmo, 2005. – P.12.

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<sup>21</sup>Tedeev, A. A. Information law (law of Internet): manual. – M.: Publishing house Eksmo, 2005. – P.14.

<sup>22</sup>Nugmanov, N.A. Theoretical problems of legal regulation of the Internet in national and international information law // International relations. Politics, economy and law – T., 2010. – No 3. – P.67.

specific field problems of legal regulation without strong legal foundation, which assumes not only the construction of a coherent legal concept, but also the development of special methodology.

In our opinion, it is important to define the subject of regulation of the Internet relations. Therefore, for example, V.B.Naumov defines a subject of regulation of public relations arising in *connection with using of the Internet*<sup>23</sup>. Etymologically closest approach adheres to V.A.Kopylov, understanding relations the Internet is regulated by legal norms of relations in the virtual space<sup>24</sup>. In turn, I.M.Rassolov defines Internet relations as "part of relationship in the virtual space (including moral, ethical and other relations) in which participants act as carriers of subjective rights and responsibilities in the Internet"<sup>25</sup>, and the relationship itself – "the result of the

impact of rules of informational, international and other fields of law on people's behavior in this environment"<sup>26</sup>. In turn, A. Pazyuk, the totality of legal relations related to the Internet, reduced to four main types, with their specific subject:

1) the relationship, realized in connection with using of the Internet (between consumers, providers and users of access services, telecommunications and information services, information products, etc.);

2) private legal relationship of material (e-payment) and non-material nature (interpersonal communication), through the Internet, including social networks;

3) public legal relationship connected to the provision of administrative (management) services between the state and individuals (e-governance etc.) and realization by states of their law enforcement duties (responsibility for offences on the Internet);

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<sup>23</sup>Naumov, V. Law and Internet: Essays on theory and practice. – M.: Book house "University", 2002. – P. 9.

<sup>24</sup>Kopylov, V.A. Informational law: the Textbook. 2nd edition, Rev. and extra – M.: Yurist, 2002. – P.31.

<sup>25</sup>Rassolov, I.M. Law and the Internet. Theoretical problems. – M.: Norma, 2003. – P.36.

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<sup>26</sup>Ibid. P. 45.



4) public legal relationship connected to Internet governance in widely understanding<sup>27</sup>.

At the same time, A. Pazyuk noted that if the first three types of relations are realized in cyberspace and governed by national law and international private law, the latter of these types of relationships has a mixed (hybrid) sort, and is done in the virtual environment and outside of cyberspace. This is due to the fact that the relationships on Internet governance to participate, as subjects of international private law (natural and legal persons of national law, and transnational corporations, such as ICANN) and international public law (States, international organizations). The mentioned feature allows assuming the formation of transnational information law (international law of the Internet)<sup>28</sup>.

Note that the solution to the above-mentioned theoretical and applied issues within the framework of

international law must be a principal vector of development using the mechanisms of international information law, which is perhaps the most "adapted" field to improve the appropriate regulatory base. As Professor V.N. Biryukov correctly said: "Trends of development of international cooperation in the field of information and communication point to forming in international law of a new field, which can be described as international information law"<sup>29</sup>.

In our opinion, the main directions of international and national-legal regulation of relations in the Internet are:

- protection from harmful and illegal information;
- observance of copyright and related rights in terms of dissemination of information in electronic form (digital information) and technically easy copying of such information;
- the issues of electronic document management, domain names,

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<sup>27</sup>Pazyuk, A. International legal characteristics of the legal relations in the Internet // <https://digital.report/pravovye-otnosheniya-v-internete/>. – 2016. – 20 Aug.

<sup>28</sup>Ibid.

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<sup>29</sup>Biryukov, P. N. International law: textbook. 2<sup>nd</sup> edition. – M.: Yurist, 1998. – P.386.



legal regulation of relations by using of electronic signatures;

– Issues of cyber economy (electronic money, crypto currency, advertising, electronic publishing, electronic contracts, e-polices, e-tickets, e-vouchers, tax on the transfer of information, electronic signature);

– information security as a condition of protection of all subjects and objects of information relations in the Internet;

– Cybercrime in the Internet.

Certainly, the Internet introduces both international law and in national legal system a large number of complex elements. Its existence as a special extralegal area causes logical contradictions during the attempt a legal regulation by the state. However, the main problem is that, now there is an urgent need in such regulation, and in identifying specific mechanism for its realization. It is clear that the process is not faster even with effort one or even several countries. This emphasizes the importance of establishing an appropriate regulatory framework,

which is reasonable combination of national legal requirements and international interest in the normal functioning of the Internet<sup>30</sup>.

Thus, we can define the Internet that is based on the definition proposed by A.K.Jarova: "The Internet is a spatially distributed global network of computer technology and infrastructure of users, which allow to carry out the services for the needs of individuals, government authorities and other actors in the information security of their contacts in real time, the operation which is regulated with technical standards, also international and national law, focusing on protection of human rights, the security of States and whole society in using process and developing of the potential of this network"<sup>31</sup>. In turn, L.Magdilova defines the Internet as "a global network of AIS, which is based on the formation

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<sup>30</sup>Nugmanov, N.A. Theoretical problems of legal regulation of the Internet in national and international information law // International relations. Politics, economy and law – T., 2010. – No 3. – P.68.

<sup>31</sup>Jarova, A.K. Legal problems of information circulation on the Internet. The Experience of The Republic of Uzbekistan: dissertation of doctor of philosophy in law – M.: Institute of state and law of Russian Academy of Sciences, 2002. – P.6.

and development of the information society and consisting of cross-border information and telecommunication networks, and distributed information resources as stocks of knowledge, together representing the integrated source of knowledge and means of communication of the subjects of the information society"<sup>32</sup>. A coryphaeus in the field of information law V.A.Kopilov, in turn, noted that the Internet is a global network of automated information system, which is the basis of formation and development of the information society<sup>33</sup>.

In connection with the foregoing, the necessity arises in contractual reinforcement of international information law as well as in the formation of completely information legislation in the frameworks of national legal systems of the States. These processes should occur in unison and complement each other.

However, the information legislation of states and the legal contractual basis of international information law should have significant differences on legal features, firstly, on the subject, cause the object and subject of regulation is based on the unique characteristics of the Internet is united.

In this regard, recognizing trans territorial nature of the Internet, it is necessary to solve the issue of jurisdictional facilities on the legal relations arising from the actions committed in or via the Internet.

## CONCLUSION

1. It is necessary to define the number of important postulates for national legal systems on the construction of the concept of legal regulation of the Internet relations.

1) Internet as a special area cannot be neither an object nor a subject of legal regulation. The subject of regulation are the legal relationship between operators and Internet users both among themselves and in relations with other persons and state bodies.

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<sup>32</sup>Migdilova, L. Lectures on information law // [http://magdilovaip.blogspot.ru/2014/02/blog-post\\_20.html](http://magdilovaip.blogspot.ru/2014/02/blog-post_20.html). – 2014. – 20 Feb.

<sup>33</sup>Kopilov, V.A. Informational law: the Textbook. 2nd edition, Rev. and extra – M.: Yurist, 2002. – P.234.

2) The legal relationship connected to Internet have an inter-national nature.

3) A number of regulatory problems related to the Internet, can and should be solved without using methods of state regulation, including at the level of organizational interaction of participants in online relationship.

4) The social importance of the Internet as a means of almost unlimited access to global information resources requires legislative (legal) consolidate the norms and rules governing aspects of the Internet that directly affect the most important rights and legal interests of individuals, society and the state.

5) The diversity and heterogeneity of legal relationship that connected with the Internet, do not allow for the development of appropriate legal framework limits with only creation of relatively isolated, "special" unity of legal norms. Simultaneously with the creating of new legal norms related to specificity of functioning of a network, it is necessary to amend acting national legislation.

2. The task of theoretical-legal justification of the Internet network as a special legal field is assigned primarily on the common theory of law.

However, a significant number of problems the Internet introduced in international activities. The solution of these problems in the framework of international law must be a principal vector of development using the mechanisms of international information law, which is perhaps the most "adapted" field to improve the appropriate regulatory base.

3. Certainly, the Internet introduces both in international law and in national legal system a large number of complex elements. Its existence as a special extralegal area causes logical contradictions during the attempt a legal regulation by the state. However, the main problem is that, now there is an urgent need in such regulation, and in identifying specific mechanism for its realization. This emphasizes the special importance of establishing an appropriate regulatory framework, which is reasonable combination of

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