

Some problems of the legal regulation of the Internet jurisdiction

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Некоторые проблемы правового регулирования юрисдикции в сети Интернет

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Abstract: *the article analyzes questions of definition of jurisdiction on the Internet. Approaches to definition of jurisdiction in the Internet are analyzed and the author gives conclusions on legal regulation the Internet jurisdiction.*

Аннотация: *в статье анализируются вопросы определения юрисдикции в сети Интернет. Автором проанализированы подходы определения юрисдикции в сети Интернет и разработаны предложения по совершенствованию правового регулирования юрисдикции в сети Интернет.*

Keywords: *Internet, jurisdiction, applicable law, conflict of law, internet relations, internet conflicts.*

Ключевые слова: *Интернет, юрисдикция, применимое право, коллизия права, интернет отношения, интернет-споры.*

Global character of the Internet creates considerable problems in definition of what law-enforcement bodies have to consider the disputes connected with a network to legal relationship and what law is applicable. Thereby, the Internet is the new legal environment disproving traditional ideas on action of precepts of law in space.

In theory there is no limit on the circumstances in which a national Government might claim to apply its laws and regulations to Internet activities which originate in a different jurisdiction, although practical enforcement of those laws against a foreign enterprise is a different matter.

In legal regulation of the Internet and Internet activities are very difficult and it is difficult to apply the laws of one Government to the Internet. It can be specified that the main problem is that the Internet has no territorial borders of its distribution.

It can be shown, that most of the problems arising from global reach occur because the applicable national laws differ from each other, and they are often unenforceable in practice. If those laws are substantially identical (in effect in not in wording) the most difficult legal problems under disappear, leaving only the question of which state has jurisdiction in the particular circumstances.

Thus, a feature of relations in the network is expressed by its global nature, which manifests the universality of access and opportunity for unlimited number of users to carry out interactions that cross national borders. L.V.Gorshkova notes, these features of the Internet becomes an impulse theoretical understanding of the concept of «foreign element», by taking into account that a foreign element can be found in all structural components of a private law relations in the Internet, in the absence of communication relations with the legal orders of different states [5].

This shows the relevance of the study and solution of the problem of determining jurisdiction in the Internet. It should be noted that the assertion of jurisdiction is determined by the image and influence the choice of the applicable law. Approaches for solving the same legal problems can be so various in different countries, that the need of taking into account the requirements of the law of a particular country can completely change the appearance of the face on the prospects of its activity.

Today jurisdiction problems in the Internet are already object of discussion of scientists-lawyers. In particular, the special attention is deserved by L. V.Gorshkova [5], A. S. Maltsev [7], E. B. Leanovich [6], I. L. Bachilo [1,2], S. V. Malakhov [8], works such foreign authors, as Dan Jerker B. Svantesson [4], Uta Kohl [9], Chrees Reed [3] and others.

In the legal doctrine and practice of some states use such criteria for establishing jurisdiction, as the jurisdiction of the state entity located in the territory of a certain state (connection of the person with a particular State); jurisdiction of the state where server located, ethnicity - jurisdiction over the person who places the data in the Internet, will be determined by the location of these data and receive data over the Internet – the location of that person; criteria of the violation; criteria for access to the website and others.

Many authors shows that country of origin regulation (also known as home country regulation) is the only regulatory model so far attempted which, at least in the author's opinion, is capable of resolving the conflicts between the multifarious and overlapping claims by national jurisdiction to regulate particular Internet activities. The principles of country of origin regulation are simple:

– by mutual agreement two states, or a group of states collectively, provide that activities of an organization which is established and regulated in one state (the home state) may be carried out in another (the host state)

without any requirement for prior authorization from or supervision by the appropriate regulatory body in the host state;

- the bases of these agreement is an assessment by all participating states that the others operate systems of authorization and/or supervision which are adequate to achieve the aims of the home state's regulatory system;
- the laws of the host state will still apply:
- to the appropriate aspects of individual transactions undertaken in the state, eg the law of contract or consumer protection law; and
- where the host state's law or regulation has overriding effect, eg the protection of national security.

The basis of country of origin regulation is not the regulation by home and host country is the same, but that it is broadly equivalent. It is therefore tempting for a host country to wish to apply certain elements of its own regulatory system to foreign providers of services, notwithstanding multilateral or bilateral agreement establishing the country of origin principle. An essential element of such agreements is therefore the establishment of the limits on the host country's ability to apply its national regulations.

Thus, there are set of criteria used in selecting the jurisdiction. For the person who uses the Internet, such a situation leads to a significant risk, because it is difficult to determine in advance the rule of law, which may affect the activities of the network.

Proceeding from requirement of conflict regulation of the Internet activities, it is possible to point to two main problems:

1. What is jurisdiction (law of the country) of the Internet activities.
2. What law (law of the country) is applicable.

Now at the legislative level of these problems are not solved. Legal regulation of the Internet activities is only formed and ways of its development aren't defined.

The most promising regulation seems to be that of accepting 'country of origin' regulation, coupled with an appropriate degree of harmonization or convergence of national laws.

In conclusion, it can be noted that the Internet is a new legal environment, which disproves traditional notions of existing legal norms in the space and Internet activities require legal regulation with regard to their extraterritoriality.

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