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## ПРАВА НА РЕЗУЛЬТАТЫ ИНТЕЛЛЕКТУАЛЬНОЙ ДЕЯТЕЛЬНОСТИ (ИСКЛЮЧИТЕЛЬНЫЕ ПРАВА): ОБЩАЯ ХАРАКТЕРИСТИКА И ПРАВОВАЯ ПРИРОДА

### Аннотация

В статье исследован вопрос развития концепции прав на результаты интеллектуальной деятельности. Также проанализированы предпосылки возникновения и квалификации прав на результаты интеллектуальной деятельности, целесообразность использования в доктрине и нормотворческой деятельности термина «интеллектуальная собственность». Одним из наиболее сложных вопросов в юридической науке является соотношение и разграничение исключительных прав (прав на результаты интеллектуальной деятельности, интеллектуальных прав) и вещных прав (классического права собственности), а также целесообразность использования понятия «интеллектуальная собственность», «право интеллектуальной собственности». Мировая юридическая наука и практика свидетельствуют о разных подходах законодателей и ученых-юристов по решению данных вопросов. Сохранение и применение в законодательстве стран мира термина «интеллектуальная собственность» является своеобразной данью исторической традиции его существования, а также определенным компромиссом касательно подтверждения политико-конституционного лозунга о значимости интеллектуальной собственности. Постепенно концепция исключительных прав на результаты интеллектуальной деятельности все больше признается зарубежными законодательствами. Сторонники исключительных (интеллектуальных) прав подчеркивают, что нельзя отождествлять правовой режим материальных вещей и нематериальных объектов. В отличие от права собственности, исключительные права ограничены во времени и пространстве, защищаются с помощью специальных механизмов защиты, тесно связаны с личностью создателя. В юридической литературе есть понимание того, что исключительные права должны быть признаны правами особого рода (*sui generis*), которые находятся вне классического деления гражданских прав на вещные, обязательственные и личные.

**Ключевые слова:** интеллектуальная собственность, права на результаты интеллектуальной деятельности, исключительные права, концепция, законодательство.

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## QUESTIONS OF PROVIDING INFORMATION SOVEREIGNTY OF THE STATES IN THE VIRTUAL ENVIRONMENT THE INTERNET AND TENDENCIES OF THEIR DEVELOPMENT IN UKRAINE

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The article reviews tendencies of information regulation in the virtual Internet environment. The states measure of filtering malicious Internet-content analyzed. It's determined that Ukraine state structures did not respond adequately to current trends in the virtual Internet information space, in terms of providing information sovereignty the state and its citizens.

**Keywords:** information, information sovereignty, malicious content, content filtering, blocking IP-addresses, limiting information online resource.

**Problem statement.** Today it is possible to tell with special confidence that the phrase "Who possesses information, that owns the world" it was not only prophetic, but also defining foreign and domestic policy of the leading states of the world in the field of regulation of the information streams circulating in all spheres of life of modern society.

Any citizen possessing reliable information has big advantage from the point of view of adoption of the correct decisions often contradicting poli-

cy, pursued by imperious elite of the states. This circumstance does official control of regulation of flows of information by an important priority for any state which wants to keep the information sovereignty and to pursue independent policy. This indisputable fact dictates need of detailed consideration of the following questions: – what sort information can pose threat for the state and its citizens; – what organizations are engaged in regulation of information streams in the Internet; – what tendencies of regulation in the information

sphere developed in the states with the developed network infrastructure.

In this article the author will try to give answers to the questions posed based on information provided in open sources.

**The analysis of the last researches and publications in which the solution of this problem is begun.** Current universal trends cause growth of steady demand at the user on reliable information in the most various spheres. According to estimates of experts, 95% of such information can be received from the open sources placed in the virtual environment the Internet.

Despite on this circumstance, a ban on information distribution in the virtual environment the Internet exist in many states of the Eurasian and Latin American continents. This ban shares on household, corporate and state.

Household ban, is established by users, for the purpose of protection of the inner circle (as a rule, children) from Internet resources of the following subject: 1. The Internet resources extending viruses; 2. Advertising and banners; 3. Roughness, immorality, obscenity; 4. Aggression, racism, terrorism; 5. Proxy and anonymizers; 6. Sites for adults; 7. Alcohol and tobacco; 8. Casino, lotteries, totalizers; 9. Phishing and fraud; 10. Torrents and P2P-networks; 11. Pornography and sex; 12. Armies and arms; 13. Extremism; 14. Narcotic substances; 15. Parked domains for all above the listed resources.

Practical realization of a household ban is carried out due to application of the specialized software (S) which allows the user to regulate information streams independently. It's mostly known of them ON Child Web Guardian and ON Net Kids. Features ON Child Web Guardian treat flexible control under idea of the user of what Internet resources bear an undesirable content and are subject to blocking. The concept put in ON Net Kids consists in preference of monitoring of actions of the user with possibility of the subsequent blocking of undesirable Internet resources.

Corporate ban belongs to a prerogative of the employers establishing rules of access to Internet resources, proceeding from the requirements to safety of network infrastructure, and also to a protection of the personnel from not desirable information in working hours. Blocking of access to social and file exchange networks, torrent, as a rule, belongs to such restrictions to trackers and not to controlled mail services.

Certainly, the considered types of a ban of access to Internet resources have to become a fundamental basis of a state policy of Ukraine in the sphere of regulation of information streams of the virtual environment the Internet, despite a large number of contradictions.

**Article purpose.** To carry out the analysis of criteria and ways of regulation of flows of information in virtual space the Internet, on an example the politician, it's carried out by the states and to define tendencies of their application in Ukraine.

**Statement of the main material.** We will consider in more detail the measures undertaken by the governments of the states in the sphere of regulation of distribution of information in the Inter-

net and we will try to give an assessment of their legality from the point of view of international law.

It agrees International the Covenant on Civil and Political rights, each person has the right for free expression and distribution of the opinion orally, in writing or by means of the press. This right is mentioned also in the European Convention on protection of human rights and in constitutions of many countries, including Ukraine. If in the state there are restrictions on a freedom of speech, they have to correspond strictly to its legislative base with the obligatory accounting of norms of international law. The laws entering restrictions of a freedom of speech have to be unambiguous and not give the chance for ambiguous interpretation. At legislative level have to be fixed: protection of reputation, dignity of the personality, national security, public order, copyright, health and morals. Thus, if the state enters similar restrictions for providing the information sovereignty, it quite corresponds to the international legislation.

In the sphere of regulation of information streams on the Internet there are such ways:

1. Rendering influence on sources of a placed content (the information companies, bloggers, owners of information resources);

2. Implementation of a selective filtration of a content of Internet resources or blocking of access to them;

3. Control of a traffic of users and its subsequent filtration, according to the established norms of providing information sovereignty of the state.

We will consider the existing rules regulating flows of information in virtual space the Internet, realized in the leading countries of the Euroasian and Latin American continents.

**The People's Republic of China (PRC)**, successfully applies difficult system of censorship which consists of the following three components: 1. System of a filtration of a traffic "Great Chinese firewall". 2. System of blocking of search of undesirable information. 3. Manual system of a filtration of the content published in social networks and a blog sphere.

The Internet resources located on a hosting or in domain space of the People's Republic of China pass obligatory registration in the Ministry of the industry and information technologies that allows identifying the author of a placed content. On July 1, 2009 the government of the People's Republic of China planned to enter the law according to which on all computers realized in domestic market, it will be established ON Green Dam intended for blocking of an undesirable Internet content. Initially, the program will be deactivated and at desire the user will be able to include it independently.

**India** made the decision on creation of the national Internet centre of scanning and coordination of "Netr" which will be capable to block the words "attack", "bomb", "destroy" in tweets, electronic letters, messages, blogs and at forums. Besides, the system will be capable to monitor voice messages in "Skype" and "Google Talk".

**The Russian Federation** rigidly reacts to distribution of a harmful content to the Internet. In 2012 in Russia the Unified register of Internet resources with information forbidden to distribution in Russia was created. According to Roskomnadzor, for

a year of work of the register more than 14 thousand resources were brought in "black list". Since August 1, 2013 in Russia "the anti-piracy law" on the basis of which, owners of the rights on film and TV-production can demand through Moscow City Court of blocking of access to the resources violating their rights came into force. After adoption of such decisions, data on such Internet resources are transferred to Roskomnadzor which informs on it their owners. If the violator within three days doesn't delete an illegal content, its Internet resource joins in the register of the forbidden sites. Also in the Russian Federation approved the uniform list of criteria of forbidden information in the Internet according to which under a ban Internet resources which contain information on how to find, grow up or prepare narcotic substance, and also the materials forming a positive image of the drug dealer get. Besides, Internet resources with a child pornography and information on its production and distribution are blacklisted. Sites on which ways of suicide are discussed get to category of the forbidden, offers take place or requests to make a suicide.

Considerable achievement of legislative base of the Russian Federation, introduction of the concept of information security of children which suggests to train school students in safe use the Internet. To their number carry: ability to protect the mailbox, the blog and the page on a social network from breaking, and also the recommendation not to visit resources for which unfounded rough statements, appeals to cruelty, an offensive language, insults, etc. are characteristic.

Ukraine actually doesn't deal with issues of a filtration of Internet content and stopped on two directions of control of virtual space the Internet:

1. Temporary withdrawal of servers of Internet resources with the official formulation "for the purpose of the termination of illegal distribution of counterfeit copies of audiovisual and literary works, programs and soundtracks";

2. Removal from service of domain names.

In Great Britain the filtration of a content of Internet resources became a prerogative for: National office on fight against crimes in the field of high technologies (The National High-Tech Crime Unit, NHTCU); Fund Internet of supervision (Internet Watch Foundation); Council for safety of children on the Internet (UK Council on Child Internet Safety).

In the second half of 2013 the government of Great Britain toughened control for the Internet in aspect of fight against terrorism and distribution of pornographic materials. In particular, in October, 2013 the government announced development of the new law which provides three years' imprisonment for pornography distribution with violence elements. Moreover, is planned to forbid completely a free access to pornographic materials. For receiving access to video for adults the user will have to conclude with Internet service provider the special agreement.

In Germany government institutions pay close attention to a problem of national intolerance. In this regard, the question of distribution on the Internet of neo-Nazi, anti-Semitic materials are subject to a rigid filtration. The special governmental

organization which is engaged in monitoring and blocking of similar Internet resources was for this purpose created, without limiting thus freedom of exchange of information.

In France, the filtration of a content of Internet sites is carried out in a national domain zone within the country and a foreign traffic on the "black lists" broken into two parts. The first part of the list includes pornographic resources, and contains "doubtful and disputable" Internet resources. The second part of the list includes racist and anti-Semitic resources; it is made according to the all-European project on development of the safe Internet (Safer Internet Action Plan). On February 15, 2011 the Constitutional Council of France adopted the Law LOPSI-2 aimed at providing internal security of the country, the Internet providing introduction of the following measures for regulation of virtual space:

1. Implementation of an obligatory filtration in the Internet, for suppression of distribution of a child pornography, on the basis of made "black lists" of the Ministry of Internal Affairs of France together with public organizations.

2. Blocking of the Internet resources containing a child pornography, on representation of the Ministry of Internal Affairs of France (without the need for submission of the judgment).

3. Introduction of criminal liability for use of the counterfeit IP address for Internet access (imprisonment for a period of up to 1 year and a fine at the rate to 15 thousand euro);

4. Maintaining criminal liability for use the Internet for action commission on behalf of the third parties if it entailed violation of their (third parties) of tranquillity or encroached on their honour and advantage (the sanction: imprisonment for a period of up to 1 year and a fine at the rate to 15 thousand euro);

5. Ban on creation and distribution by all means, including through mass media, messages and the appeals bearing threat to physical safety of citizens;

6. Legalization of remote installation by police divisions on computers of the persons suspected of commission of crimes of special programs, allowing to register and transfer to police data on the actions made by users of personal computers (only by a court decision).

In the USA the filtration of Internet resources at schools and public libraries, universities is carried out. For a filtration commercial filtering software packages, however in a number of states are used, for example, in Pennsylvania blocking of IP addresses at the level of provider is applied.

In Canada the filtration of Internet resources within a national domain zone and on "the hot line" foreign traffic is realized. Blocking of the foreign Internet resources located out of jurisdiction of the Canadian law enforcement agencies is carried out within the Pure Communication project realized in November, 2006 with assistance of leading providers of Canada and the Canadian line of reception of messages on sexual exploitation of children. The providers participating in the project, voluntary blocks transition according to links from this list, without foreknowing, what Internet resources are brought in it, keeping, thus, not involvement into

an assessment of links. The mechanism of blocking is determined by provider (blocking by a domain name, the IP address, etc.).

**Conclusions and further prospects of research in this direction.** Based on provided information, it is possible to come to a conclusion that in the majority of the countries it is active on control and regulation of information streams from the state. Thus, whatever was level of the declared freedom of speech; considered tendencies exist and take root into legislative bases of the states. In these processes, undoubtedly, there are positive and negative sides.

Comparing current situation at this stage in the different countries, it is possible to provide such data from the last report of Freedom House "Freedom of a network 2013 World assessment Internet and digital media". In the report is defined, how actively the states put into practice regulation of flows of information in the Internet. First of all, it is a question of blocking and a filtration of a content of Internet resources. Legalization of such actions is regularly supported with adoption of laws which forbid harmful (according to government bodies) a content, and allow active manipulations in information space, physical attacks against journalists and bloggers and other Internet users and politically motivated shadowing. According to the results published in the report, the rating of Ukraine in 2013 worsened in comparison with results of 2012 a little and made 27 points. The rating of Ukraine in freedom context in the Internet was estimated at 28 points from 100 (here respective-

ly – less points, subjects are more than freedom). Difficulties of access to the Internet in Ukraine are estimated at 7 points from 25, restrictions on Internet content – at 7 points from 35, violations of the rights of users – at 14 points from 40.

As for regulation of information streams in virtual space the Internet of Ukraine, it is unambiguously possible to draw a conclusion that distribution of a harmful content from the point of view of preservation of information sovereignty of the state and its citizens has menacing character. Government institutions actually close eyes to regulation of virtual information space to which the increasing number of citizens of Ukraine "moves". The virtual environment the Internet gradually becomes an impunity zone where instead of freedom the chaos even more often reigns and the immoral and criminal behaviour of citizens progresses. When in the virtual environment the Internet isn't present real responsibility for distribution of false information, to the user everything is more difficult to find reliable information. Moreover – importance of any information for the user falls, and his intellectual level degrades. Its internal standards and requirements inevitably decrease, provoking degradation of standards of behaviour at first in virtual, and then in the real world.

Nevertheless, it is necessary to remember always that control and regulation of flows of information from the state can be interpreted by society not as the instrument of information domination of interests of the state, and as establishment of information censorship.

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## ПИТАННЯ ЗАБЕЗПЕЧЕННЯ ІНФОРМАЦІЙНОГО СУВЕРЕНІТЕТУ ДЕРЖАВ У ВІРТУАЛЬНОМУ СЕРЕДОВИЩІ ІНТЕРНЕТ ТА ТЕНДЕНЦІЇ ЇХ РОЗВИТКУ В УКРАЇНІ

**Анотація**

У статті розглянуті питання регулювання інформаційних потоків у віртуальному середовищі Інтернет. Проаналізовано заходи, що вживаються державами для фільтрації шкідливого інтернет-контенту. Визначено, що державні структури України не реагують належним чином на сформовані тенденції у віртуальному інформаційному просторі Інтернет, з точки зору забезпечення інформаційного суверенітету держави та її громадян.

**Ключові слова:** інформація, шкідливий контент, фільтрація контенту, контроль контенту, обмеження інформації, інтернет-цензура.

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## ВОПРОСЫ ОБЕСПЕЧЕНИЯ ИНФОРМАЦИОННОГО СУВЕРЕНИТЕТА ГОСУДАРСТВ В ВИРТУАЛЬНОЙ СРЕДЕ ИНТЕРНЕТ И ТЕНДЕНЦИИ ИХ РАЗВИТИЯ В УКРАИНЕ

**Аннотация**

В статье рассмотрены вопросы регулирования информационных потоков в виртуальной среде Интернет. Проанализированы меры, предпринимаемые государствами для фильтрации вредоносного интернет-контента. Определено, что государственные структуры Украины не реагируют должным образом на сложившиеся тенденции в виртуальном информационном пространстве Интернет с точки зрения обеспечения информационного суверенитета государства и его граждан.

**Ключевые слова:** информация, информационный суверенитет, вредоносный контент, фильтрация контента, блокировка IP-адреса, ограничение информации, интернет-ресурс.