

**THE LAW
OF THE DIGITAL ECONOMY – 2021**
Edition 17

Annual Anthology

Lead author and science editor

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The seventeenth edition of the “Modern Law Review / IP & Digital Law” series comprises articles on the legal regulation of digital rights, cryptocurrencies, databases, online media platforms, aggregators of information on goods and services, and activities in the Darknet. This annual book contains papers covering the protection of competition in the digital context, the legal framework of Mobile App Stores operation, “image” rights protection, eligibility to derivative works in video games, e-Sports and intellectual property, and legal aspects of retraction. The book also considers the problem of digital twins and digital forms of inheritance law.

For judges, lawyers, legal practitioners, academics, lecturers, postgraduates and law students as well as all others interested in the development of the Russian law and issues related to the application of the current legislation.

See <http://asp.rozhkova.com> and <http://books.ipclub.in/asp.html> to find an invitation to participate in the forthcoming annual books of this series as well as information about them.

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Marina Rozhkova

THE TERMS “DIGITAL LAW”, “DIGITAL RIGHTS” AND “DIGITAL CURRENCY” IN RUSSIAN LAW

Abstract. The article researches the dynamics of the development of Russian legislation, related to information technology. Based on the analysis of academic works and actual legislation the author analyzes the nature of terms ‘digital law’, ‘digital rights’ and ‘digital currency’.

Keywords: digital law, digital rights, digital currency.

Nicolas B. Rouiller

CRYPTOCURRENCIES: CURRENT REALITIES, PHILOSOPHICAL PRINCIPLES AND LEGAL MECHANISMS

Abstract. This paper deals with practical aspects of cryptocurrencies, including the legal framework and instruments, but also with the underlying philosophical or political approaches that motivate creators of cryptocurrencies. These motivations are diverse. A feature common to most of them is the idea of a decentralized financial ecosystem, without (or with a strongly reduced role of) intermediaries and organizations that fulfill centralizing functions (notably banks): as a consequence, power is distributed and autonomy increased. For some, the philosophical source is a form of anarchism or of democratism; for others, it is a critical analysis of the economy, in particular of the situation of governmental currencies and of the fundamental inflationary potential resulting from contemporary monetary policies (like, in technical terms, quantitative easing, or, with a more polemic tone, currency debasing). Identifying the philosophical approaches – or several of them – is useful from many points of view, as this also enables to understand in a deeper way numerous technical and practical questions.

Keywords: cryptocurrencies, decentralized financial ecosystem.

Guido Noto La Diega

ARTIFICIAL INTELLIGENCE AND DATABASES IN THE AGE OF BIG MACHINE DATA

Abstract. This paper deals with those databases where Artificial Intelligence technologies are used to obtain, verify, or present the database’s contents (‘AI databases’). The overarching research question is whether AI databases can be protected under the copyright and sui generis regimes provided by the Database Directive. The alleged inadequacy of the sui generis right for the data economy and, in particular, for machine-generated data led the European Parliament to call on

the Commission to abolish said right and the Commission to propose the introduction of a data producer's right as a new property that would have done what the sui generis right had been unable to. It is this paper's contention that, contrary to popular belief, the sui generis right is fit for AI databases and that a different solution would lead to an overprotection of said subject matter by contractual means. The sui generis right may be the best, if not the only, way to protect AI 'authorial' works. Indeed, even if AI works currently fall outside the scope of copyright law for lack of originality, they could nonetheless be protected if part of a database. Thus, thanks to AI, the sui generis right may become more important than it ever was.

Keywords: artificial intelligence, intellectual property, databases, copyright, sui generis right, EU law, big data, machine data, industrial data, internet of things, machine learning, data mining, contract law.

Vera Glonina, Anastasiya Semenova

LEGAL PROTECTION OF NON-CREATIVE DATABASES IN RUSSIA AND IN FOREIGN COUNTRIES

Abstract. The article is dedicated to the problem of the protection of non-creative databases protection of non databases. The authors analyze Russian and foreign legislation, case law and doctrine regarding the protection of non-creative databases and elaborate on the applicable test for ensuring a balance between the freedom of information and the necessity to protect efforts and investment of the database creators.

Keywords: database, information, related rights, sui generis.

Marina Kozlova, Dmitriy Kozhemyakin, Olga Sergacheva

PROTECTING COMPETITION AND SPREADING DIGITAL TECHNOLOGY

Abstract. The article presents an analysis of the antimonopoly regulation which facing of widespread and development of technologies for processing large amounts of data. The authors investigate the impact of digital platforms and pricing algorithms on the competitive environment, the practice of their application for market monopolization and the possibility of countering this effect from the antitrust law.

Keywords: competition in digital markets, digital platforms, antitrust immunities, digital cartels, pricing algorithms.

Daria Motovilova

ONLINE MEDIA PLATFORMS: EU APPROACH TO REGULATION

Abstract. The article reveals the economic nature of a platform and outlines the development of media from print to digital. Then, the article reviews the EU

legal framework of online media platforms as a kind of audiovisual services, the responsibility of online intermediaries for user-generated content, the current CJEU practice on the right of communication to the public and recently adopted provisions aimed at certain types of online media platforms.

Keywords: *platform, media, copyright, related rights, right of communication to the public, audiovisual media services, online intermediaries, EU law, CJEU.*

Linar Safargaleev

AGGREGATORS OF GOODS AND SERVICES INFORMATION: REGULATION ISSUES

Abstract. *The article analyzes the regulation of a new construction in Russian law – the owner of an aggregator of goods (services) information. The author examines the status of the information aggregator and its owner, contractual relations with the aggregator owner, and the legal liability of the aggregator owner to users.*

Keywords: *Aggregator, legal status, consumer, services, intermediary, liability.*

Artem Levashov

THE LEGAL GROUND OF ORGANIZATION AND FUNCTIONING OF MOBILE APP STORES

Abstract. *This article discusses the legal content of mobile app stores as aggregating platforms for digital goods and services. The main trends in the development of regulation of information service providers are considered. The importance of identifying all participants in the information infrastructure of stores as a prerequisite for compliance with legislative requirements is emphasized. Particular attention is paid to the analysis of legal relations related to the placement of mobile applications in catalogs of stores and their selling to end users.*

Keywords: *E-commerce, information intermediaries, aggregators, digital products, mobile applications.*

Anastasiya Shchukina

PROTECTION OF “IMAGE RIGHTS” IN RUSSIA AND ABROAD

Abstract. *The article considers the approaches of different legal systems to the legal protection of image rights. This institution is rather poorly developed in the Russian doctrine, and stable judicial practice is also not formed. The author explores the legal nature of image rights, and also, taking into account the experience of foreign countries, makes suggestions for improving the legal regulation of this institution in Russia.*

Keywords: *image, image rights, brand, trademark.*

J. Remy Green

ALL YOUR WORKS ARE BELONG TO US: NEW FRONTIERS FOR THE DERIVATIVE WORK RIGHT IN VIDEO GAMES

Abstract. *In copyright law, the author of an original work has the exclusive right to prepare further works derivative of that original. Video game developers' works are protected by the Copyright Act. As video games take advantage of more advanced technology, however, players are doing more creative, interesting, and original things when they play games. Certain things players do create independent economic value and are the kinds of acts of original authorship our copyright system is designed to encourage. However, since the author of the video game is entitled to the full panoply of rights under the laws of the American copyright regime, they own the exclusive right to prepare works "derivative" of that game.*

This Article has both descriptive and normative goals. Its descriptive goals are to outline the current legal trends in the video game space and to demonstrate the huge economic stakes at play. Its normative goals are to offer a number of different ways of explaining how derivative works of video games are created and to suggest several modes of understanding how cases where ownership of these works is disputed should be decided. These modes include philosophical thought experiments, critical analysis of what exactly a game is, analysis of what kind of game underlies the second order work in question, and application of the liability/property rule framework from law and economics literature.

Vladimir Pisarev

E-SPORTS AND INTELLECTUAL PROPRTY: COUNTERING CHEATING IN E-SPORTS AND E-GAMING THROUGH TOOLS INTELLECTUAL PROPERTY LAWS

Abstract. *This article discusses legal practices that can counteract malicious, algorithmized interference with gaming software that is protected by licensing agreements. It is noted that in the industry of computer games for violation of intellectual rights, criminal, civil and disciplinary measures are applied.*

Keywords: *intellectual rights, intellectual property, e-sport, digital economy, legal liability.*

Anna Gapanovich

DIGITAL TWIN – THE INDIVIDUAL OBJECT OF CIVIL RIGHTS?

Abstract. *The author analyzes characteristics of the digital twin's technology. It is distinguished from the related categories such as information model, digital mode, digital identity, digital shadow, virtual object. It is concluded that the objects being parts of the digital twin's technology are unequal.*

Keywords: *digital twin, object of law, artificial intelligence, virtual reality, augmented reality, digital mode, digital identity, digital shadow, virtual object, a single technology.*

Alina Faizova

THE PROBLEM OF LEGAL REGULATION OF ACTIVITIES IN THE ANONYMOUS DARKNET

Abstract. *The article is devoted to the analysis of social relationships mediated by the anonymous Darknet and their correlation with the law, the complexity of detecting and suppressing illegal acts regularly committed on the Darknet. The author examines approaches to the legal regulation of anonymous networks and the search for a balance between ensuring the right to privacy and confidentiality of personal data and compliance with the law on the territory of the country.*

Keywords: *Darknet, Tor, offense, Internet, anonymizer, cybersecurity, privacy.*

Oleg Pechenyi

DIGITAL FORMS OF INHERITANCE: CONTEMPORARY CHALLENGES, RELATIONSHIP WITH PERSONAL ASPECTS

Abstract. *In the article the features digital forms of inheritance law are analyzed. The author highlights the problems of digital asset inheritance; digital forms of wills, digital formats of inheritance rights. The analysis of the current legislation on the inheritance of the practice of its application is carried out. Foreign experience and the possibility of using it in the national system of inheritance are investigated.*

Keywords: *inheritance; digital format; inherited law; electronic signature.*

Andrey Bogustov

LEGAL ASPECTS OF RETRACTION

Abstract. *The article is devoted to the analysis of legal aspects of the procedure of retraction of scientific articles. Based on the research, it is concluded that the nature of retraction can not be explained using existing copyright institutions. At the same time, retraction can lead to individual violations of the authors subjective rights. The conflict between retraction and law can only be resolved by changing the rules on retraction and achieving their compliance with current legislation. The negative consequence of retraction is the de facto recognition of subjective rights unknown to the current legislation and doctrine. The de facto recognition of the powers of the constituents of the essence of retraction creates uncertainty of the rights and obligations of the subjects of copyright relations.*

Keywords: *author, work, copyright, retraction.*