

Law of Digital Markets

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Abstract. This is a review of the session on “Law of Digital Markets”, which was part of the Postgraduate Legal Forum “Transformation of Modern Law: Trends, Benchmarks, Solutions”, organized by the State Academic University for the Humanities, GAUGN (Russia, Moscow, June 25, 2024). The main topics for discussion were digital property, decentralized autonomous organizations, personal data protection, fintech, and the challenges of regulating artificial intelligence. The session participants noted the need for coordinated work of the academic community, legislature, and agencies to develop consistent legal regulation for new digital technologies that meets the current interests of citizens, businesses, and the state.

Keywords: digital property, virtual objects, decentralized autonomous organizations, smart contracts, data protection, artificial intelligence, fintech.

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Within the framework of the Postgraduate Legal Forum “Transformation of Modern Law: Trends, Benchmarks, Solutions”, organized by the State Academic University for the Humanities (GAUGN) with the support of the Institute of Scientific Information for Social Sciences of RAS, the Federal Chamber of Lawyers of the Russian Federation and the All-Russian public organization “Business Russia”, held on June 25, 2024, the session “Law of Digital Markets” took place. The session was moderated by Head of the Center for Legal Research of Digital Technologies of GAUGN, Doctor of Law, Professor L.V. Sannikova; Professor of the Department of Civil Law of the Kutafin Moscow State Law University (MSAL), Doctor of Law, L.Y. Vasilevskaya; Chief Researcher of Institute of State and Law, Professor of the Department of Business and Corporate Law of the Kutafin Moscow State Law University, Doctor of Law, V.A. Laptev, The reports of the participants were divided into four areas covering the issues of digital market regulation: general aspects of digitalisation of civil circulation, personal data protection, the development of artificial intelligence, and the digitalisation of financial markets.

The first group of reports included topics related to legal research in the field of digital technologies, the digitalization of objects and subjects of civil law, and the contracts in the digital sphere.

Dr. Prof. L.Y. Vasilevskaya began the session with a presentation on “Digitalization of Civil Circulation: Problems and Development Trends”, in which the key mistakes made by researchers in the field of civil law digitalization were highlighted.

D.D. Furman, a PhD student of the Center for Legal Research of Digital Technologies, GAUGN, presented a paper on “Informational property as a substantial characteristic of new objects of civil rights - information objects”. Due to the rapid digitalization of social relationships, legal scholars actively discuss the regulation of intangible objects, such as virtual reality objects, crypto-assets, CAD files, and Big Data. Literature and legislation commonly use terms like “digital”, “virtual”, and “electronic” for intangible objects. The challenge of creating specific regulations for such objects arises because these terms describe only the form of the object, not its essence. Legal doctrine prioritizes the essence of the relationships over its form. Thus, current categories of new civil rights objects mainly highlight the specifics of existing legal relationships.

N.A. Galkin, a PhD student of the Law Department of the Institute of Economics, Management and Law, Moscow City Pedagogical University, made a presentation on “Digital Property: Civil Law Aspect”. The concept of digital property and its legal status in civil law is of great interest in today's society. There are doctrinal issues in distinguishing digital rights, digital property, and virtual objects. Appropriate legislative regulation requires a clear definition. The term “digital property” is rarely used in scientific discourse, as Russian legislation uses the term “digital rights”. In the Russian Civil Code, the term “digital rights” is

equated with obligatory rights. The term “digital rights” can be confusing, as it can refer to both the set of norms regulating cyberspace relationships and the group of new generation human rights, such as internet access and digital communication. Therefore, the speaker proposed using the term “digital property” in civil legislation, as it clarifies the distinction between private and public law and broadens the scope of application.

A.G. Boitsov, a PhD student of the Center of Legal Research of Digital Technologies, GAUGN, presented a paper on «Liability Issues of Participants in a Decentralized Autonomous Organization». The presentation examined the issues of liability of participants in decentralised autonomous organisations (DAOs). It explored the determination and delineation of liability among participants and mechanisms for ensuring and implementing it in different legal systems. The speaker provided practical examples of these mechanisms in various fields. Various approaches for solving this problem are considered, including use of blockchain technologies for transparent management and control, the development of ethical codes and rules of conduct, and the application of traditional methods for determining and enforcing liability. The speaker also discussed the role of the state in regulating DAOs and the potential use of legislation to protect the rights and interests of participants.

G.M. Laptev, a PhD student of the Civil Law Department, Faculty of Law, Russian New University spoke on “Digital contract in Public Procurement”. The application of digital technologies in the public procurement system is crucial for the effective use of budgetary funds. The efficiency of public procurement depends on the extent of digital technology usage. Since 2017, public procurement has been transitioning to digital technologies as part of the “Digital Economy of the Russian Federation” program. This began with converting all procedures to electronic form and implementing electronic acceptance of goods, services, and works. The next step is the introduction of digital contracts, which simplify the contract signing process and reduce errors by using electronic files. The speaker highlighted that the concept of a “digital contract” is new for Russian legislation and needs to be defined in both scientific and legislative contexts. Digital contracts represent a new development in the law of obligations, as they represent an electronic form of obligation. The Law on the Contract System requires these contracts to be electronic documents based on competitive procurement results. However, the legislator has not clarified how to use the electronic contract file in procurement notifications. The speaker also noted the need to determine which provisions, such as liability clauses, should be included in digital contracts and how they should be applied in fulfilling obligations. Therefore, this innovation requires further in-depth research.

G.O. Trifonov, a PhD student of the Center for Legal Research of Digital Technologies, GAUGN, made a presentation on “The Use of Smart Contracts in Consumer Relationships”. In the context of the rapid development of digital technologies and the growing popularity of blockchain, the use of smart contracts in consumer relations is becoming increasingly relevant. The presentation focused on the use of smart contracts in legal relations with consumers and their potential to transform traditional legal mechanisms. The author highlighted the legal aspects of the introduction of smart contracts, analysing their advantages and potential risks. Special attention is paid to consumer protection. The speaker also considered examples of the successful use of smart contracts in various industries.

In the second group of reports on personal data, the speakers discussed the protection of patient data and the implementation of identification standards.

D.A. Lebedeva, a PhD student of the Digital Technology Law and Biolaw Department, Faculty of Law, Higher School of Economics, presented a paper on “Prospects for the Legal Protection of Patient Data”. Under strict sanctions and restrictions on the supply of imported technologies, the transition to domestic software and data security is extremely important for modern Russian society. The protection of patient and medical data is critical as digitalization accelerates, including in healthcare. National projects “Healthcare” and “Demography” emphasize the priority of digital development in healthcare. A key federal project involves creating a unified digital framework based on the Unified State Health Information System. This will provide transparent access to electronic medical records and digital medical data, enabling citizens to use all digital medical services in one application and facilitating electronic document management in medical institutions. The speaker noted digital solutions in medicine require thorough legal regulation of data processing and protection, creation of security standards and strict penalties for violations. Almost one-third of medical institutions worldwide experience patient data leaks, often due to security and ethical violations. Leaked data often ends up on the darknet, leading to fraudulent use. The speaker concluded that

enhancing legal regulation of data protection in medicine is necessary due to evolving technologies and increasing threats.

D.Y. Sapronov, a PhD student of the Law Department of the Institute of Economics, Management and Law, Moscow City Pedagogical University, made a presentation on “Peculiarities of Person Identification Standardization in the Digital Age”. The widespread adoption of information technologies has led to fundamental changes in society. The state faces the task of improving the legal regulation of social relations in the area of personal data circulation. An important aspect of modern relations in this area is that identification currently often occurs in virtual space, and in many instances, approaches to it differ. This can compromise the reliability of identity verification in virtual space, and frequently, the collection of personal data is excessive. The speaker pointed out that standardizing the digital identification process will enhance the reliability and accuracy of remote identity verification and make it more secure.

In the third group of reports, devoted to the development of artificial intelligence, the speakers discussed the issues related to the introduction of artificial intelligence (AI) in the field of justice and the risks of disinformation.

Dr. Prof. V.A. Laptev made a presentation on “Artificial Intelligence in the Court: Legal Foundations and Prospects”, where the stages of AI implementation in the domestic judicial system (short-term, medium-term, and long-term prospects) were discussed. It was noted that work of AI at the current stage is possible only in connection with a human judge. The speaker highlighted the challenges in implementing AI in the judicial system, such as the need to digitize all incoming documents, digital inequality, the court's lack of full access to the System of Interdepartmental Electronic Interaction (SIEI), and the issue of the number of judicial instances when using AI, etc. Traditional concepts of the judge's consciousness, the need to separate technological aspects from legal aspects, rethinking approaches to personal data circulation, and the creation of special judicial cloud servers for AI work were emphasized.

I.A. Tereshchenko, PhD student of the Center for Legal Research of Digital Technologies, GAUGN, presented a paper on «Ethical and Legal Aspects of Artificial Intelligence in Justice». The speaker considered several problematic aspects of using AI technologies in the judiciary. The author highlighted controversial issues such as the risk of convergence with case law and the question of responsibility of AI in decision-making. Potential risks associated with the use of AI in judicial decisions were identified. Based on the analysis of AI legal regulation in foreign countries and Russia, the speaker made proposals for the use of AI in the judicial process.

A.E. Stepanova, a PhD student of the Department of Information Law and Digital Technologies of MSLU, made a presentation on “Artificial Intelligence in the Landscape of Disinformation”. Striving for technological leadership, national security, and strategic stability, countries are developing human-centered AI technologies. Previously unquestioned, the universal utility of AI is now debated, with growing emphasis on the associated risks and threats. The systemic impacts of AI are unpredictable but will significantly affect national interests in the information sphere. Creating a secure information environment resistant to various interferences is challenging as ICT transforms methods of propaganda and deception to influence strategic decisions. The speaker provided examples of AI-generated propaganda and explained why such information, despite the “hallucination” effect, appears more convincing to consumers. Scientists are revisiting the Turing Test to distinguish real human behavior from harmful synthetic content. The speaker highlighted issues of information warfare using cyber technologies, historical falsification, and the spread of harmful ideologies, which threaten traditional moral values. It is specified how everyone can learn to recognize false information. The author concluded that mastering fact-checking skills may be the best way to achieve this goal.

In the last group of presentations on the digitalization of financial markets, speakers focused on discussing the regulation of investment platforms, digital financial assets and mining.

A.A. Zavertyaev, a PhD student of the Center for Legal Studies of Digital Technologies, GAUGN, spoke on “The Main Directions for Improving the Legal Regulation of Digital Financial Asset Circulation in the Russian Federation”. This presentation was devoted to the legal regulation of investing through investment platforms and the contractual relationships between involved parties. The speaker analyzed trends in Russian legislation on such contractual relationships. The key trends in legal regulation for investment processes using investment platforms, with a focus on the specifics of contracts concluded by participants,

were identified. The speaker pointed out the key factors influencing contracts in investment processes using platforms.

A.S. Biryukov, a PhD student of the Center for Legal Research of Digital Technologies, GAUGN, made a presentation on "Protection of Retail Investors in the Digital Rights Market". Models for raising funds based on the use of digital rights, such as asset tokenization or crowdfunding, largely depend on funds from a wide range of retail investors. These investors are the most vulnerable category due to their lack of knowledge or understanding of the investment market. Therefore, it is essential to protect this group of investors from financial losses with measures based on minimal restrictions for the investor. The presentation focused on the issue of protecting retail investors in the market of digital financial assets and utility digital rights. The existing provisions for protecting retail investors were analyzed. It was concluded that the current regulations do not fully enable retail investors to participate in capital-raising processes. Therefore, the speaker proposed to lift the ban on purchasing certain types of digital rights while simultaneously setting special limits for their purchase and imposing additional requirements on issuers.

M.A. Uspensky, a PhD student of the Center of Legal Research of Digital Technologies, GAUGN, made a presentation on «Problems of Delegated Legislation: A Case Study of the Mining Bill». The speaker discussed the permissibility of granting the Central Bank of Russia broad powers to regulate mining. The concepts of delegated legislation and its permissible limits were examined. It was concluded that prohibitions in this area should be established only by the legislature. The speaker also pointed out that excessive delegation of prohibitions to the executive branch undermines the role of the legislature, fills the regulatory framework with inherently unconstitutional norms, creates additional burdens on the courts, and undermines the confidence of citizens and legal entities in the stability of civil circulation.

At the end of the session, the moderators gave their feedback on the PhD students' presentations. The young scientists, in turn, received valuable recommendations on how to conduct their research and added to their amount of knowledge gained from the presentations of their colleagues and moderators.