

# Digital Rights Regulation in the European Union

Mikhail N. Kuznetsov<sup>a</sup>, Ekaterina P. Rusakova<sup>b</sup> and Viktor V. Zaitsev<sup>c</sup>  
*Peoples' Friendship University of Russia (RUDN University), Moscow, Russia*

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**Abstract:** The development of digital rights is of concern to the European community and requires the creation of a new regulatory framework. Today, the European Union is striving to unify the existing regulation of digital rights. The purpose of the research is to analyze the concept of digital rights in Europe, identify trends in legal regulation, and study the most important documents in the system of digital rights regulation. The importance and relevance of the article is caused by the fact that the concept of "digital rights" still does not have a generally accepted definition, there is no unified legislation on the territory of the European Union. Countries in Europe have adopted controversial laws that may violate the right to freedom of expression, which causes outrage among international organizations involved in the development of digital rights regulation. The result of the work is the identification of two trends in relation to the definition of "digital rights", namely: to consider digital rights as an independent right or a means for the realization of fundamental rights. The authors draw the following conclusions: there is a tendency to replace Directives with the adoption of Regulations on the regulation of digital rights, which contributes to the accelerated unification of legislation on the regulation of digital rights; the existence of international organizations that provide legal assistance in legal disputes involving digital rights. As a general conclusion, it can be noted that the European Community believes that digital rights are under threat, in this regard, the European Union is actively developing rules for regulating digital rights, protecting personal data, organizing public consultations on digital rights and taking into account opinions on the regulation of artificial intelligence.


## 1 INTRODUCTION


The development of digital technologies requires legal regulation and the formation of methods of protection in case of violation of digital rights. Today, digital rights are not something unknown to society. It has become much more common to mention the violation of digital rights, their acquisition, alienation, and litigation, the subject of which is digital rights. However, digital rights in Europe remain under threat. In this regard, it is necessary to have an effective legal framework aimed at regulating digital rights. In this article, we propose to analyze the experience of the European Union. It is important to note that the concept of "digital rights" introduced in the Civil Code of the Russian Federation is a special

branch concept and has no relation to the concept of digital rights emerging in international law.

The appearance of the term "digital rights" was preceded by other terminology: "human rights on the Internet", "Internet rights" and others. To date, the concept of "digital rights" has become widespread, but has not yet been fully formed. The head of the Digital Freedoms Foundation (DFF), Nani Jansen Reventlow, believes that the concept of "digital rights" should be interpreted broadly, and digital rights should be understood as human rights in online and online spaces. The content of digital rights and the nature of the state's obligations to ensure digital rights are considered by the authors in different ways. Among digital rights, such topics as the right to be forgotten, the right to protect personal data, and the right to access the Internet are most often studied.

<sup>a</sup>  <https://orcid.org/0000-0001-7229-1351>

<sup>b</sup>  <https://orcid.org/0000-0001-6488-0754>

<sup>c</sup>  <https://orcid.org/0000-0001-6088-0941>

## 2 RESEARCH METHODOLOGY

The theoretical basis of the study was the regulations and directives of the European Union, the legislation of the countries of the European Union, the works of domestic and foreign scientists.

The research methodology includes general scientific methods of cognition (dialectical, formal-logical), private scientific methods (historical, ethnographic, anthroposociological, statistical) and special legal methods (legal-dogmatic and comparative-legal).

The theoretical and methodological component of the study is represented by the works of the authors-Shugurov M. V., Tian Y.-J., Hugenholty P. B., Determann L., Vinton G., Tomalty J, Varlamova N. V., Mikhailov S. V.

## 3 RESEARCH RESULTS

Digital rights can be considered in two aspects:

- digital rights are new fundamental independent human rights;
- digital rights are only a means to realize traditional human rights.

The European Union has created a universal system for regulating digital rights.

One of the most recent acts regulating digital rights is Directive (EU) No 2019/790 on copyright and related rights in the Digital Single Market. The purpose of this Directive is to create conditions for the functioning of a single digital market. The strategy of the single digital market is based on three aspects:

- improved consumer and business access to online products and services across Europe;
- creating an enabling environment for digital networks and services to thrive;
- increasing the growth potential for the European digital economy.

At the same time, a number of countries adopt controversial legislation in the field of freedom of speech on the Internet. For example, in Germany, on 18.06.2020, a law on "hate speech" in social networks was adopted, which caused heated discussions.

The legal community in Europe is faced with a number of issues that have not yet been resolved in the context of resolving digital rights disputes, namely, whether it is necessary to initiate proceedings in different jurisdictions simultaneously; to adhere to the same strategy for protecting digital rights in

different jurisdictions, or to use different strategies in different countries. These issues should be openly discussed by the legal community of the European Union, and the experience gained in Europe can be used in other countries of the world.

## 4 DISCUSSION OF THE RESULTS

The right to be forgotten and the right to the protection of personal data is considered as an element of the right to respect for privacy. The right to be forgotten is a legal opportunity to demand the removal of links in search engines to inappropriate, outdated, inaccurate, incomplete information about a person, if they can cause him harm .

The European Order initially recognized personal data as an inherent right to respect for private and family life. With the advent of digital technologies, the Internet, personal data has "flowed" into the digital space, where it has received similar recognition as an integral element of the right to respect for privacy, protection and protection of fundamental rights. Given the increased threat of the dissemination and disclosure of personal data, the European Union has created special legislation in this area . One of the first acts that established the protection of personal data, and therefore the protection of digital rights, was the data protection Law adopted by the federal State of Hesse in 1970 .

The right to access the Internet can be considered in two ways: technical and political-ideological. The right to access the Internet in the technical aspect implies the implementation of digital rights with the help of the appropriate technical infrastructure, in the political and ideological aspect it is considered as a guarantee of free access to the information contained in the "Network". While the rights to be forgotten and the right to the protection of personal data were considered as an element of the right to respect for privacy, the right to access the Internet is an element of the right to freedom of expression. The right to access the Internet was internationally recognized in the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of 16 May 2011 (A/HRC/17/27) (hereinafter referred to as the UN Report) , which emphasized the attribution of this right to fundamental human rights. However, in the doctrine, some authors did not agree with the interpretation of the UN Report on the attribution of the right to access the Internet to fundamental rights, believing that this statement is controversial and the right to access the Internet is a means of realizing the

right to freedom of expression and the right to information .

In the development of digital rights, great importance is given to their protection. In the context of digital activity, the rights to privacy and freedom of expression are often violated. In the European Union, this issue is actively resolved by the ECHR, which considers disputes related to the use of electronic means (tracking of electronic correspondence, mass introduction of video cameras, indefinite storage of fingerprint data, cell samples and DNA profiles in electronic banks, etc.) . The scope of digital rights and their protection is not limited to the practice of the ECHR.

For example, the Charter of Human Rights on the Internet establishes:

- the right to access the Internet, which follows from article 26 of the Universal Declaration of Human Rights, which guarantees the right to education;
- the right to freedom of expression and association (Article 18-20 of the Universal Declaration of Human Rights – the right to participate in online protests);
- the right to access knowledge, according to article 27 of the Universal Declaration of Human Rights (the right to freedom of information);
- The right to free and open source software and technology (article 27 of the Universal Declaration of Human Rights);
- the right to privacy, freedom from surveillance and encryption (article 12 of the Universal Declaration of Human Rights);
- the right to Internet governance, which includes: the right to an open Internet architecture; the right to transparency and accessibility of decisions related to the governance and development of the Internet; the right to multilateral democratic oversight of Internet governance;
- the right to know, protect and exercise rights on the Internet.

This list is not exhaustive, since the development of technologies, the Internet, content, and services contributes to the emergence of new digital rights, which in turn need to be protected and protected.

In Europe, the protection of digital rights is one of the most relevant topics. In October 2017, the Digital Freedoms Foundation was established in Berlin, the main goals of which were: strengthen cooperation between digital rights protection actors and provide them with the means to pursue strategic litigation.

The General Data Protection Regulation (GDPR), adopted by the European Parliament on December 17, 2015 (hereinafter referred to as the Regulation), was

created to unify the provisions governing the protection of personal data of individuals in the European Union, and is mandatory for the countries of the European Union, since it was adopted in the form of a regulation.

The Regulation sets out specific types of safety that can be considered «risk-appropriate», including:

- pseudonymization and encryption of personal data;
- the ability to ensure the continued confidentiality, integrity, availability, and sustainability of processing systems and services;
- the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
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The Regulation defines the concepts of «personal data», «controller», «operator», «project data protection», «pseudonymization», «profiling» and others. The Regulation sets restrictions on the transfer of personal data to "third countries" (i.e. outside the EU) and to international organizations. The rights of personal data subjects are regulated, including: the right to access, the right to rectification, the right to deletion, the right to restriction, and the right to portability.

The Directive (EU) No 2019/790 on copyright and related rights in the Digital Single Market regulates the issues of expanding the list of mandatory restrictions and exceptions, establishes new rules for works that have gone out of circulation, regulates the legal regime of expanded collective licensing, recognizes publications in the press as new objects of exclusive rights, and creates special regulations for certain categories of online platforms.

In accordance with this law, social network operators are required to inform the Federal Criminal Investigation Department about incitement to national hatred, depiction of acts of violence, propaganda, use of prohibited symbols, preparation of serious crimes, and death threats. Opponents of the law, including the UN Special Representative for Freedom of Speech, David Kay, believe that the law violates the rights of subjects on the Internet and will lead to greater censorship. Similar trends are observed in France, where laws have been passed to curb terrorism, but these laws seriously violate the rights to freedom of speech . In France, it was proposed to adopt the so-called «Air Law», but this bill was rejected due to the disproportionate impact on freedom of speech .

The civil and legal community is actively involved in the regulation of digital rights. The Digital Freedoms Foundation, the Foundation for Democracy and Media, and the Renewable Freedom Foundation plan to create a project on future digital rights challenges as a complement to the support for judicial work that the Digital Freedoms Foundation is actively pursuing. These funds plan research in the field of artificial intelligence, ensuring equal conditions in the digital sphere, and defining the boundaries of freedom of thought.

On February 19, 2020, the European Commission adopted the digital strategy of the European Union, which, in addition to regulating digital rights, addresses the development of legal norms for the development and implementation of artificial intelligence. According to this strategy, it is planned to attract European, public and private funding for the development of the digital space. One important aspect is to keep the focus on human needs in the development of artificial intelligence, especially in industries such as law enforcement. In line with this strategy, the European Commission plans to initiate public consultations on digital rights and the development of artificial intelligence systems.

At the same time, the strategy adopted a document entitled *Shaping the digital future of Europe* («White Paper on Artificial Intelligence»), which covers the regulation of digital rights and artificial intelligence. The European Community is concerned about the digital transformation in society, the economy, the protection of human rights, digital rights.

With regard to digital rights and data, the document regulates the following aspects:

- the formation of a regulatory framework that will motivate the exchange of data between government agencies and commercial organizations, without forgetting about the protection of digital rights, personal data and consumer rights;
- incentivize by encouraging public authorities to disclose high-value data sets;
- encouraging the creation of data sets for the European Union, which focus on the areas of industrial production, digital rights protection, and mobility.

In the regulation of digital rights, there is a tendency to replace the Directives of the European Union with a Regulation, for example, in 2020, discussions began on changing the Directive on e-Commerce to the Law on Digital Services, adopted in the form of a Regulation. The main purpose of the Digital Services Act is to unify the rules on the territory of the European Union regarding the suppression of illegal and malicious content on the

Internet. In Europe, there is already a practice of creating such laws, as examples mentioned above were Germany and France, which adopted or tried to adopt a law to regulate the removal of illegal and malicious content. The Digital Services Act provides for the creation of a certain "notification and action" mechanism that will ensure that online services have the same processes for removing content in the event that it has been found illegal. The Law on Digital Services applies not only to the states of the European Union, but also defines the range of organizations. One of these organizations is the Corporation for the Management of Domain Names and IP Addresses, which interacts with states in the framework of the regulation of digital rights and carries out technical regulation in the Internet system.

The Law on Digital Services provides for certain requirements for Internet companies, including penalties that may follow for non-compliance with these requirements:

- Internet platforms must share some data with regulators and even competitors;
- users should be able to delete pre-installed applications and download other software;
- Internet platforms should strengthen their control over ambiguous, illegal or misleading content;
- in case of non-compliance with the rules on the part of Internet sites, temporary blocking is possible;
- setting fines in case of non-compliance with the requirements of the Digital Services Act.

It is assumed that the Law on Digital Services will create a certain order in the field of legal regulation of digital rights and personal data. The Law sets out two main objectives: to create safe and reliable services, while protecting freedom of expression. These tasks are aimed at achieving a common goal, namely, to guarantee users access to a wide range of services online.

One of the important issues for the European community is the protection of children's rights in the digital space. The Council of Europe has adopted the following documents: Recommendation CM/Rec (2008) 6 of the Committee of Ministers for the member States of the Council of Europe "On measures to promote respect for freedom of speech and information in connection with Internet filters", Declaration of the Committee of Ministers on Protecting the Dignity, Safety and Privacy of Children on the Internet (2008), Recommendation of the Committee of Ministers CM/Rec (2009) 5 on measures to protect children from harmful content and behavior and to promote their active participation

in the new information and communication environment.

## 5 CONCLUSION

Thus, at the present time in Europe, there is no definitive concept of "digital rights". Most European organizations use a broad interpretation of the concept of "digital rights". Digital rights are defined as individual rights, such as the right to access the Internet, the right to be forgotten, and the right to protect personal data. It is still an open question whether these rights are independent rights or represent a means for the realization of independent fundamental rights such as the right to respect for private life, the right to freedom of expression. The European Community is concerned about the regulation of digital rights, their protection and the protection of personal data. The authorities of the European Union adopt appropriate regulations and strive to unify the rules governing digital rights. The tendency of states to adopt legislation on the suppression of illegal activities on the Internet is causing a heated debate in Europe, as a number of experts believe that these laws are a direct violation of freedom of speech and expression. The European Union strives to take all aspects into account in order to create effective legal regulation, for example, by holding public consultations on digital rights and taking into account the views of citizens on the regulation of artificial intelligence. The corresponding legal regulation is also adopted in the field of protection of children's rights on the Internet. An important role is played by international organizations and Internet companies, one of the most notable is the assistance provided by the Digital Freedoms Foundation (DFF) in the litigation of a dispute over digital rights. In this regard, it should be noted that Europe is committed to regulating all issues of digital rights, establishing unified rules, and most importantly – the absence of a threat to digital rights in Europe.

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