DIGITAL PLATFORM: FEATURES OF CIVIL STATUS

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Abstract: The paper researches the problem of the legal regime of digital platforms. The relevance of the chosen topic is due to the widespread use of digital platforms in various sectors of the economy, including digital platforms based on artificial intelligence (AI), neural networks (NN) and big data (BD), and the lack of legal regulatory framework for the category “digital platform". In practice, there are more and more problems associated with the use of digital platforms that need to be resolved through legal means. Thus, in Russia, it became necessary to improve legislation in the field of antimonopoly activity in connection with the dominant position in the digital economy market.

Keywords: digital technologies, digital platform, legal regime, complex object, intellectual property object.

1 Introduction

Modern digital technologies are gradually expanding their influence in all areas of activity. Digital platforms based on artificial intelligence (AI), neural networks (NN) and big data (BD) have found wide application in both jurisprudence and economics. Digitization and digital transformation formed the basis for the emergence of such previously unknown innovative technologies as artificial intelligence, machine learning, the Internet of things, virtual and augmented reality, digital twins, distributed ledgers, adaptive security architecture, 3-D printers, quantum technologies, robotics, and digital technology platforms. Meanwhile, it is the creation and implementation of digital technology platforms in various fields of activity that will ensure the development of the digital transformation process in the economy.

2 Methods

The methodological basis of the research was general scientific methods of cognition, as well as specific scientific (dialectical, formal-logical, comparative-legal, system-structural) and other methods of analysis of the studied phenomena.

3 Results and Discussion

The task of developing the digital economy in the Russian Federation through the creation of platforms and technologies is set in the Order of the Government of the Russian Federation dated July 28, 2017 No. 1632-r "On approval of the program "The Digital Economy in the Russian Federation". It seems possible to single out two trends in the digital economy: digitalization and digital transformation. The digitalization process is driven by the use of digital technologies, and the digital transformation process is driven by a radical change in business strategy under the influence of digitalization. Thus, digital transformation is a deep reorganization and reengineering of business processes with the widespread use of digital tools as mechanisms for process execution, which leads to a significant improvement in the characteristics of processes and the emergence of fundamentally new qualities and properties. The research of J. Westeman, E. McCaffey, and D. Bonet is devoted to the problems of digital transformation. Among the domestic scientists who have studied the problems of regulating the turnover of intellectual property, one can single out the works of S.N. Bruskin, N.M. Abdikeev, O. M. Kitova, D.M. Moshkova, V.S. Tolstova, Yu.I. Vakhitova, and others.

The digitalization of society is due to the exponential growth of the amount of data, and digital transformation is due to competition in the market, as well as the need for business to fundamentally rethink the business strategy and the relationship between sellers and buyers. Thus, the main advantage of digitalization is the development of human-independent algorithms based on artificial intelligence using artificial neural networks. Therefore, predictive modelling and machine learning come first; they are implemented in the form of cloud platforms and services.

J.P. Morgan defined platform economy as an economic activity using an online intermediary that provides a platform through which independent workers or sellers can provide a particular product or service to customers. The author notes that all platforms have four things in common: they tie employees or sellers directly to customers; they allow people to work when they want; sellers receive payment immediately after the work was completed or the goods were provided; payment goes through the platform (Farrell & Greig, 2016).
Digital platforms are also widely used in the field of legal activity. Thus, artificial neural networks based on digital platforms have found application, including in the field of copyright. A.N. Savchenko points out that technologies associated with an artificial neural network are widely used to protect copyright and identify the owner. Also, an artificial neural network can be used to track multimedia products that are distributed illegally (Savchenko, 2010). In addition, with the help of new technologies, the electronic assistant ROSS was created: a program developed by ROSS Intelligence and running on the cognitive computer IBM Watson, which uses natural language in order to understand the questions of lawyers and provide them with information on court cases and legislation of interest to them with the necessary references (Lohr, 2017). Also, for example, since January 1, 2010 in Poland, the country's first electronic court became fully operational; it was created on the basis of the VI Civil Division of the Lublin-West Regional Court.

When considering the legal characteristics of a digital platform, the issue of the differences between technological and digital platforms deserves special attention. What are the respective differences? D.M. Moshkova defines a technological platform as a tool aimed at creating promising commercial technologies, new products and services, attracting additional resources for research and development based on the participation of all stakeholders (business, science, government, and civil society), improving the regulatory framework in areas of scientific, technical and innovative development (Moshkova, 2015). So, in the Russian Federation, several technological platforms have been opened on the basis of state corporations (Rostec, Rusnano, Rosatom). In this regard, the technological platform is an economic instrument operating on the basis of partnership agreements between the state, society and business.

According to T. Eisenman, the digital platform includes a single set of components (hardware, software and service modules with a given architecture) and rules (standards, protocols, policies and contracts with rights and responsibilities) used in interaction. The platform's tools and building blocks provide ecosystem members with the ability to create powerful applications, which are then turned into benefits for end users (Eisenmann et al., 2018).

In turn, Intel experts define the concept of "platform" as "a complex set of components that provide implementation of intended use models, expand existing markets and create new ones, and also brings users much more benefits than the simple sum of the parts. The platform includes hardware, software, and services" (http://www.bytemag.ru).

A. Celine defined a digital platform as a business model entirely based on high technologies that creates profit through exchange between two or more independent groups of participants. In the basic configuration, the platforms directly bring together manufacturers and end users, who get the opportunity to interact without intermediaries. They also enable different companies to share information and thus significantly improve collaboration and create innovative products and solutions (Selin, 2016).

The European Commission also defines online platforms in terms of their functionality as "search engines, social networks, e-commerce platforms, application purchase stores, and price comparison sites" (https://ec.europa.eu). Meanwhile, if the definition of "technological platform" has received legal consolidation in regulatory legal acts, then the definition of "digital platform" has not received such a regulatory form. Thus, V. Noseda notes that currently in the EU there is no single regulatory framework specifically governing digital platforms. Digital platforms are currently governed by standard and well-established EU rules related to data protection, intellectual property, consumer protection, competition and intellectual property, etc. (Noseda, 2017). F. Michele notes that the European Union uses such models for regulation of the use of digital platforms as, for example, self-regulation and co-regulation (Michèle, 2017).

In accordance with the order of the Government of the Russian Federation dated 08.12.2011 No. 2227-r "On approval of the Strategy for innovative development of the Russian Federation for the period until 2020", a technological platform is a communication tool aimed at enhancing efforts to create promising commercial technologies, new products (services), attracting additional resources for research and development based on the participation of all stakeholders, as well as improving the regulatory legal framework in the field of scientific and technological innovative development. Meanwhile, a digital platform is a set of intellectual property objects linked by a single function (a single concept). Thus, a digital platform can be classified as a complex object. According to the researchers, complex objects can only be recognized as those objects that, combining several protected objects as structural elements, form not a simple set, but a complex structural composition characterized as a kind of a single whole, including through structural and functional relationships (Conclusion of the Research Centre for Private Law on the Interpretation and Possible Application of Certain Provisions from Part Four of the Civil Code of the Russian Federation, 2007).

The complex structure of the digital platform is due to the combination of various intellectual property objects (programs, technologies, trademarks, etc.) that form the technology of the digital platform. In addition, the special regime of a complex object is designed to facilitate the circulation of rights to objects consisting of several results of intellectual activity, and to ensure a balance of interests between an organizer of the creation of a complex object and the original authors.

Science defines technology as a set of methods and tools that make up scientific knowledge to achieve the desired result, which is expressed in solving a practical problem (Technology, Encyclopedia Britannica Encyclopedia Britannica Online, 2016). Meanwhile, such an important concept for the digital economy as "technology" is truncated in civil law in the form of a single technology (Art. 1542 of the Civil Code of the Russian Federation). In addition, the concept of technology is found in other industry-specific regulatory legal acts. So, the legislation in the field of information circulation gives a legal definition of information technology: processes, methods of searching, collecting, storing, processing, providing, and disseminating information and ways of implementing such processes and methods (Federal Law dated July 27, 2006 No. 149-FZ, 2006).

Export legislation defines technology as special information that is required for the development, production or use of any product. Information takes the form of technical data or technical assistance. The specific technologies are defined in the List of dual-use goods and technologies that can be used in the creation of weapons and military equipment and in respect of which export control is carried out (Decree of the President of the Russian Federation dated December 17, 2011 No. 1661, 2011).

Noteworthy is the fact that the legislator did not include technology in the Civil Code of the Russian Federation as an object of intellectual property (Art. 1225 of the Civil Code of the Russian Federation). Consequently, it can be assumed that civil legislation defines technology as a part of a complex object, which includes several protected results of intellectual activity (Art.1240 of the Civil Code of the Russian Federation), or as an object that is a secret of production (Art.1465 Civil Code of the Russian Federation), which contains information of an industrial, technical, economic, organizational nature on the results of intellectual activity in the scientific and technical sphere and on the methods of carrying out professional activities that have actual or potential commercial value due to that they are unknown to third parties, if third parties do not have free access to such information on a legal basis and owners of such information take reasonable measures to maintain their confidentiality, including by introducing a trade secret regime. Yu.I. Vakhitova notes that a complex subject structure (the authors of the original works and the organizer acquiring the rights to use) and a multi-level object (a complex object as such and its individual elements (Vakhitova, 2015)) should be classified as a complex object.

V.S. Tolstoy considers a complex object as a synonym for a complex work, which is a synergistic result not limited to a set of separate works (Tolstoy, 2009). In addition, in accordance with Part 5, Art. 1259 of the Civil Code of the Russian Federation, copyright does not apply to ideas, concepts, principles, methods, processes, systems, technics, solutions to technical, organizational or other problems, discoveries, facts, programming languages, geological information about the subsoil. Thus, the technology itself is not subject to intellectual property.

Consequently, a digital platform is a complex object of intellectual property that includes technology, for example, in the form of a computer program, a trade secret, a database, etc. So, the quantitative component in a digital platform, due to the presence in its composition of various objects of intellectual property, is transformed into its qualitative component forming a new complex object of intellectual property due to its common design, as well as new properties. Therefore, it is necessary to consider the possibility of losing the status of an independent object of intellectual property in relation to an object included in a complex object of intellectual property, for example, in a digital platform.

At the same time, it should be noted that the Presidium of the Supreme Arbitration Court of the Russian Federation in its resolution dated November 30, 2010, No. 10521/10 in case No. A23-4426 / 09G-20-238 reasonably stated that the list of complex objects is not subject to broad interpretation (Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated November 30, No. 10521/10 on the case A23-4426, 2010). Therefore, it is advisable to include the digital platform among the complex objects of intellectual property (Art. 1240 of the Civil Code of the Russian Federation).

In addition, it should be noted that the person who organized the creation of a complex object acquires the right to use the specified results on the basis of agreements on the alienation of exclusive rights or licensing agreements. Meanwhile, authors retain the right of authorship and other personal non-property rights.

Thus, a special role is played by the legal status of the organizer who has been created a complex object as a person with derivative exclusive rights.

At the same time, it should be noted that the Federal Antimonopoly Service made proposals related to the improvement of legislation in the field of antimonopoly activities, due to the creation of a dominant position in the digital economy market. Thus, the FAS (Federal Antimonopoly Service) of Russia proposes to recognize as dominant the position of an economic entity that owns an infrastructure (platform), which is designed to organize and ensure the interaction between other business entities and (or) consumers, in the case when network effects resulting from the activities of an economic entity, and (or) the data at the disposal of an economic entity gives such an economic entity the opportunity to exert a decisive influence on the general conditions of circulation of goods in the relevant product market and (or) remove other economic entities from this market, and (or) hinder access to this market for others business entities (Draft Federal Law "On Amendments to the Federal Law "On Protection of Competition" and Other Legislative Acts of the Russian Federation"). For example, the use by a business entity of a digital platform in order to exert decisive influence on the circulation of goods may be a competition offense.

In this regard, the problem of differentiating digital platforms arises, as well as determining their legal status as a means of ensuring the dominant position of a business entity in the market. Consequently, the planned changes in antimonopoly legislation will inevitably require changes in civil legislation related to the determination of the legal regime of the digital platform.

4 Summary

As a result of the research carried out in this paper, the place of the digital platform as an object of civil rights was determined; a comparative analysis of the legal regulation of the technological platform and the digital platform was carried out; the legal signs of a digital platform were revealed in the course of such a comparison.

We believe that a digital platform, by its status, is a complex object subject to legal protection and expressed in digital form, which includes, in one combination or another, production secrets, databases, computer programs or other results of intellectual activity, united by a single concept, which can serve as a technological basis in the implementation of e-commerce. Taking into account the meaning of Article 1240 of the Civil Code of the Russian Federation and the position of the judicial authorities related to the impossibility of an extensive interpretation of the list of complex objects, we consider it necessary to amend the edition of Article 1240 of the Civil Code of the Russian Federation by including a digital platform into the list of complex objects.

5 Conclusions

In accordance with the Program "Digital Economy of the Russian Federation", a digital platform is one of three levels, which in interaction with other levels (markets and sectors of the economy, the environment of interaction between subjects of markets and sectors of the economy) affects the life of citizens and society as a whole.

The effective development of markets and industries (spheres of activity) in the digital economy is possible only if there are developed digital platforms. The study of the legal features of digital platforms, including their civil status, will prevent legal risks that are possible in connection with the use of platforms in the digital economy, thereby reducing property losses both to the state and a wide range of market economy entities operating through use of digital platforms.

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