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### SPECIFIC CHARACTERISTICS OF REGULATING THE PERSONAL DATA TRAFFIC ON THE INTERNET

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**Abstract:** Present article considers the specific features of regulating the personal data traffic on the Internet. Special attention is attached to the issues on the confidentiality of personal data on the Internet. It is substantiated that, despite of the fact the personal data collection and procession should be preceded by the subject's voluntary consent, due to the Internet intensive expansion the likelihood of such data covert collection and use increases. It is conditioned by the technical abilities of the information and telecommunication platform of the Internet, enabling the operators to obtain personal data without informing their holders.

**Key words:** Internet, personal data, right to private life, confidentiality, information society.

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#### Introduction

The society mankind is living in today is commonly referred to as the information one, and it reflects quite logical period of the industrial history. The Republic of Kazakhstan started its transit to the information society at the end of the 20th century, when almost all areas of life had got subjected to reforms.

In the course of creating the information society, the means and methods of the information dissemination and exchange are modernized, the information environment is dramatically changed. Technical means offer ample opportunities for collecting, storing and processing large volumes of the socially important data in different automated systems. But it is these systems, aimed on structuring, storing and searching the needed socially important information, that generated the problem of the leak and other modes of illegal access to personal data, which resulted in the need for its legal protection.

The critical relevance of the problems, mentioned above, generated the need for the scientific analysis and understanding of the abilities of the legal sciences to ensure confidentiality of personal data on the Internet.

### **Research methods**

Methodological framework of the study is composed by the following scientific methods: dialectical learning method; historical, system, complex, logical, technical, and comparative methods. The author has examined the following resources: Constitution of the Republic of Kazakhstan, international legal acts, laws and regulations, and other juridical and technical materials.

### **Results and discussion**

The Internet has created the global virtual environment, where exchange of data has been intensively developing. In the Republic of Kazakhstan density of the Internet users within the period of 2010–2016 increased from 36.1 percent to 75 percent, whereas the number of the mobile Internet users tripled from 3,694,000 to 10,567,000 [1].

If we consider the "Digital Kazakhstan" National Program, its target indicators illustrate that expansion of the Internet into the life of Kazakh society will keep on growing in the coming years. In particular in 2022:

- the share of electronic commerce in total retail sales will reach 2.6 percent;
- the share of the electronic services in total public services will reach 80 percent;
- share of the citizens using the Internet will reach 82 percent;
- the information and communication technologies development index will be equal to the 30th position [2].

Thus, the problems of securing the personal data traffic on the Internet are relevant to both the science and law enforcement practice. The current regulations on personal data in the Republic of Kazakhstan pay insufficient attention to the issues, related to the personal data procession in information systems. The improvement of the law of the Republic of Kazakhstan on securing personal data on the Internet is called for by the Cyber security concept ("Cyber shield of Kazakhstan").

Before starting the examination of the specifics of the personal data traffic on the Internet, its legal nature should be defined.

A.V. Minbaleyev noted that today the Internet is fairly considered a unique information environment, generating unlimited number of forms and types of the dissemination of mass information [3, p. 92-93].

To date, the Internet is an effective instrument for the information exchange between natural and legal entities and the world outside with minimum material costs. The Internet serves as a main instrument for the distant information exchange. At that, information, appearing on the Internet, can be confidential. The Internet, therefore, can be considered a

sort of alink between the subjects of law, participating in legal relationships for generating and exchanging different data, including personal ones.

Therefore, we should find fair enough the A.V. Khuzhina's quote that "the active information and communication process between the subjects, forming the self-regulated Internet-communities, existing out of any clearly delineated national boundaries and allowing to maintain different relationships with respect to the information circulating in the world infrastructure, are functioning within the Internet-environment" [4, p. 104].

The model CIS law "On fundamentals of regulating the Internet" defines the Internet as a global information and telecommunication net, connecting the information systems and telecommunication networks of different countries by means of the global address space, based on the Internet-protocols complexes (Internet protocol, IP) and data transmission protocol (transmission control protocol, TCP), and allowing to practice different forms of communication, including publishing information, available to the unlimited number of users [5]. However, in this context the Internet definition is based on its technical features only and does not cover its social nature.

Following the law of the Republic of Kazakhstan of 24 November 2015 "On informatization", the Internet is the worldwide system of the interconnected networks of the telecommunication and computational resources, serving for the electronic information resources transmission. In its turn, the law of the Republic of Kazakhstan of 5 July 2004 # 567-II "On telecommunications", while explaining what communication is, delivers the answers to the questions related to the Internet regulation.

In our opinion, special attention must be paid to the issue of the Internet perception from the legal point of view as an object of the right. As it was mentioned above, the Internet is not something integral. Till now, no countries in the world have an organizational structure acting as a sole regulator (host) of this resource. It proves the Internet is not possible to be characterized as a legal entity, since it does not own any assets, having its material and information resources being owned by various subjects. It is, therefore, logical that the Internet does not have any independent rights not obligations. This is due to the fact there is always a certain subject behind all legal relationships arising in the net. Thus, the Internet is a specific legal regulation object, consisting of many thousands of corporate, scientific, governmental and domestic nets, interconnected by the use of individual Internet protocols. In this case it is referred to the relationships, arising between the global net users, and therefore they must be regulated by the government, securing respect and execution of the law.

In our opinion, the Internet regulation covers the set of information relationships, arising in the course of using the net, transmitting and processing personal data.

Despite of the fact the personal data collection and procession should be preceded by the subject's voluntary consent, due to the Internet intensive expansion the likelihood of such data covert collection and use increases. It is conditioned by the technical abilities of the information and telecommunication platform of the Internet, enabling the operators to obtain personal data without informing their holders.

The researchers note that none of the existing personal data classifications consider them in the context of confidentiality, which fact acquires greater significance [6, p. 119].

Disagree with this opinion due to the personal data types not affecting the specifics of regulation, we find it important to define which types of information should be protected on the Internet.

As I.L. Bachilo mentioned, personal data on the Internet are "the information on the identity, which, by the citizen's initiative or under the law, is included in the information system of existing institutions" [7, p. 47].

We find this definition correct, as it is the fixation of personal data in information resources, arising from the organizations' electronic data bases creation, and being published on the global net, that constituted threats to the personal data traffic. It subsequently resulted in the need for studying the issues of regulating the personal data traffic on the Internet.

According to the researchers, the issues of regulating relationships, involving personal data on the Internet, have number of aspects. They are "the personal data protection, invasion of privacy, protection of honor and dignity, regulation of the good and services markets, education, advertisement etc." [8, p. 17]. Despite of the fact there is no any country in the world having elaborated the integral codified act, aimed on regulating these relationships, in the Republic of Kazakhstan, like in many other countries, the global net is regulated by different areas of legislation.

It is due to the fact that from the legal point of view the information and telecommunication Internet platform is unexplored, and the detailed regulations for the personal data traffic and protection are quite difficult to design. This is complicated by the fact the net is not attributed to the countries' boundaries not their jurisdictions, which restricts the governmental interference.

I.M. Rassolov distinguished the following forms of the Internet relationships regulations:

- directly by law;
- by technical standards regulating the access;
- social and corporate standards used by the net users;
- market and competition laws related to the goods and services delivery [9, p. 122].

We find it worth to agree with supplementing these forms by international standards and judicial precedent.

At the modern stage of the information relationships development, when the Internet has a great impact on all areas of public life, the legal reform should be focused on the priority of the personal data protection. As the enforcement practices and juridical doctrine illustrate, the matters of law must be reformed simultaneously with technical standards in order to create the full-fledged mechanism for protecting information. At that, it should be taken into account that the Internet, although being open virtual environment, is aimed on collecting, processing and storing the real information about the real person. Therefore, this sector must be regulated by ordinary legal acts adjusted to the technological process.

Though the modern Kazakh law contains regulations on the personal data protection, some practical problems prove the opposite.

The main problem, related to the personal data protection, is faced by a person getting registered for one or more social networks, which constitute the integral part of the interactive social communications. It was accentuated by the Cyber security concept ("Cyber shield of Kazakhstan"): "Neglecting the security concerns when using the Internet resources and social networks results in the higher risk to the inviolability of private life, unauthorized use or modification of the publicly available personal data, as well as disclosure of the limited-access data or their extraterritorial availability for the criminal groups or intelligent structures at their storing on the other states' territories" [1].

Having acknowledged the existing threats to the personal information, the state undertakes certain measures to settle these problems, but the legal reforms do not keep up with the rapid development and transformation of the social networks.

The today's meaning of the social networks is the Internet users' communities, whose activities fill the websites with information. Such networks satisfy the users' demand for various services, i.e. music, video, photo, games, chats etc.

All social networks can be conditionally divided into the three groups: business-like networks focused on professional growth and career; specialized networks addressed to the people connected by common interests (entertainment, music, automobiles etc.), and contact networks dedicated to the private communication, establishment and maintenance of contacts and search for new friends.

At that, in order to stand out, the users are to publish their personal data on the social networks. The most part of such data is confidential, nevertheless, the users disclose them deliberately under certain conditions. As a rule, when getting registered on a social network, the user fills in his/her profile specifying his/her personal data. At that, the reliability of the data never gets verified nor confirmed by relevant documents. But when getting registered, the user provides his/her email and mobile number. It is these data that could be used for identifying the user.

That is why the network users, upon giving consent on their data collection and procession, should be given an opportunity to consult the agreement, specifying the aim of such data submission at the relevant resource.

Upon choosing the social network and getting registered on it, the users of their own free will submit their personal data and should thoroughly examine all conditions, contained in the personal data agreement, to avoid any further misunderstandings, as almost all Internet resources, dedicated to the interactive communication, fix the information usable for the person identification.

Modern social networks offer their users' detailed profiles, containing not only personal data, but the information, allowing to evaluate the users' financial status and many others. The most part of the information, accumulated by the social networks, is confidential and exposed to the risk of going beyond the users' control. Traditionally the personal data, asked for by the social networks, include the following: full name, date of birth, sex, marital status, residential address, languages the user knows, list of relatives, friends, employment (where the user worked before and is working now), education, religious views, political opinions, music, books, movies, TV shows, games, sports, hobbies and interests, and so on. Besides these data, emails, phone numbers, addresses and others are requested. Of course, each of such data has an impersonal nature, but they can be helpful in identifying the person.

The personal information published in the social network, upon being processed, can become an instrument for the individual's private life interference. The personal data procession in social networks is regulated by the law of the Republic of Kazakhstan "On personal data and their protection". That is why the personal data procession must conform with relevant regulations.

The legislator has paid attention to the cases, where available personal data are published on the open resources (including biographical directories, phone and address books, open electronic information resources and media). In our opinion, social networks can be referred to them, too, but only in cases when data are not hidden with the help of individual privacy settings.

The subject is given a number of rights related to his/her refusal from his/her personal data disclosure by the host or operator in the open sources. Studying the issue of personal data, published on open sources, we state the declarative nature of the relevant regulations, since even having them deleted, no one can be sure they will not be processed by the other users.

We suggest on the operators of personal data in open sources to attach their attention to such issues in the confidentiality policy with respect to the relationships, related to processing the personal data, submitted by the registering user.

Therefore, the users must be clearly instructed on the way their personal data are processed on the net information resources.

By now, no special regulations for the personal data protection on the Internet have been adopted in Kazakhstan. In this respect, operators and hosts of the bases, containing personal data, must on their own take adequate measures on protecting their users.

Labor relationships between employers and employees constitute another problem, related to the personal data procession on the Internet. There are many precedents where the employer, having seen on the employee's profile his/her photos, status and other information the employer considers incorrect, and being concerned about the moral aspect of the matter, imposes disciplinary penalties on the employee.

The people's profiles in social networks are attributed to their personal life, which is protected by the Constitution of the Republic of Kazakhstan, and in our opinion, have nothing to do with their professional characteristics. The only exception is the people working for the government institutions.

The most sore point of the issue is the leak of personal data on the Internet. The level of their security is quite poor. Almost none of the information resources can guarantee the personal data will be not misused, nor the users' right to their private life inviolability will be secured.

Ya.V. Kudashkin detected the most typical cases:

- data collection and procession without the subjects being notified;
- data collection and procession for any implicit purpose;
- transfer of information to any third parties without the subjects' consent;
- acquisition of information in an illegal manner for the purpose of creating the users data bases, exchange data or undertake wrongful purchase;
- publication of personal data on the Internet without the subjects' consent [10, p. 142].

The risk of the personal data leak is the today's topical issue, whereas this takes place not only in Kazakhstan, but almost in all countries. Just during last year we witnessed number of cases of the leak of the confidential data of millions of people. In April 2019 data of thousands of the American police and FBI officers were disclosed. In July 2019 in Kazakhstan personal data of 11 million people became available. In August 2019 data of 60 million credit cards leaked in Russia.

Besides, in 2019 some big companies were affected by the data leak. They are data of 540 million Facebook users; those of 3.1 million Toyota clients; 150 GB of the MongoDB information containing 800 million personal records; data of 620 million day of the users of 16 Internet services. Such cases take place almost every day in almost every country, using up-to-date information technologies.

And all these occurred just within the first half of 2019. And the volume of the information, having leaked in the pervious years, is difficult to

measure. The most of such data are still for sell on various Internet commercial platforms.

The personal data leak is caused by various reason. They can be planned cyber attacks, technical failures or human factor. At that, someone's actions can be either deliberate or accidental. The leak can be provoked either by the website insecurity or loss or theft of the material drives (flesh carts, smartphones, notebooks etc.). Personal data of people, accumulated by the government institutions and law enforcement bodies, regularly become publicly available. And the imperfectness of law and technical facilities is one more reason for the information leak.

The information leak dynamics all around the world call for the states to reform their policies. The need for the personal data being protected is proved by the total life digitalization. Continuing growth of the number of the institutions, involved in the data procession, is accompanied by the increase in the information volume. That is why the standard ISO/IEC 29151 | ITU-T X.1058, which guarantees the enhancement of the personal data security, was developed.

There is one more non-trivial phenomenon, provoking various barriers for detecting violation and protecting data. Many Internet resources are registered abroad and not covered by the Republic of Kazakhstan jurisdiction. Two scenarios of setting the problem can be used in such cases: to request the state the domain is registered with to block the website, or to register the website as forbidden on the territory of the Republic of Kazakhstan.

At the modern stage of the information relationships development, when the Internet has a great impact on all areas of public life, the legal reform should be focused on the priority of the personal data protection.

### **Conclusions**

Therefore, the information openness growth has resulted in the full availability of the Internet as a multifunctional mechanism for collecting and processing personal data.

We suggest on both website hosts and operators when working with users to:

- notify them on their personal data collection and procession;
- disclose the purpose of their data collection and procession;
- receive the user's prior clear consent on his/her personal data collection and procession;
- make the user consulted with the detailed confidentiality policy;
- disclose terms and procedure of storing and erasing data;
- provide the users with free access to the collected information about them;
- notify the users on the cases of collecting and disclosing data allowed by law;
- set the privacy settings the personal data holders can use for limiting the access for any third parties to their personal information.



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