

Information as An Object of Legal Regulation in Ukraine

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Summary

The article deals with the problematic issues of defining information as an object of private relations. Definitions that they are intangible and non-consumable by nature, are inextricably linked to a specific material carrier are/or secured by the subject that transmits them, messages, and information that have quantitative and qualitative characteristics, and are capable of having a freight or another value, and in case of its illegal usage causing damage and moral harm.

Key words:

Information, personal intangible rights to information, property rights to information, transaction, liability.

1. Introduction

Information is a multifaceted concept, it is the object of various forms of human consciousness and activity. All social relations – that are the object of legal regulation – are connected with information. But information is in the field of regulation of both public and private law. Still, a special place is occupied by information as an object of private law.

Considering a particular object of law, jurisprudence refers to the developments (achievements) of other fields of knowledge, for which this object is a traditional subject of study. Ch.N. Azimov, A.G. Diduk, O.V. Kokhanovska, Y.V. Petrov [1-4] and other researchers of informational legal relations followed this path. Much attention is paid to the legal relationship regarding information, as well as the possibilities of its retrieval and usage, protection of information rights, which is evidenced by: a) a number of general and special acts of legislation in the field of information, including the laws of Ukraine “On Information”, “On Scientific and Technical Information”, “On Printed Mass Media”; b) general public and sectoral programs and research objectives in the sphere in question; c) the works of civil scientists in the field of the informational legal relationship (Ch.N. Azimov, I.V. Aristov, I.L. Bachylo, O.V. Kokhanovska, etc.). Information and relations regarding it or rights to this

specific object are subject to legal regulation in the public and private legal aspects. It was embodied in the adoption of special legislation acts.

2. Theoretical Consideration

Despite the fact that information has always been an integral part of any human activity, society, and the state, the theoretical (scientific) understanding of this phenomenon began relatively recently, about half a century ago. Obviously, this was connected with the scientific and technological progress, the development of communication systems, and the emergence of cybernetics, and as a consequence – the growing importance of information in the development of society and especially commercial information. Therefore, it is not for nothing that the XXI century has been proclaimed the century of information and intellectual property rights.

Information in Article 177 and Article 200 of the Civil Code of Ukraine is defined as an object of civil rights, and as one of the objects of intellectual property rights in Chapter 46 of the Civil Code. This increased the scientific interest in the phenomenon of information as an object of civil law. In particular, the works of O.V. Kokhanovska, Y.V. Petrov, A.I. Diduk were devoted to this issue, where approaches to understanding the specifics of information and civil relations regarding it are presented [2-4].

In the information society, information has acquired great political, economic, social, and legal significance. The information sphere is developing rapidly, i.e. “the environment of information circulation (production, distribution, usage), during which the subjects realize their needs and opportunities in relation to information”. As rightly noted by I.L. Bachylo, information is an essential condition of human life and activity, the subject of their attention and development, exists as much as the man themselves, and accompanies all their actions and relationships. It is a kind of environment that ensures human existence and is no less important than air, land,

water, the entire biosphere [5]. If this is the case, then the right to information should be protected quite effectively, and in the event of its violation should be restored, and violators should be held accountable.

After all, it is precisely about the phenomenon – information that affects the development of social systems at a qualitatively new level. “Therefore, the concept of information, – says O.O. Gopodov, – is central in a number of natural areas of knowledge and at the same time remains one of the most controversial”. This is primarily due to the fact that the information is related to other objects of law and, in fact, are messages about someone (subjects of law) or something (objects of law). The scientific definition of the “information” category has changed many times, its boundaries have expanded and narrowed. Until the middle of the XX century, this category meant “representation”, “concept”, later – “data”, “transmission of messages” and “messages”.

Understanding information as a message, a signal that helps to reduce the uncertainty of the observed object, K. Shannon seemed to narrow the meaning that had been embedded in the concept of information earlier. “On the one hand,” says the philosopher O.D. Ursul, “the concretization of the content led to the simultaneous expansion of the scope of the concept – the information began to characterize not only the aspect of human communication but also communicative phenomena in technical, biological, and other processes” [7].

The most common is the so-called “meaningful approach” to defining the concept of information. Thus, we can define information as a set of selected data, which is a meaningful output of the system. Within the framework of a meaningful approach, we can provide two general definitions of the concept of information. First, information is data that removes the uncertainty that existed before it was retrieved. Second, information is data that reduces or eliminates the indistinguishability of things or phenomena. At the same time, it is not any removal of uncertainty that is essential but only that which results in knowledge; only significant diversity is also important. In other words, it is certain knowledge of something. It is another matter of how adequate they will be to the form in which they are passed on to others.

The main idea of the semantic theory of information is the ability of a person to perceive and accumulate information at the expense of external sources. Yu.A. Schreider explains his theory on the example of human perception of information. If, for example, the source of external information is a textbook on probability theory, the junior school student will not receive any information from it (their initial thesaurus is not enough), the high school student will receive some information, and the university student studying this course will get the maximum [8].

Based on the semantic theory of information, it is common to distinguish two types of information – internal (as a characteristic of the organization of any system) and external (as a means of the organization of any system). Norbert Wiener has given one of the first definitions of information: “information is the designation of content obtained from the outside world in the process of adapting our feelings to it. The process of circulation and usage of information is a process of our adaptation to the variability of the external environment and our life in this environment” [9]. In 1948, N. Wiener also proposed an “information vision” of cybernetics as a science of control in living organisms and technical systems. From this time, information began to be understood as “not just data, but only data that are new and useful for making a decision that would ensure the achievement of the goal of management. Other data were not considered information” [9].

Ukrainian authors consider it possible to distinguish two concepts of information. Supporters of the first concept tried to correlate the information with the concept of “reflection”, while revealing the need for unity of reflection and interaction as a dialectical unity of polar categories. Thus, V.O. Golubev defined information as the result of reflection and processing of the diversity of the world in the human consciousness, data on objects surrounding humans, natural phenomena, the activities of other people, etc. Philosophers consider information as an aspect of a general property – a reflection that provides new data about the world around us, obtained as a result of interaction with it. A.D. Ursul believes that “the philosophical category of reflection turned out to be the key that opened the secret of the nature of the information; it was this philosophical category that turned out to be methodologically fruitful for penetrating into its essence” [6]. Analyzing such general properties of matter as the motion and interaction of one material formation with another, he writes: “In the concept of interaction, it is already stated not just that all material objects change, but that one object changes precisely because another object acts on it, and the latter, in turn, changes under the influence of the former object” [6].

The result of such interaction is reflection, and data, forming their content, becomes information. In the context of this direction, the essence of information is associated with the statement of its connection with the reflection as a general property of matter. In informational theory it is called “relative information”. Thus, in the theory of cognition, reflection is considered as a process during which the reproduction (transfer) of some features and properties of one object to another takes place, resulting in a reflection.

In this process, three main objects are distinguished: the reflected one, that is, any material body, phenomenon, and process of the material world that participate in the interaction and contribute to the formation of reflections; the reflective one – any material body which, due to a

change in its appearance and internal state, reproduces the features and properties of the reflected object; the reflection – as a consequence of interaction and reflection [10].

The second concept of information, in the opinion of many scientists, is a more fruitful approach to solving the problem of information – a “diverse” concentration of information. In terms of this approach, information can be interpreted as “removed indistinguishability”, as diversity. In particular, B.V. Biryukov emphasizes that information exists where there is diversity, heterogeneity. Information “appears” when at least two “elements” together differ, and it “disappears” if the objects are “glued”, “identified”[11].

V.I. Zhukov believed that to clarify the concept of “information as such” it is necessary to separate the concept of “data” and “properties”[12]. This approach is shared by V.Z. Kogan, who believes that the clarification of the concept of “information” is possible only in the system of information flow and interaction, in the process of which certain data are transmitted. To do this, we must distinguish between the concepts of “data” and “properties”. From his point of view, “data” is often understood as information on certain properties of the organic and inorganic world. In fact, they acquire signs of information only after an individual or group of people has been informed about them. And before that, we are dealing more with “properties”, which only with a caveat can be considered as “information in a hidden form”. Without taking into account the consumer, even fictional, potential, it is impossible to talk about information. To do this, it is necessary to establish the difference between the concepts of “properties”, “data”, and “information”[14]. The data on events that took place in society, if documented, are in the state of the legal regime of “properties” and, as already mentioned, can only be considered as “hidden information”. Experts in the field of cybernetics insist on the fundamental difference between the concepts of “properties”, “data”, and “information”. Regarding these recommendations, it makes sense to listen to them and separate these concepts.

Another specialist in the field of information, V.M. Trostnikov, argues that only when connected with the consumer, the message “allocates” information, and in itself, it does not contain any information substance [13]. Besides, one and the same “message” can give one consumer a lot of information and little to another one. It is expedient to speak about the amount of information in the case when the “properties” and “messages” of the recipient are known [13]. Hence, it is logical to assume that the violation of informational rights is associated with a decrease in its properties, or, more precisely, the consumer value. Thus, it is useful for the person who transmits the message to know objectively the amount of information contained in the message, in order to compare the share of consumption with it, to draw a conclusion about what the individual has learned and what has passed their perception.

Therefore, the scheme of the information process, which leads “from the source to the end”, can look like this:

Object => Object properties => Data on object properties
=> Messages that contain data on object properties = The amount of data or information received from the messages.

V.Z. Kogan notes that the first two parts of the scheme of the information process exist outside and independently of human consciousness, while the last three exist because there is someone who transmits information, messages, and there is someone who perceives this information, messages. Moreover, the last part of the scheme is useful only in the case of measuring the amount of perceived information [14]. Accordingly, at this stage, violations of the right to information and manifestations of the negative consequences of these violations are possible.

Informational relations about data can have five legal modes (“about the object” => “about the properties of the object” => “about data on the properties of the object” => “about messages that contain data on the properties of the object” and, finally, – “the amount of data received from the message”). These violations are manifested as distortion or incompleteness of the object and its properties, or other inaccuracies. Based on the analysis of Art. 8 of the Law of Ukraine “On Information”, it can be seen that the object of information is inadequately reflected. The legislator did not take into account all the natural properties of information, especially two of them, which are important for determining its legal regime and taking into account the negative consequences of violations. On the one hand, information is “data” (that have meaning), and the Law “On Information” is based on this concept, and on the other, information is “message” (that has no meaning). That is, messages and data are “information as such”. Therefore, it does not make sense to indicate “information as such” and the direct object of law, because in this case the same information can serve as an “object” of different rights and different rights will have the same object [15].

Given the uniqueness of information as an intangible substance, we can provide its following characteristics: it is certain news, data, facts, data on various processes and phenomena that occur in society and nature [5]; and process, i.e. in this case it is a message to any subject of certain data or information; the intangible nature of information is revealed through its properties such as content, qualitative, and quantitative certainty, the special nature of values; separation of information from the person who is its creator or carrier of information; availability of information through its presentation in an objective form; systematic information, selectivity, substantial independence, continuity, inexhaustibility, massiveness, universality.

Since the beginning of the formation of scientific ideas about information and until now, scientists have not been

able to formulate a clear definition of the concept of information. It is due to the fact that this term, at first glance completely understandable, actually has a much broader and deeper meaning. In addition, in a meaningful sense and practical meaning, it is constantly filled. Due to the multifaceted and mega-content of the phenomenon of information, each of the aforementioned definitions is correct in its own way, as it reflects one, several, or a group of characteristics of information. Therefore, the difference in approaches is also explained by the lack of accumulation of sufficient scientific ideas about information. The lack of a single definition of information not only inhibits but also stimulates the development of scientific ideas about information. In particular, the question of the nature of information, whether it is material or ideal, remains debatable.

The process of changing knowledge (information) on the world around us is infinite and depends on changing the level of our consciousness, which at a certain stage of development is able, as a result of transformation (processing) of perceived properties and characteristics of the world phenomena, to create various information on these phenomena, including false, which can cause damage and harm. Therefore, information is not copied (removed) from the object, as the supporters of the attributive concept believe, but is created by living systems based on the results of displaying the properties and characteristics of the object. To exist in reality, information must be expressed in some objective form (oral, written, in the form of images, etc.), be capable of perception, and always assume a connection with any physical body or environment that supports its existence and is called the information carrier.

Information carriers can be various material objects and processes: paper, punch cards, magnetic tape, electric, electromagnetic fields, sound waves, etc. On some of them, the information is stable and does not change, while others indicate the impact, as a result of which the information may be changed or destroyed.

Due to its ideal nature, information can easily, without compromising its content, change the form of expression and the material carrier.

In connection with the aforementioned facts, it is necessary to define the concept of information, since information as a scientific category is an ideal product of reflection of the world in the whole system and its components in human consciousness and in the perception of other living self-governing and self-organized systems that exist in objective form, capable of perception. Those persons who have a legal right to it have a monopoly on information.

Regarding information, there are various legal relations of different industries. In a market economy, the central link is private rights. One of the main tasks of jurisprudence today is the study of information as an

object of legal relations. Let us note that there is a long-standing debate in the legal literature about the object of legal relations. For the most part, it is considered to be everything about which the legal relationship is established, or what the legal relationship is aimed at [16]. The object of legal relations also means what the rights and obligations of the subjects of legal relations are aimed at, or in connection with which the activity of its subjects arises and is carried out, i.e. the subject of activity of entities [17].

In connection with the various concepts of the object of legal relations in the literature, attempts have been made to combine the concepts of "object of legal relations" and "object of legal regulation" [18], to distinguish between the concepts of "object of legal relations" and "object of law" [18] and, finally, completely abandon the concept of "object of legal relations", to replace it with the concept of "object of law" [19].

Jurisprudence considers the objects of law mainly in their objective sense [18] and as objects of subjective rights. The objects of civil law as a system of legal norms (objective understanding of the law) are property and personal non-property social relations. The objects of subjective civil rights are tangible and intangible assets to which these subjective rights and the corresponding subjective obligations of persons – participants in legal relations – are directed in order to meet their needs. The objects of subjective civil rights are also identified with objects of civil legal relations. In the Legal Encyclopedia, Yu.S. Shemshuchenko notes that the object of law is tangible and intangible assets, in connection with which the legal relations arise [20]. This definition is general and needs to be clarified in relation to the manifestations of the features of individual objects of law.

To date, information is becoming the subject of many transactions. Nowadays in the theory of civil law, researchers understand the following as the subject of transactions: the actions of the parties, the material benefit itself in connection with which the transaction is concluded, or actions and material benefits in the complex, or rights and responsibilities, or objects of civil law and law, or legal consequences. That is, there is no single point of view at present.

Paying attention to the practically tested types of agreements in the information sphere, it is also ambiguously determined what the subject of such agreements is.

Moreover, the position that the subject of transactions is rights and obligations is embodied in the current civil legislation of Ukraine (Part 1 of Article 202 of the Civil Code of Ukraine). If a transaction is an action that aims to create, amend, or terminate rights and obligations, and the philosophical concept of the subject says that the subject is what the action is aimed at, in our case the subject of the transaction is rights and obligations. Thus, if the subject of

the transaction is a civil legal relationship, and civil legal relations are certain subjective rights and obligations (the content of legal relations), which arise, amend, or terminate between certain subjects (subjective composition of legal relations) in relation to certain objects (object of legal relations), then, in fact, these elements of the structure of legal relations in unity and constitute the subject of the transaction. In turn, subjective law is a way to meet needs, and the means of meeting them are tangible and intangible assets, so we hold the view that the subject of transactions with information is the rights and obligations of intangible assets.

3. Conclusions

The question of the object of civil law in general in the science of civil law is still debatable. The doctrine of civil law has formed several approaches to resolving the issue of the object of subjective civil law. The theory of the plurality of objects of subjective civil rights has become the most widespread, which recognizes as such objects various objects and phenomena of the material and spiritual worlds: things, securities, actions, results of creative activity, personal intangible assets, etc. The theory of the plurality of objects of subjective civil rights is opposed by the theory of a single legal object. Some supporters of this theory assume that the object of subjective law can be only the actions of the obligated person (theory of action), and others believe that such a single object of rights are things (property-legal theory of the object) [21].

This indicates that the dominant in the Ukrainian science of private law is the theory of the benefit of the objects of subjective civil rights, which has also found legal support in Art. 177 of the Civil Code of Ukraine. Among the objects of civil rights listed in this article, information is singled out separately, and Art. 200 of the Civil Code defines general approaches to its understanding. Besides, the categorical opinion that information, as a personal intangible asset, cannot be the subject of the transaction, loses its essence. Transactions regulating personal non-property relations may contain information as a subject and change or terminate the rights to it. The conclusions drawn are not only relevant for law enforcement and law enforcement practice but also for the theory of civil law. In particular, they point to the need for further research into the possibility of concluding transactions with intangible assets and the types of legal consequences of such transactions.

In the scientific literature, it is rightly noted that any scientific activity should be based on the same rules, standards, axioms [22]. In this regard, at the beginning of this study, it is necessary to define the concept (single concept, at least within this study) of information (as an

object of legal relations), so it is intangible and non-consumable in nature, inextricably linked to a specific material carrier and/or stored for the subject who transmits them, messages and data that have quantitative and qualitative characteristics, and are able to have a freight or another value, and in case of its illegal usage to cause damage and moral harm.

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