HUMAN RIGHTS ISSUES ARISING IN CONTEXT OF THE FREE (OPEN) SOFTWARE

Andrey A. Shcherbovich,
National Research University Higher School of Economics,
Lecturer, Department of the constitutional and municipal law

The problems of free (open) software have always been recognized area of interest intellectual property rights and other branches of private law. Such a debate in the public law field is fairly new, but the problem of the proliferation of free software, of course, affects the perspective of the constitutional rights and freedoms of man and citizen.

We consider the use of a free (open) software for the implementation of human rights and freedoms at all three levels of Internet governance. More detail the role of each of these levels in the governance of the Internet in the context of freedom of expression, access to information and other constitutional rights set out in my paper "Freedom of speech on the Internet: the constitutional and legal aspects"[1].

The debate about free software

Free (Open) software, by definition, L. Lessig – this is the program source code is available to everyone. Anyone can download a technology to run the program with open source software. And anyone eager to learn how to operate a separate module of this free technology, can change its code[2]. Despite the fact that this software is beginning to emerge in the early 80-ies of the last century, only in the last decade, its popularity has increased so much that it became able to compete with traditional commercial proprietary software products. Most of this was made possible because of the Internet, has opened a unique opportunity to overcome geographical barriers, the joint work of many programmers from around the world and disseminate the results of such work without spending[3].

V. Slyschenkov and A. Levin noted that supporters of free software is important freedom of distribution of software as such, regarded by them as the value of the same order with the freedom of speech, assembly and other fundamental rights and freedoms. In contrast, open-source software movement this general legal and humanitarian component fades into the background, giving way to the practical considerations

of economic benefits that can be obtained from the work of the open source[4] .

Meanwhile, in the I. Zenina and K. Meshkova noted that free software should be distinguished from the Open Software, software or open source software. The authors of the term "Open Source Software" are Eric Raymond and Bruce Perens. This term is used with the 1998 software is open source software distributed under licenses Creative Commons. Firstly Creative Commons license appeared in 2002 and were designed eponymous social organization Creative Commons. Unlike the GNU GPL Creative Commons licenses allow translation to other languages and the emergence of official translations and adaptations to the laws of other countries.

Creative Commons licenses are more flexible in comparison with the GNU GPL, and let the author as to retain exclusive rights in full or in whole or in part, to abandon such conservation. As a result, not all Creative Commons licenses are free[5].

The Message of the President of the Russian Federation leaders of the participating countries' Group

of Twenty "is proposed to undertake a comprehensive analysis of the prospects for recognition of the right to limit the website of their property rights (partial rejection of them) by way of public statements about the need for the absence of consent and / or the payment of compensation for the use of third-party created Content them for specific purposes. This study is necessary to standardize the existing free license (Creative Commons, etc.) and the adaptation of new models of distribution of content to the requirements of both the Anglo-Saxon and continental law[6].

Of particular note are the activities of international intergovernmental and non-governmental organizations in this field. Activities of a number of them specifically devoted to a free (open) software. The largest of these organizations is the Free Software Foundation - a non-profit organization founded in October 1985 by Richard Stallman to support the free software movement, and in particular, the project GNU.

It is in the communities for professional or cultural interests are added alternative relations, and public opinion is formed. The first example was the community of free programmers, Mr. Richard Stallman

founded in 1984. He set the task to free software from the shackles of copyright and patent law, to "give all users the freedom to redistribute and modify," he developed the program. From thought to announce its operating system of public property Stallman refused, so as not to give any temptation to privatize derivatives. So the idea of «Copyleft» is a special concept, which does not allow using the development of free programmers to create proprietary software[7].

Open content movement is based on principles and values inherent in post-economic thinking, has its own methodology and ideology, a legal right, the driving force and motivation system, as well as ways of organizing production and distribution of digital products specific to the non-hierarchical (net) producing structures.

It may be noted the following principles of open content movement:

1) Knowledge, information, works of art and scientific results in the public domain.

2) Free access to information and knowledge sharing are essential to the development of society and human evolution.

3) Socially useful activities is the result of greater importance than private commercial gain.

4) The collective authorship and collective responsibility - the basis of fair value exchange.

5) Transparency of methods, rules of the organization and the technology used - for the effectiveness of joint activities.

6) The partnership of equals, non-hierarchical, open and free membership in the community - a condition of collective synergy and effectiveness of the team.

7) Commitment to Ethics Network, which is the basis of so-called Netiquette as a set of unwritten rules that govern the rules of behavior in the virtual world[8].

The international level of regulation

Unauthorized copies of software are particularly prevalent in poor countries. The highest percentage of its use in Vietnam, where it is estimated the Business Software Alliance 94 percent of all software used in 2001, was illegally copied. In the article by S. Garfinkel noted that the situation was spread even "in disadvantaged parts of the United States". In Mississippi, 49 percent of the software was contrary to copyright laws.

Such copying is a particular risk for organizations that protect human rights: U.S. companies and the U.S. government are making every effort to make the illegal use of software crime around the world, as in the United States[9].

The International Covenant on Economic, Social and Cultural Rights, in its article, according to which recognizes the right of everyone to enjoy the benefits of scientific progress and its applications. States are called upon to take measures for the preservation, development and diffusion of science and culture. This guarantee, obviously, refers to software that is primarily represents not only the technology, but knowledge in its pure form, the product of human creativity. Contributing to this

particular human right, therefore, also means "liberation" of the software.

Among all human rights, one most relevant to free software is so-called "right to development". It is the third generation of human rights, in recent times has become urgent. It belongs to the category of so-called "human solidarity" (along with the right environment, the world's artistic heritage) that involve social and collective dimension to the implementation of the common good. So the traditional dualistic scheme of "people - the state" is now changing: the human rights of its belonging to the community are met based on the fact that a person belongs to this community. important thing here - this is a concept formulated by the UN human development.

The right to communicate is one of the most talked about civil liberties in the digital world. The claim to the right to communicate is usually followed by a discussion of its aspects, such as the right to privacy, protection of intellectual property, to freedom of expression. As for the free software, there is no doubt that it is the best it's better guarantees the right to

privacy, as well as offering opportunities for creative expression.

The educational value of free software led to the fact that from the very beginning of its use has been linked to the right to education. For many years the bodies of the United Nations, in particular UNESCO, prepared reports on the potential of new technologies for e-learning, in particular, to improve the level of human development. Increased access to education and improving the quality and flexibility of the educational services are among the features of the free software[10].

National (state) level

In Russia at the legislative level, the issue of use of such software does not rise. However, the use of the territory of the Russian Federation of open source development represents a qualitatively new phenomenon in the relationship and the user's software with open source. Note that these solutions are implemented mainly in the form of orders of the Government of the Russian Federation on the development of specific plans for the transition to the use of free (open) software [11] . In the explanatory memorandum to the draft federal law on the

federal budget for 2012 indicated that the project "Modernization and support systems technical support to users of free software for scientific and educational institutions" in 2012, the main results of the implementation are, in particular, for updating training materials to work with the free software used in educational and research institutions, the access to the portal of information and methodological and technical support and distance learning system with the free software from the given parameters of quality of service of the Portal[12].

Senior Research Fellow of the Institute of State and Law, RAS A. Zharova believes that in Russia there are changes in the expansion of the rights of users of computer programs, through the distribution of software, open source (free software), but in this area there are quite a lot of problems. In Russia in 2009, such software has been used extensively in government, ministries, and departments. However, problems still exist because at the moment turnover rights to such software based on the practice of trade.

The main advantage of open source software is the ability to enable a other computer programs. In

addition, intellectual property rights in such programs have no territorial restrictions, as well as many other constraints specific to closed-source software; it allows you to participate in the development of many programmers, which in turn determines the creation of high-end of the program[13].

Free (open) software is used in order to ensure the transparency of public authorities, in particular the electoral field. In accordance with the decision of the CEC of Russia is a translation of individual software components SAS "Elections" for free software if the implementation of information security requirements[14].

In comments to the Federal Law "On Education in the Russian Federation" states that the technological and software tools that are used to operate the official websites of educational institutions on the Internet, to ensure access for users to familiarize themselves with the information posted on the websites of the free and open source software[15].

Thus, the use of a free (open) software can have both positive and negative sides. Positive point - the use of free software is essential in order to ensure the rights

and freedoms of the citizens through the fundamental right to the information age - the right of access to information. However, it should be noted that the use of free (open) software in Russia inadequate legislation on this issue carries some serious risks.

First, the more confidence the software created by well-known manufacturers in particular due judicial guarantees which are protected by user license software in use. These safeguards prescribed in the license agreement related software product, the agreement provides for the mutual responsibility of the user and the manufacturer, clear procedures for settling disputes out of court as well as in court.

Second, in the case of free (open) software sufficient legal guarantees are not clear. In fact, if you have open license legislation has not developed a unified approach to the protection of the rights of holders of source code and derivatives or modified programs. In our case it is important, it is not known who is responsible for the developed software. Therefore, one of the risks is a violation of the law or dereliction of responsibility on the Free (Open) software distributed via the Internet, at instability of judicial practice in the

protection of the rights arising from its use. Thus, the decision of the St. Petersburg City Court explicitly states that "the judicial panel sees no reason for the evaluation as evidence of code content management system, as the system used by the defendant is free software, licensed under the GNU GPL, the code of the legal values for the merits of the dispute"[16]. The very definition of free software is extremely vague and blurry, which is unacceptable for legal safeguards to protect the violated rights. IS Ivanov, commenting on the law to protect children from information harmful to their health and development, points to imperfection "dictionary" of the Law, including uncertainties and, in some cases, ambiguity of the terms used. Thus, there is uncertainty as to whether or not to refer to the information products free software[17].

Third, in the absence of an effective legal framework and effective enforcement under the guise of free (open) software, you can spread malicious software, including embedded in the source code of the program. A special case of this is the digital vandalism, ie intentional damage or contamination of software viruses which may cause real harm to the user. Often with the use of free software is no protection from malicious

programs that could lead to a possible identity theft. Most free software includes viruses deep within the source code, which leads to the fact that the computer is integrated into the global network without the permission of the user and any notifications.

The level of online communities

As for the level of self-regulation (online communities), it is in their best interests and their efforts to extend the free (open) software. Thus, free software can be used to protect and monitor human rights and freedoms. This raises the question of the extent to which the principles and rules underlying Wikipedia, based on the use of open source software to facilitate sharing real-time monitoring can be carried over into the context of human rights? Is there a problem here, a potential clash of cultures? Wiki culture - a reflection to some seemingly utopian idea has universal exchange and cooperation aimed at improving the human condition. Such precedents are historians of ICT, one of which is the idea of HG Wells' the brain of the world "- a global encyclopedia, collecting all available information into a coherent knowledge[18].

By creating this information, ordinary people can produce information products that were previously produced exclusively by professionals in the field of human rights in the process of "co-production". One example is the co-edited articles on human rights, which are placed on Wikipedia. Although the data in these reports may differ from the reports of non-governmental organizations such as Human Rights Watch, the scope of their coverage is comparable and may cause the public interest in human rights issues.

Non-profit tech company Ushahidi provides a platform for the creation of human rights reports by the aggregation of information provided by the public. Originally developed as a map reports of violence in Kenya after the elections in 2008, Ushahidi is now developing a free and open source software for the collection, visualization and interactive mapping of human rights problems in the world. In such cooperation involves ordinary people who are interested in the protection of human rights, and those of the relevant non-governmental organizations is greatly enhanced[19]. Such activity is called crowdsourcing - is the transfer of certain production functions to the general public on the basis of a public offer, not involving an employment

contract. The development of means of communication, especially the Internet and mobile technologies has allowed the commercial project of crowdsourcing be a way to address the humanitarian problems. According to a leading U.S. researcher Dr. C. Shirky, one should speak of fundamental changes in the use of free time. If the age of television most of the time was spent on passive consumption of information today, more and more members of the digital generation are spending time on the production of information and its publication in the public space, where it becomes an issue. Shirky calls such phenomena of "positive deviance" and argues that the Internet allows you to raise "positive bias", changing the culture of leisure time and providing a large range of tools for the implementation of altruistic premises[20].

In conclusion, the Internet is the main venue for the dissemination of a free (open) software, extending both the relevant sites on the web, as well as indirectly. Often, Internet sites contain online services by using the free (open) software. It is therefore necessary to create an adequate legal framework for the free distribution (open) software. To do this, ensure adequate management of the Internet at all three levels -

international, national, and the level of self-regulation. To do so in the future to ensure mainstreaming of a free (open) software in the legal field, both from the point of view of "soft law" and by appropriate binding international treaty on the rights and freedoms on the Internet. It is also possible to adopt a special convention or the optional protocol on the use of free (open) software. It is expected that the international legal basis of relations on the Internet will be substantially updated and expanded during the World Summit on the Information Society in 2015.

National legislation should take into account that the relations connected with a free (open) software, related not only to issues of civil rights, but also directly affect the realization of the right of access to information. Therefore, must be clearly defined in the legislation aspects related to the use of such software. Of course, the law must be a reference to the basic acts of human rights and freedoms, including those adopted at the international level.

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