

Ostroushko A. V.

## LEGAL RISKS IN INFORMATIONAL SPHERE

*Ostroushko Aleksandr  
Vladimirovich,  
c.j.s. (PhD in law), Associate  
professor, Russian Legal Acad-  
emy of the Ministry of Justice of  
the Russian Federation.*

Considering information-legal risks as a variety of public-law risks, the author defines them as the likelihood of juridical activity leading to negative consequences as a result of the adoption, implementation and interpretation of information-legal prescriptions.

Depending on the nature of the information-legal risks, they are separated into general and special risks.

The author notes a negative invasion of law-enforcers in processes that cannot be legally regulated, gives examples of such invasion.

**Keywords:** legal regulation of informational processes, legal risks, informational risks, Internet risks, information-legal risks.

Informational infrastructure has currently generated in the economy of states a new industry of social production that covers the processes of creating, distributing, processing and use (consumption) of information. Informational technologies and means are widely implemented in all spheres of society, including science, education, arts, military, etc. Informatization directly affects the development and formation of the informational sphere, which is sometimes identified with an informational space.

Application of informational technologies, both at international and domestic level, is an important determinant of the level of development of modern societies. However, along with the obvious advantages, such as increased speed and quality of informational processes, availability of services, reduction of costs, etc., the use of informational technologies brings new significant risks. Exactly risks' reduction is becoming more important with the development of informational component in public relations. These risks have received the name of informational (IT-) risks, we note that in recent times among informational risks increasingly single out Internet-risks as ones having their own characteristics due to the specificity of informational space of their emergence.

Risks in the informational sphere are well studied both in the science of Informatics and in the theory of management. In management the standard for elaboration of any managerial decision is the application of methodology known as the "risks management", which takes into account, inter alia, informational risks. Currently, we should be based on the provisions of the GOST R 51897-2011/ISO Guide 73: 2009. "National Standard of the Russian Federation. Risk Management. Terms and Definitions".

By virtue of the growing volume of requirements for the ordering of relations in informational sphere, in parallel with the development of IT-technologies legal regulation of informational processes remains in the process of continuous improvement. Growth of activity and quality of work of state bodies in this direction does not keep pace with the development of informational technologies, and in recent times there are situations of probabilistic events development in making any legal decisions.

Exactly the category of risk is proposed to use as legal-technical means to designate a situation where it is very difficult to predict in advance the result. Therefore, it can be concluded that in informational relations has been formed a new type of risks - information-legal risks. In order to eliminate the possibility of the presence of legal risk in informational sphere we should identify the methodological and theoretical aspects of this category, as well as to draw an analogy with the informational risks and identify mutually stipulating aspects.

The importance of informational risk is indicated in the "Doctrine of Informational Security of the Russian Federation" approved by the President of the Russian Federation from 09.09.2000 No. Pr-1895. So, economic methods of ensuring information security in the Russian Federation include: development of programs of informational security of the Russian Federation and determination of the order for their financing; perfection of the system of financing the works related to

the implementation of legal and organizational-technical methods of information protection, establishment of a system of information risk insurance of physical and legal persons [7].

Information-legal risks are traditionally attributed to legal risk, the problem is that the theoretical aspects of these risks are currently in a formative stage, a clear terminological apparatus has not been formulated. The most common definition of "legal risk" was given by M. D. Shapsugova: risk of legal activity arising in a situation of choice when making legal decisions in connection with overcoming uncertainty of legal consequences [16, 167-174].

To determine the place of information-legal risks in the system of legal risks, it should be borne in mind that, for the most part, informational and legal relations are of public-law nature, therefore we, based on the opinion of M. A. Lapina and D. V. Karpuhin [15], also consider them such.

M. A. Lapina and D. V. Karpuhin understand public-law risk as a potential threat of adverse development of socially significant, public-law relations as a result of the adoption, implementation and interpretation of legal prescriptions [15]. Similar views in formulating the definition of different categories of public-law risks are stated by A. E. Zhalinskii, A. P. Anisimova, A. E. Novikova [12, 13].

A. V Karyagina recognizes risk in informational sphere as an activity in conditions of uncertainty of its consequences, because inadequate assessment of the content of information can take the form of legitimate risk, without actually being such [14, 5-7].

In general, sharing the specified point of view, we will try to elaborate a definition of information-legal risk. However, we believe that the reduction of information-legal risk only to danger, uncertainty, error, is unsubstantiated.

The legislator has suggested a probabilistic approach. The Federal Law No. 184-FZ from 27.12.2002 "On Technical Regulation" normatively defined the concept of risk as the probability of causing harm to the life or health of citizens, property of natural or legal persons, state or municipal property, the environment, the life or health of animals and plants, taking into account the gravity of that harm [1]. In GOST R 51897-2011 / ISO Guide 73:2009. "National Standard of the Russian Federation. Risk Management. Terms and Definitions" (Order of Rosstandart № 548-st from November 16, 2011) risk is a result of influence of uncertainty on achievement set goals [9].

We consider information-legal risks as kind of public-law risks – the probability of legal activity leading to negative consequences as a result of the adoption, implementation and interpretation of information-legal prescriptions.

Information-legal risks, by virtue of the specifics of regulated social relations, have a number of individual features that make it possible to highlight them in a subsystem within the system of public-law risks.

Depending on the nature of information-legal risks we can distinguish general and special risks.

Risks of a general nature entail the possibility of negative consequences due to underestimating by law-making bodies of all levels of informational processes and adoption of non-competent acts.

Either an error is in attempt of invasion of law-enforcers in processes that are beyond of legal regulation.

A vivid illustration of the first is the legal definition of the Internet in the Federal Law No. 149-FL from July 27, 2006 "On Information, Informational Technologies and Protection of Information" as informational and telecommunication network, which is a technological system for the transmission of information, with access to it by the means of computer facilities [3].

According to normative and technical documentation the informational and technological system is a set of informational and technological resources, which provide services by one or more interfaces [10]. At that, the concept of technological system is even more limited – the ultimate totality of production items and performers to perform in regulated manufacturing environment.

Thus, it is normatively enshrined that the Internet is a finite number of computers involved in any technological process. Every schoolchild knows that this is far from the case and the main characteristics of the Internet are its infinity and its multisystem nature.

Given that, to date, there are no a normatively defined concept of the Internet and clear criteria to describe its legal essence are not developed, we can talk about existence of information-legal risk. The concept of informational space or cyberspace, which would solve this problem in the domestic legislation, did not receive proper enshrining, although already in use, as an example we can provide the Decree of the RF President No. 761 from June 01, 2012 "On the National Strategy for Action on Children in 2012 – 2017", which refers to the rules of safe conduct in the Internet space, [4] and a number of documents, including the Concepts of development of international informational security prepared by the Security Council of the Russian Federation.

It is impossible to normatively regulate the full content of information that will be represented in a TV-broadcast going on live television. And the appearance in such broadcast of prohibited by law information, according to article 4 of the Law

“On the Media”, will be classified as abuse of the freedom of the media, which entails responsibility under article 13.15 the Code on Administrative Offences of the Russian Federation. The requirements to already past live broadcasts also may be ambiguously qualified (exactly to the MEDIA, and not to the individual that has said a phrase), as an example, many questions are raised by the letter of Russian scientists to check for signs of extremism, incitement of inter-ethnic and inter-state discord all the broadcasts of Dmitrii Kiselev “Vesti Nedeli” that have passed in the past three months, [17] and not the statements of the citizen Kiselev.

Special information-legal risks, in our view, are very linked to the informational risks and lie in the plane of implementation of public-law prescriptions. Based on this interrelation, we will try to identify the most common information-legal risks.

One of the most common IT-risks is risks of loss of sensitive data and the risks of loss of informational system health. If we consider only the legal aspect, then the probability of such events is in direct dependence on the degree of settlement and clarity of normative prescriptions in the sphere of information protection.

An example might be the RF Government Decree No. 1091 from November 28, 2013 “On the Uniform Requirements for Regional and Municipal Informational Systems in the Sphere of Procurement of Goods, Works and Services for State and Municipal Needs”, which states that when the establishment and operation of regional and municipal systems the requirements provided for by legislative and other normative legal acts of the Russian Federation regulating relations in the field of protection of information, as well as the requirements regarding the use of electronic signature, should be exercised. The problem is that the protection of information in the Russian Federation is regulated by quite a large number of regulatory legal acts of various state bodies. And such a formally correct, but rather vague, wording entails the need to clarify the requirements at the regional level and/or when creation of a particular system. Here is an information-legal risk, because the compliance with the requirements of Government will happen, but the correctness of meeting the requirements will be considered only with a certain probability.

As a good example of counteraction informational risks we indicate the Standard of the Bank of Russia “Ensuring of Informational Security of Organization the Banking System of the Russian Federation. General Provisions” STO BR IBBS-1.0-2010 [11], the document containing detailed requirements uniquely demanded for all organizations of the Banking System of the Russian Federation. It talks about a specific information-legal risk of ambiguous understanding the requirements level of a management body.

Informational technologies are acquainted with the risk of lack of integration of informational systems. This usually occurs after certain period of operation of an informational system for organizational and technical reasons because of the lack of common standards for data, reporting, calculation of indicators, introducing of new innovative technologies, generation change of technical means and other factors. Hence we can describe the following information-legal risk – the risk that an adopted normative act does not account for the specific of development of informational technologies. So, for example, according to the Federal law No. 131-FL from October 06, 2003 “On General Principles of Local Self-government in the Russian Federation” in the constituent entities of the Russian Federation were created registers of municipal normative legal acts [2], since 2008 the Ministry of Justice of the Russian Federation has begun work on creation of the Federal Register of Municipal Normative Legal Acts and one of the challenges was ensuring the compatibility of existing informational systems [8].

Change of normative requirements to the IT-systems may lead to a situation where these systems will not be able to function or their activity will take place in violation of legislation. This may be due to economic, technical or other reasons related to the peculiarities of formation of various informational objects, communication networks, etc. Thus, there is an information-legal risk of impossibility of performance of public-law prescriptions due to objective reasons relating to the functioning of informational technologies. So, the time terms of transition of the RF to DTV set by the Federal Target Program “Development of Broadcasting in the Russian Federation for 2009-2015” are being constantly adjusted.

Peculiarities of building the Internet do not allow us to clearly identify the Russian segment, so one and the same time a web-site can be located in the jurisdiction of several states. On the basis of this specificity, public-law prescriptions for regulation of Internet legal relations can with some probability be in conflict with the legislation of another country, and this is the basis for the distinguishing of another information-legal risk.

Therefore, the modern juridical activity in the information-legal sphere has a number of very specific information-legal risks that inevitably arise in the mentioned sphere of relations. These risks can be of different in nature, can be classified according to a variety of grounds, but ultimately, their presence causes the likelihood of negative consequences, which significantly complicates the achievement of the final result that is expected by public authorities. In this regard, it seems appropriate to pay particular attention to this aspect in making, implementation and interpretation of information-legal prescriptions.

## References:

1. Federal Law No. 184-FL from December 27, 2002 "On Technical Regulation" [Federal'nyi zakon ot 27 dekabrya 2002 g. № 184-FZ «O tekhnicheskome regulirovanii»]. *SZ RF – Collection of laws of the Russian Federation*, from 30.12.2002, no. 52 (part 1), article 5140.

2. Federal law No. 131-FL from October 06, 2003 "On General Principles of Local Self-government in the Russian Federation" [Federal'nyi zakon ot 6 oktyabrya 2003 g. № 131-FZ «Ob obshchikh printsipakh organizatsii mestnogo samoupravleniya v Rossiiskoi Federatsii»]. *Rossiiskaya gazeta – Russian Newspaper*, no. 202 from 08.10.2003.

3. Federal Law No. 149-FL from July 27, 2006 "On Information, Informational Technologies and Protection of Information" [Federal'nyi zakon ot 27 iyulya 2006 g. № 149-FZ «Ob informatsii, informatsionnykh tekhnologiyakh i zashchite informatsii»]. *System GARANT* [Electronic resource], Moscow: 2014.

4. Decree of the RF President No. 761 from June 01, 2012 "On the National Strategy for Action on Children in 2012 – 2017" [Ukaz Prezidenta RF ot 1 iyunya 2012 g. № 761 «O Natsional'noi strategii deistvii v interesakh detei na 2012 - 2017 gody»]. *SZ RF – Collection of laws of the Russian Federation*, from 04.06.2012, no. 23, article 2994.

5. RF Government Decree No. 985 from December 03, 2009 "On the Federal Target Program "Development of Broadcasting in the Russian Federation for 2009-2015" [Postanovlenie Pravitel'stva RF ot 3 dekabrya 2009 g. N 985 «O federal'noi tselevoi programme «Razvitie teleradioveshchaniya v Rossiiskoi Federatsii na 2009-2015 gody»]. *System GARANT* [Electronic resource], Moscow: 2014.

6. RF Government Decree No. 1091 from November 28, 2013 "On the Uniform Requirements for Regional and Municipal Informational Systems in the Sphere of Procurement of Goods, Works and Services for State and Municipal Needs" [Postanovlenie Pravitel'stva Rossiiskoi Federatsii ot 28 noyabrya 2013 g. № 1091 «O edinykh trebovaniyakh k regional'nym i munitsipal'nym informatsionnym sistemam v sfere zakupok tovarov, rabot, uslug dlya obespecheniya gosudarstvennykh i munitsipal'nykh nuzhd»]. Available at : <http://www.pravo.gov.ru> (accessed : 15.04. 2014).

7. "Information Security Doctrine of the Russian Federation", approved by the President of the Russian Federation September 09, 2000, No. Pr-1895 [«Doktrina informatsionnoi bezopasnosti Rossiiskoi Federatsii», utverzhdennoi

Prezidentom RF 9 sentyabrya 2000 g. № Pr-1895]. *Rossiiskaya gazeta – Russian Newspaper*, from September 28, 2000.

8. Order of the RF Ministry of Justice No. 300 from December 22, 2008 “On Approval of the Procedure for Provision of Data Contained in the Federal Register of Municipal Normative Legal Acts” [Prikaz Minyusta RF ot 22 dekabrya 2008 g. № 300 «Ob utverzhdenii Poryadka predostavleniya svedenii, sodержashchikhsya v federal’nom registre munitsipal’nykh normativnykh pravovykh aktov»]. *Byulleten’ normativnykh aktov federal’nykh organov ispolnitel’noi vlasti – Bulletin of Normative Acts of Federal Executive Bodies*, no. 6 from 09.02.2009.

9. Order of Rosstandart № 548-st from November 16, 2011 “National Standard of the Russian Federation GOST R 51897-2011 / ISO Guide 73:2009 “Risk Management. Terms and Definitions” [Prikaz Rosstandarta ot 16 noyabrya 2011 № 548-st «Natsional’nyi standart Rossiiskoi Federatsii GOST R 51897-2011 / Rukovodstvo ISO 73:2009 «Menedzhment riska. Terminy i opredeleniya»]. *System GARANT* [Electronic resource], Moscow: 2014.

10. Recommendations for Standardization R 50.1-048-2004 “Informational and Telecommunication Game Systems. Terms and Definitions” Approved by the Decision of Gosstandart of the RF No. 87-st from March 09 2004 [Rekomendatsii po standartizatsii R 50.1-048-2004 «Informatsionno-telekommunikatsionnye igrovye sistemy. Terminy i opredeleniya» utverzhdennye Postanovleniem Gosstandarta RF ot 9 marta 2004 g. N 87-st]. *System GARANT* [Electronic resource], Moscow: 2014.

11. Standard of the Bank of Russia “Ensuring of Informational Security of Organization the Banking System of the Russian Federation. General Provisions” STO BR IBBS-1.0-2010 [Standart Banka Rossii «Obespechenie informatsionnoi bezopasnosti organizatsii bankovskoi sistemy Rossiiskoi Federatsii. Obshchie polozheniya» STO BR IBBS-1.0-2010]. *Vestnik Banka Rossii – Bulletin of the Bank of Russia*, no. 36-37 from 29.06.2010.

12. Anisimova A. P., Novikova A. E. Environmental Advocacy Risks: Issues of Theory and Practice [Ekologicheskie pravozashchitnye riski: problemy teorii i praktik]. *Advokatskaya praktika – Legal Practice*, 2008, no. 4.

13. Zhalinskii A. E. *Criminal Law in Anticipation of Changes: Theoretical and Instrumental Analysis* [Ugolovnoe pravo v ozhidanii peremen: teoretiko-instrumental’nyi analiz]. Moscow: Prospekt, 2009.

14. Karyagina A. V. Ensuring of Informational Sovereignty of Russia: Historical and Legal Aspects [Obespechenie informatsionnogo suvereniteta Rossii:



istoriko-pravovoi aspect]. *Istoriya gosudarstva i prava – History of State and Law*, 2011, no. 20.

15. Lapina M. A., Karpukhin D. V. Legal Risks in Public Administration: Invitation to Discussion [Pravovye riski v publichnom upravlenii: priglashenie k diskussii]. *Aktual'nye voprosy publichnogo prava – The Topical Issues of Public Law*, 2014, no. 2.

16. Shapsugova M. D. Legal Risks: Problem Statement [Yuridicheskie riski: postanovka problemy]. *Problemy razvitiya sovremennogo rossiiskogo prava i pravovoi teorii: materialy yubileinoi nauchno-prakticheskoi konferentsii – Problems of Development of Modern Russian Law and Legal Theory: proceedings of anniversary scientific conference*, Rostov-on-Don: publishing house of North-Caucasian Academy of Public Service, 2011.

17. Available at : <http://slovosfera.livejournal.com/108928.html> (accessed : 14. 04. 2014).