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INTERNET SPACE AND ARTIFICIAL INTELLIGENCE: PROBLEMS OF ENTREPRENEURSHIP AND LAW ENFORCEMENT [1]

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Introduction: the author investigates the problems of carrying out a special type of entrepreneurial activity – advertising goods and services by public-media individuals on the Internet, through their personal accounts in social networks. Formally, these individuals are not individual entrepreneurs they mention certain goods and services indirectly, in the process of communicating with other users of social networks. Such an advertising business is based on the analysis and accumulation of user search queries, because of which special computer algorithms are launched, and instantly give this user numerous answers and suggestions about goods and services. In the current period, such remote services in the information and communication network Internet are provided to users with the help of artificial intelligence. **Methods:** a number of problems of using artificial intelligence are highlighted, the features of the legal responsibility of the person who owns this computer-software resource, as a person who is an employer from the standpoint of labor law, are revealed. **Results:** it is proposed to legislate the special entrepreneurial status of "self-employed in the information and telecommunications network Internet". A variant of a special tax regime for such entrepreneurial activity is proposed too. The **conclusion** is substantiated that public-media individuals who have continuous Internet communications with other persons in the number of at least 1 million persons on average per year should, by virtue of the law, be given a special entrepreneurial status, provided that they do not have a written refusal from advertising activities. Compliance with such a refusal and the actual non-implementation by a public media person of advertising activities in social networks is also controlled by artificial intelligence.

Key words: media personality, Internet, artificial intelligence, advertising, account, users, entrepreneurship, legitimation, taxation.

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ИНТЕРНЕТ-ПРОСТРАНСТВО И ИСКУССТВЕННЫЙ ИНТЕЛЛЕКТ: ПРОБЛЕМЫ ПРЕДПРИНИМАТЕЛЬСКОЙ ДЕЯТЕЛЬНОСТИ И ПРАВОПРИМЕНЕНИЯ [1]

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Введение: автор исследует проблематику осуществления особого вида предпринимательской деятельности – рекламирования товаров и услуг публично-медийными физическими лицами в Интернете через их личные аккаунты в социальных сетях. Формально, указанные физические лица не являются индивидуальными предпринимателями, упоминают те или иные товары и услуги косвенно – в процессе общения с другими пользователями социальных сетей. Такой рекламный бизнес основан на анализе и накоплении поисковых запросов пользователей, в результате реагирования на которые запускаются специальные компьютерные алгоритмы и мгновенно выдают данному пользователю многочисленные варианты ответов и предложений о товарах и услугах. В текущий период

такие дистанционные услуги в информационно-коммуникационной сети Интернет оказываются пользователям при помощи искусственного интеллекта. **Методы:** выделен ряд проблем использования искусственного интеллекта, раскрывают особенности юридической ответственности лица, владеющего данным компьютерно-программным ресурсом, как лица, являющегося работодателем с позиций трудового права. **Результаты:** предлагается законодательно закрепить специальный предпринимательский статус «самозанятый в информационно-телекоммуникационной сети Интернет. Представлен вариант специального налогового режима для такой предпринимательской деятельности. **Выводы:** обосновано, что публично-медийные физические лица, имеющие непрерывные интернет-коммуникации с другими лицами в количестве не менее 1 млн человек в среднем за год, должны в силу закона наделяться специальным предпринимательским статусом при условии отсутствия их письменного отказа от рекламной деятельности. Соблюдение такого отказа и фактическое неосуществление публично-медийным лицом рекламной деятельности в социальных сетях должен контролировать также искусственный интеллект.

Ключевые слова: медийная личность, интернет, искусственный интеллект, реклама, аккаунт, пользователи, предпринимательство, легитимация, налогообложение.

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Introduction

Virtual property that exists only in a "digital format" has economic value as well as material things [8]. For example, VKontakte LLC has a website with a domain name http://www.vk.com. However, let us ask ourselves whether the actions of vk.com are upon registration of its new user by entrepreneurial activity. Although the procedure for registering a user on this website (creating an account) can be considered as an option for concluding a gratuitous contract for the provision of information services. In the process of registering a user, VKontakte LLC does not make a profit, that is, it is problematic to consider this process as an entrepreneurial activity [5].

Considering the same question from the perspective of the account user, we see that at the same time potential advertisers may be interested in a new user (especially if it is a public media personality). After that, they can systematically conclude commercial contracts with them for advertising in their account. Here the question: what is the legal characteristic of the actions of those very public media personalities who "unobtrusively" advertise services and goods through their accounts on social networks, that is, contextual mentioning that they use goods (services) of a particular manufacturer (service provider) in the course of their daily life.

Using this simplest example, it can be noted that at the present stage, the signs of entrepreneurial activity carried out on the Internet are not defined; therefore, the allocation of such signs is significant [6]. The main problems in the field of legal regulation of civil turnover carried out on the Internet are related to the fact that for the current period:

1) the circle of subjects that carry out property turnover, entrepreneurial activity is not defined (except for mass media and bloggers registered as mass media);

2) the essential features of contractual practice and entrepreneurial activity on the Internet have not been disclosed, as well as an approximate list of activities (for example, the provision of a domain name differs in legal characteristics from advertising);

3) the issue of targeted advertising and "unobtrusive" advertising – contextual mention by public media personalities of goods (services) of a particular manufacturer (service provider) has not been settled;

4) the specifics of providing consumer loans and financial services are not regulated (for example, these are the activities of financial organizations on the Internet, Qiwi wallet, Yandex Money, which do not fall under the legal field of public relations that regulate the activities of credit organizations). At the same time, many microfinance organizations provide loans online.

Materials and Methods

As part of the regulatory framework, the Labor Code of the Russian Federation No. 197 of 30.12.2001, Federal Law No. 135-FZ of 26.07.2006 "On Protection of Competition", Law of the

Russian Federation No. 2300-1 of 07.02.1992 "On Protection of Consumer Rights" were studied. Judicial acts were also analyzed in terms of the issues under study. The study of doctrinal sources covers the scientific works of a number of Russian scientists, among these are A.A. Frolov, D.S. Silnov, A.M. Sadretdinov, E.V. Kiseleva et al.

The development of the content of the study as a whole was carried out based on the materialistic worldview and the universal scientific method of historical materialism. General scientific methods of cognition are applied: dialectical, hypothetical-deductive method, generalization, induction and deduction, analysis and synthesis, empirical description. The research also uses private scientific methods: dogmatic, comparative-legal, hermeneutic, structural-functional, etc.

Results

Public regulation of competition in the market of goods and services at the present stage is also relevant, due to the high cost of advertising in general, as well as the constant emergence of new methods and types of advertising that require legal regulation. The latter include, in particular, targeted advertising, which allows you to broadcast ads about goods and services in which this audience is interested to a certain target audience. The interests of the audience are analyzed and systematized based on publicly available information from the profiles of Internet users by artificial intelligence algorithms [12]. The difference between targeted advertising and "unobtrusive" (contextual) advertising placed on social networks is that when creating targeted advertising, user data is used, and in the case of contextual advertising, keywords that the user enters into the search bar.

Currently, the main legal problems with the use of targeted advertising seem to be the following.

1. The use of conditional personal data of users (since advertising is formed based on analyzed user requests). At the same time, such personal data, although illustrating the peculiarities of the user's interests, do not fall under protection as personal data. At the same time, in the context of the development of cybercrime, the free use of search query data by third parties can lead to an increase in the number of cases of fraud, as well as intrusive advertising. This implies the need to regulate the access of third parties to search queries (the exception is the access of law enforcement organs).

2. The use of other people's names, trademarks, brand names, etc. when creating advertising, since it is based on user requests (appeals to goods or services of a specific type and specific economic entities) that targeted advertising is developed [7]. In fact, targeted advertising implies the use of information about those goods and services (and the economic entities providing them) that are most interesting to the user, potential consumer, that is, direct use of information about the popularity of goods and services of a particular type or manufacturer with the consumer.

This feature of targeted advertising at the present stage seems to require regulation, since the creation of such advertising is based on the use of information about other advertised goods and services. Thus, other people's trademarks are used as an "information source" when creating targeted advertising. At the same time, in the legislation and practice of applying the norms, this feature is not considered as a sign of unfair competition, which seems to be some omission, this causes difficulties in law enforcement practice [10; 11].

For example, targeted advertising that contains the brand name of another organization (someone else's trademark) is recognized in one of the definitions of the Federal Antimonopoly Service as not conforming to the norms of legislation [3]. In the case under consideration, the Federal Antimonopoly Service received a complaint about the fact that a legal entity uses part of a trademark in targeted advertising.

Considering the issue of using targeted advertising, the Federal Antimonopoly Service, in particular, indicated that based on paragraph 1 of Article 14.6 of the Federal Law "On Protection of Competition" unfair competition in this way is not allowed. In a way that may mislead a potential consumer when mixing services provided by an economic entity with goods and services provided by another economic entity or a competitor when using a similar trademark, commercial designation, country of origin or brand name [4]. In particular, the Federal Antimonopoly Service pointed out the impossibility of using trademarks and other designations and names in the Internet information

and telecommunications network, including placement in a domain name and when using other addressing methods, when organizing advertising activities. The last reservation of the law enforcement officer indicates the actual impossibility of using targeted advertising, because the concept of "other ways of addressing" introduced by the Federal Antimonopoly Service itself is rather vague.

It should be noted that the decision of the Federal Antimonopoly Service in the above case was influenced by the use of someone else's trademark, and not by the fact of using targeted advertising. A similar situation occurs in the materials of the Decision of the Arbitration Court of the Perm Territory dated 03/19/2020 in case No. A50-32717/2019, during the preparation of which the case of illegal use of the trademark "system vector psychology" in targeted advertising was analyzed. In this case, there was also a reference specifically to the illegal use of the trademark, and not to the use of targeted advertising tools as such [15]. Therefore, the indication of the impossibility of advertising in the domain name clearly indicates that the use of targeted advertising by the Federal Antimonopoly Service equates to one of the methods of unfair competition.

In the practice of judicial law enforcement, various contradictions arise that require the development of a unity of approaches. In this regard, the analysis of the specifics of the practice of judicial enforcement, in particular, electronic evidence and their accounting by the court is quite relevant. In court procedures, witness testimony is not taken into account in case of non-compliance with the simple written form of the transaction, provided that this form of transaction is established in the law for the simple written form of deals [16].

The fact of committing any actions under the transaction, if there is a need for compliance with a simple written form for its type, will not be established by the court only based on testimony alone when presenting written evidence that refutes this fact [2]. In particular, the borrower's receipt, promissory note or other document certifying the transfer of a certain amount of money (thing) from the lender to the borrower, they serve as such written evidence that confirms the conclusion of the loan agreement and regulates its terms [1].

Article 162 of the Civil Code of the Russian Federation provides for the recognition of a transaction as invalid only if it is directly specified in the law or contract (direct instructions, in particular, are contained in Articles 331, 362, 820, 940, 1028 of the Civil Code of the Russian Federation, etc.). Failure to comply with a simple written form of the transaction, executed in the form of a contract, entails the invalidity of the deal. This agreement is considered null and void. In addition, it is within this framework that electronic evidence can be presented to the court in the event of a dispute – for example, an electronically executed contract, or a correspondence agreeing on the terms of the parties for a specific contract or deal. For example, the court found that the invalidation of one part of the disputed clause of the contract will not affect the fulfillment by the parties of their obligations under the contract, and the recognition of this contract as invalid does not entail the nullity of other terms of the contract [13]. The norm of paragraph 2 of Article 167 of the Civil Code of the Russian Federation assumes the main legal consequence of the invalidity of transactions: each of the parties is obliged to return to the other party all the property received under the transaction. That is, if the transaction is declared invalid, the parties return to the property position that was before the deal.

When resolving disputes over the above-mentioned deals, the following requirements have been formed for the acceptance of electronic documents as written evidence:

– accessibility to human perception (readability, ability to understand the meaning);

– reliability of the method of preparation, storage and transmission of electronic evidence;

– reliability of the method of identification of the originator of the evidence;

– the correctness of the form and features of the information fixation procedure [9].

As part of the assessment of Russian judicial practice in the field of intellectual property rights protection in the conduct of business activities on the Internet, including copyright for advertising, a number of the following main problems can be identified.

1. The complexity of proving the fact of infringement of the right within the framework of the fact that many symbols, letters, drawings, ideas

are used by different copyright holders and somehow have elements of similarity, and multimedia products may structurally include intellectual property products for which copyrights have already been registered.

2. Problems of evaluation of individual evidence in court (for example, the failure of the court to accept video recordings as evidence, the lack of evaluation of individual evidence, etc.).

3. Insufficient volume of court decisions in practice [12].

Development of machine-readable law, the concept of which was approved in 2021. By the Government of the Russian Federation, it could significantly increase the level of law enforcement in controversial cases. At the same time, business entities, thanks to digital platforms based on this technology, could automatically check whether legal documents, including contracts and contracts, are drawn up correctly. Currently, the technology of machine-readable law is partially used in the operation of video recorders on the roads. Here it is necessary to clarify that a machine-readable right is implemented and created, among other things, by means of artificial intelligence.

Note that the Labor Code of the Russian Federation regulates the relationship between an employee and an employer; however, if an artificial intelligence acts as an "employee" who produces goods (services) for his "employer", a situation arises in which it is problematic to consider the relationship as labor [17]. Artificial intelligence from an economic standpoint can be considered as a kind of means of production; however, from the standpoint of labor law it is impossible to accurately answer the question whether artificial intelligence is an object or a subject of labor relations. The features of artificial intelligence that indicate the possibility of considering it as a subject of labor relations are the performance of socially useful activities (production of goods, provision of services that are consumed in society), as well as the ability to self-study, improve their activities. At the same time, the fact that artificial intelligence does not have a biological life and a strong-willed human personality as such does not allow us to consider artificial intelligence as a subject of labor relations.

In the process of property turnover, the transition of artificial intelligence from one employer to another becomes a significant problem. For example, if one employer has created a program that produces services, which is transferred to another employer for use, and the latter has significantly improved the quality and increased its profit from the services provided due to the self-learning properties of artificial intelligence. Here it is quite problematic to assess the scope of the rights of one and the second employer to these improvements. Artificial intelligence itself is an object of intellectual property, and at the same time, it independently produces intellectual property – for example, it creates new algorithms, technologies, etc. In this regard, the problem is the assessment of the possibility of artificial intelligence to act as a "subject" of copyright for the technologies, know-how or elements created by it, which is regulated by civil legislation. From this point of view, artificial intelligence, which itself is the property of its "employer", produces an object of intellectual property.

From the point of view of formal logic, this implies the automatic right of the "employer" of artificial intelligence to the objects of intellectual property created by the latter, since this result of intellectual activity can be considered as official. However, if an individual employee acts instead of artificial intelligence, then he can alienate the rights to the created technology or know-how only voluntarily and for remuneration. Undoubtedly, artificial intelligence is not a subject of civil law will.

Within the framework of quality control of functions and created electronic-virtual and information products and services by artificial intelligence, the following problem can be identified. In particular, in accordance with civil law, the employer is responsible for the harm caused by his employee. The problem of regulating these relations is that the distribution of responsibility of the organization and the employee is regulated not only by the norms of administrative law, but also by the norms of civil and labor law.

The liability of a legal entity or a citizen (individual entrepreneur) for harm caused by its employee is regulated in general by Article 1068 of the Civil Code of the Russian Federation [14]. At the same time, there are quite a large number of regulations that somehow relate to the issue of regulating the liability of legal entities for the actions of their employees (first of all, these are laws regulating the financial sphere, for example, the work of banks, insurance companies, etc.).

In addition, it should be noted that the offense of a legal entity in all cases is a specific individual - the head, chief accountant, ordinary employee, the sanction for which is somewhat lower, since the legislation on administrative offenses provides for lighter penalties for misconduct of individuals.

Within this framework, the institute of administrative responsibility of legal entities differs in that one of the legal problems in it is the problem of distinguishing the responsibility of an individual and a legal entity. In addition, it is quite a difficult task that a legal entity is not actually protected from the actions of its employees in any way, unless it is proved that the employee committed an offense for personal purposes, and not for providing additional benefits to the legal entity.

For example, it is quite problematic to prove the fact that the chief accountant of a commercial organization, having decided to get personal benefits, used his position as an employee of the organization, and at the same time the head of the organization did not know about his actions. In such cases, quite often-legal entities are wrongfully held liable. It is also quite difficult to prove the part of the offense that is interpreted as an action or inaction. In fact, an organization cannot have an expression of will, and it is possible to characterize its action or inaction only in relation to a specific individual – as a rule, the head or chief accountant. At the same time, it is also quite difficult to prove that, for example, the head actually instructed his colleague, the chief accountant, to perform the action prescribed by law (to submit documents or appear in the case of a tax audit, etc.). Quite often, the manager can shift the blame to his employees, which implies their punishment, and not the punishment of the organization.

With regard to artificial intelligence, the employer does not exclude an unlawful "shifting" of blame on it, such as, for example, a reference to a technical error that led to violations of the rights of consumers of products or services [18]. However, the question arises as to how significant the degree of the employer's guilt is. If, in the event of such a situation with an individual employee, the court determines the employee's guilt and the amount of damage (for example, in the framework of a recourse claim from the employer to the employee after the employer reimburses the damage). In case of harm caused due to an artificial intelligence error, the employer has the opportunity to evade responsibility. At the same time, the courts in such cases can fully consider only the employer's fault, which also violates his rights.

The situation is caused by the fact that the employee actually carries out the activity (hence, the activity that caused harm) at the direction and (or) under the control of the employer, i.e. fulfills his will. Within the framework of the judicial claim practice on the liability of legal entities for the actions of their employees, it often does not matter whether the employment relationship is properly formed. However, artificial intelligence, although it fulfills the will of the employer, has no human will, unlike an individual, and therefore it is problematic to consider it as a potential subject capable of bearing responsibility in labor and civil law. There is also no clarity in solving the problem of dividing the responsibility of the employer and artificial intelligence if, during the functioning of the latter, due to a technical error, consequences corresponding to the composition of an administrative or criminal offense have arisen.

For example, if, as a result of violation of the established rules, environmental damage was caused, which turned out to be so significant that it provides for criminal liability for the head of the organization and persons responsible for compliance with the relevant norms and rules. Alternatively, in case of violation of safety regulations, fire safety, if it caused harm to health, caused the death of other persons, the mechanism of bringing such persons to responsibility is not fully understood. Since their own guilty behavior (a mandatory feature of the corpus delicti in accordance with criminal law) is, absent in this case. There is only a "conditionally guilty" behavior of artificial intelligence, which cannot be the subject of a criminal offense.

It is assumed that the employer and other responsible persons should be responsible for the actions of artificial intelligence. At the same time, the functioning of artificial intelligence and its "behavior" may not be controllable, and the fault of the head of the organization, if he followed all the established rules and regulations, will be absent.

Conclusion

There are a number of problems with the use of artificial intelligence; there are features of

the legal responsibility of a person who owns such a complex intellectual computer-software resource as a person who is an employer from the standpoint of labor law. At the same time, a number of problems of law enforcement are highlighted both by executive authorities and in courts when resolving disputes.

It is reasonable to single out a special type of entrepreneurial activity – advertising of goods and services by public-media individuals, in the information and communication network Internet, through their personal accounts on social networking websites. Despite the fact that these individuals are not legally individual entrepreneurs, they systematically and for making a profit mention certain goods and services indirectly, in the process of communicating with other users of social networking websites. Advertisers base such an advertising business on the analysis and accumulation of user search queries, because of which special computer algorithms are launched, and instantly give the next user numerous answers and suggestions about goods and services. Such mass remote services in the information and communication network Internet are provided to an unlimited number of users mainly by artificial intelligence.

According to the authors, public-media individuals who have continuous Internet communications with other persons through a personal account on a social network website in the number of at least 1 million persons on average for 1 year should, by virtue of the law, be given a special entrepreneurial status, provided that they do not have a written refusal from advertising activities. Compliance with such a refusal and the actual non-implementation by a public media person of advertising activities in social networks, as well as the implementation of activities, should also be controlled by artificial intelligence. Counting and monitoring the actual availability of the number of users within 1 million persons or more on average for 1 year is also artificial intelligence. The authors propose to fix a special entrepreneurial status in the law for the designated public-media individuals – "self-employed in the Internet information and telecommunications network". It is also necessary to fix in the law the option of a special tax regime for such business activities. According to the authors, this should be an imputed tax regime: 1 kopeck for 1 regular user per year in each account of a "self-employed person on the Internet information and telecommunications network".

The use of artificial intelligence and the allocation of this new type of entrepreneurial activity of individuals in the Internet information and telecommunications network, the legitimization of this business, including its taxation, will correspond to the high level of legal regulation of public relations and communications of the modern society of the Russian jurisdiction.

NOTE

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