

Economic Networking as Implied in Property Law: Certain Aspects

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Abstract: The present paper outlines the current stage in the development of traditional approaches in the field of property law and the relevant legislation and practice in Russia. Some results and tendencies of adapting traditional approaches to the realities of the new time are introduced. The author shows a gradual shift from the concept of *property form* toward the concept of *property regime* based on the actual move away from the property holders themselves to the rights that such holders enjoy. The present paper highlights the economic reasons for this state of affairs. It has also been revealed that the method of appropriation of information leads to the changes in the area of property defined, given the parties involved, as state property concerns its definition as communal and public. As a result, a property network regime for information has been formed according to the information available in the network (from inaccessible and restricted to commercial or generally accessible). The author explains the reasons for more complicated property relations and evolving ownership rights for both tangible and digital objects. It has been established that the spare potential of property interpretation in terms of its regimes is significant; thus, it requires further analysis. It is worth highlighting those property regimes and forms as mobile and variable. This paper states that the ethical problem of justice that arises in the context of the effectiveness and the possibility of traditional forms of property, especially private property, contributes to the reassignment of property functions that fit property regimes. This paper provides up-to-date scientific information on Russian legislation and the doctrine/research works (books, articles, etc.), as well as other ideas in the relevant field; the paper contributes to the understanding of the practical and legislative gap (or its absence) in Russian and foreign research results and implications.

Keywords: Network economy, ownership, Russia, property, ownership forms and regimes, network regimes of property, digital objects.

INTRODUCTION

Currently, the information and network economy, i.e. – economy based on information and knowledge, patent, etc. and networks such as the Internet, etc., exists alongside the market economy, and is developing - network economies are gradually developing. It is regarded as a knowledge economy according to its essence, as a digital economy, according to the source of changes that have occurred in it, and as electronic one with respect to various types of activities, namely: business, trade, marketing, etc (Abdullaev *et al.*, 2019; Al-Hashimy *et al.*, 2019). Practically, it does not have the characteristics of a market economy, such as exclusivity, competitiveness, and (Benkler, 2006; Belikova, 2019: 81-86).

In this newly formed system of economic relations, the competition concerns not only the possession of capital resources and material values, but also the possibility of developing and implementing innovations. The most efficient innovative companies become monopolists in the market with a completely new product. The World Wide Web (WWW) technology and CRISPR-Cas9 technology are examples of such

innovations. This approach changes the emphasis and reassigns current sources of economic growth (Figure 1). Thus, innovative systems, including proprietary (patented) systems, become the dominant ones (Pérez *et al.*, 2018; George *et al.*, 2008: 826-832).

Moreover, the fundamentally important result of information and network transformations is the virtualization of economic processes, which forms the corresponding economic spaces and causes the increase in the contribution of virtual factors into total economic capital. In this context, *the very fact* that an individual, a company, city, region or state enters the network interaction system *becomes the most significant* feature of such a company, city, etc (Koblova, 2013: 9-11).

In this context, many legal institutions, whose activity is targeted at people and their needs, are undergoing some changes. These changes consist of the following the institution of ownership, institutions of competition law, and norms on the protection of consumer rights (including norms on advertising) and on innovations (including norms on intellectual property protection) (Belikova, 2019: 153-161).

The purpose of this research was to indicate the current development and adaptation of traditional approaches in the sphere of property law, relevant legislation, and practice to modern reality, and to

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predict the direction and degree of further transformation using the example of Russia as ownership has already been influenced by the implication of the network economy according to the researchers and practitioners (economists, lawyers, sociologists) as well as the other representatives of the academic community.

Thus, the authors consider the subject of research in terms of the ownership significance for societal development. Along with competition and innovation, ownership aims to increase the well-being of society and the country as a whole. However, the economic network and its transition to a new quality – based on knowledge and networks instead of traditional approaches – are reflected in a change in both the essence of ownership and property rights, its organization, legal regulation, and protection.

Therefore, the novelty of the present study is determined by the following two factors:

- 1) The goal of identifying the adaptive potential of traditional approaches in the sphere of competition, competition law, and practice to modern realities; and
- 2) the institutional approach to the analysis of relations in the sphere of competition.

The theoretical significance of the research is determined by the fact that foreign readers will be provided with the current scientific information on the Russian legislation and the practice of its improvement in the relevant sphere. In terms of legislative implications and implementation, the research results will help identify the gap (or its absence) in the achievements of Russian and foreign researchers and practitioners in the sphere under consideration. Practical significance of the research results is that changing the paradigm of legal regulation in a way, which is centered on the idea of property rights regimes instead of owner's rights will lead to the fact that the border between relative and absolute rights will be blurred and new legal regulation will be required. What kind of regulation it will be should be decided right now.

LITERATURE REVIEW

The present study was based on expert data introduced in the relevant publications of domestic and foreign researchers studying a selected range of problems. It was identified that the issues of economic networking, ownership development, and adaptation of

traditional approaches existing in the appropriate legislation and practice were and are the subjects of Russian and foreign research (in economics, legislation, etc.). The results of a global study of the networks development and their impact on the economy were introduced by Benkler (2006), Belikova (2019) and Koblova (2013).

Jorge A. Heredia Pérez, Martin H. Kunc, Susanne Durst, Alejandro Flores, Cristian Geldes (2018); George J.Y. Hsua, Yi-Hsing Lin, Zheng-Yi Weic (2008), Zaheer Khanm, Rekha Rao-Nicholson, Shlomo Y.Tarba (2018), have developed the thesis that studying of the knowledge-based economy and creating of an appropriate economic paradigm for acceleration of technological innovation is a primary task for governments. In addition, these authors declare that the issues associated with the challenges and adaptation of innovative (including competitive) policies in a knowledge-based economic system require in-depth discussion. Besides, the researchers emphasized the increasing significance of R&D for network economy.

Some authors have studied the issues of networking as implied in concept of ownership and property, including H. Demsetz and B. Villalonga (2001); Michael Zhou, Mark A.A.M. Leenders, Ling Mei Cong (2018); S.N. Maksimov (2016), E. Krasnikova (2007); V.L. Tambovtsev (2015); Koblova (2014).

The essence of digital objects was studied by Hamid Reza Khedmatgozar and Mehdi Alipour-Hafezi [24], and others.

METHODS

The author introduced some new ideas of network economy implications in the field of ownership and property rights, which are based on materialist dialectics. The research was conducted using the data collection method. The subsequent analysis of doctrinal sources in the field under study and the provisions of the relevant legal acts was based on the descriptive approach to the legislative regulations and relevant practice. Hence, the author defined patterns for development of intrinsic and legislative approaches to understanding and regulation of property in the new conditions of economic networking in Russia. In addition, the potential for such a development was identified. On the one hand, property, regardless of the changing essential content of this concept, which is governed by law, remains the cornerstone of economic

development. The economies of a number of modern states, and Russia's as well, are based on the acceptance of the necessity of property protection. On the other hand, there is redistribution, i.e., a change in the boundaries of traditional forms of ownership in of the context of establishing its regimes. New digital objects of ownership appear that require legal regulation. The necessity to implement accelerated scientific and technological development by the state and individual enterprises results in networking of the ownership structure. In this context, new research results develop the existing scientific and practical ideas and can be implemented for further forecasting of the situation development both in Russia and abroad.

RESULTS

The research results show that the traditional approaches in the sphere of property rights, reflected in the Russian doctrine and legislation, give place to the new ideas about ownership forms and objects of property simultaneously with the development of the network organizational structure (Figure 1).

Thus, the following results were obtained:

1. A change in the conceptual apparatus of ownership during the period of the network economy development has been stated, which is

caused by a change in technologies entailing a change in social relations following the development of information resources.

2. It has been shown that the concept of the ownership "form", which is determined by the parties involved (public, private, municipal, etc.), requires replacement by the concept of property rights "regime", which is able to reflect the totality of the real possibilities of the actor relative to the item of property .
3. The economic reasons for the greater functionality of the concept of the property rights "regime" over the concept of ownership "form" have also been shown since its regime and network structure, formed as a result of coordination of the individual ownership actors' behavior, promote the transformation of knowledge and information into innovative potential and their involvement in practice.
4. It has been revealed that as a result of the assignment of information resources, property, defined on the basis of the parties involved as public one, undergoes a change as regards the definition as communal or shared property. Hence, a network property rights regime has been formed as applicable to the information

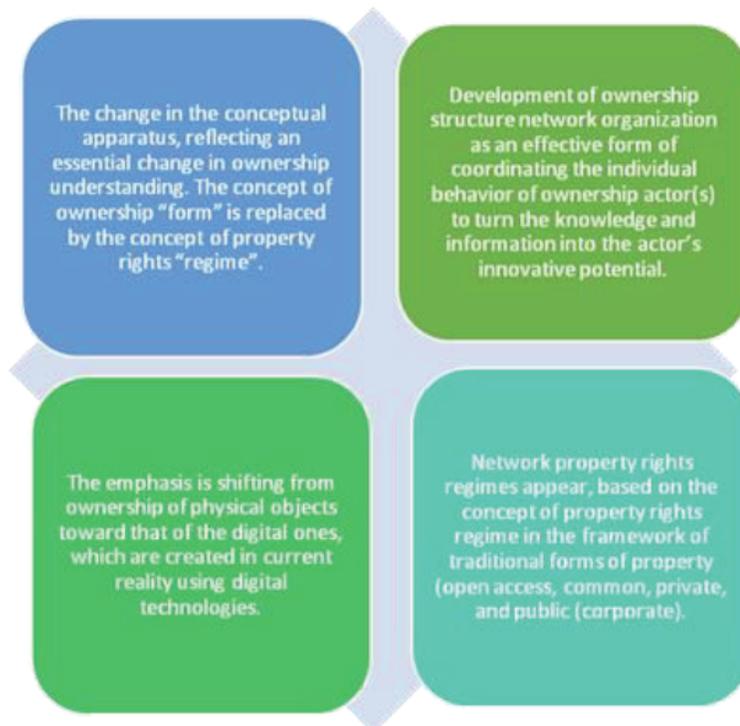


Figure 1: Networking markers in terms of ownership.

placed on the network (from inaccessible and restricted to publicly available chargeable or generally accessible).

5. It has been established that both the autonomy of consumers from manufacturers and the severance of hierarchical ties between the latter complicates ownership relations and deduces ownership not only of physical, but also of digital objects.

DISCUSSION

In the present research, the author analyzed practical and legislative implications of changes caused by the development of the network economy in the field of the institution of property.

The correlation between the technological development and the configuration of property relations is not obvious. However, it was determined that new technologies contribute to new technological organizational relations and influence the organizational and economic relations. The latter, in turn, provide changes in socio-economic relations, which are based on the ownership relations (Maksimov, 2016).

It is worth highlighting that the essence of ownership is its understanding as “*appropriation*”, considered in the following aspects:

- a) humans transform the natural substance into their “own”, i.e., people subdue the nature in the process of labor activity;
- b) the results of this activity, i.e., the products created by human labor activity, are appropriated;
- c) the appropriation as a social relation presumes simultaneous alienation of the created product from other people (Maksimov, 2016). Subsequently, ownership is understood as unlimited and exclusive human dominance over a thing.

Thus, for example, paragraphs 1 and 2 of Article 209 of the Civil Code of the Russian Federation (Part One of the Civil Code of the Russian Federation of November 30, 1994), (hereinafter - Civil Code of RF) declare that the owner shall be entitled to the rights of the possession, the use and the disposal of his property; the owner shall have the right at his own

discretion to perform with respect to the property in his ownership any actions, not contradicting the law and the other legal acts, and not violating the rights and the law-protected interests of the other persons, including the alienation of his property into the ownership of the other persons, the transfer to them, while himself remaining the owner of the property, of the rights of its possession, use and disposal, the putting of his property in pledge and its burdening in other ways, as well as the disposal thereof in a different manner (Dudin *et al.*, 2016: 1026-1036; Frolova *et al.*, 2017: 799-812).

In this context, the network transformations of the institution of property that we may observe are caused by the complication, expansion and modification of its scope because of the launch and development of mechanisms for the implementation of property rights to information resources moving over communication networks, which are “appropriated” by various actors.

What can we observe without bias currently as a result of such understanding?

Firstly, there is a *change in the conceptual apparatus*, reflecting an essential alteration in understanding of ownership when the *concept of ownership form* is interpreted as a type of property, and characterized according to the attribute of the actor connected to the object, taking into account its peculiarities. Traditionally public, private, municipal, and other property (Article 8 of the Constitution of the Russian Federation) is *replaced by the concept of the property rights “regime”* (The Constitution of the Russian Federation, 2008), which is interpreted as a real set of an actor’s opportunities possessed with respect to the property item, its structure, rights and obligations characterizing the relation of one actor to another in connection with the property item. In this regard, it is noted that with the appearance of numerous forms of the organization of economic life, in which property rights are distributed among the various actors in the form of lease, trust, corporate and other governance, property rights regime is more functional than the ownership form (Maksimov, 2016).

The sources of this idea should be apparently sought for in the assumptions of the representatives of economic theory, such as: M. Friedman, G. Stigler, and G. Becker (University of Chicago), J.M. Buchanan, and G. Tullock (Virginia Polytechnic Institute), A. Alchian, and H. Demsetz (Los Angeles University), , who, together with R. Coase, considered the institution of

property in terms of transaction costs and specifications (diversion). The scholars pointed out that amount of expenses and remuneration, which economic agents will be able to receive for their actions, depends on the scope of ownership, for example, in case of permissible free transfer of profits and (or) capital of a foreign investor from a country that accepts the investments abroad – the investors' expectation consists in the possibility of free transfer. This possibility is provided by Russian legislation in response to these expectations; for example, paragraph 3 of Article 5 of the Federal Law "On Currency Regulation and Currency Control" dated December 10, 2003 prohibits the need for residents (non-residents) to obtain individual permits from foreign exchange control authorities) (Federal Law, 2003). In connection with possible restrictions of the property rights, H. Demsetz and B. Villalonga tried to confirm the direct correlation between the utility and scope of the property rights. The researchers suggested that in the market the process of transaction conclusion is accompanied with the exchange of two bundles of property rights (Demsetz & Villalonga, 2001: 209-233). Usually, any physical benefit or service has bundles of rights attached to them, which value determines the value of goods to be exchanged. From an economic point of view each bundle of rights is usually taken for granted with the characteristics or reasons that determine the price and quantity of goods supposed to be exchanged and holding these rights. The utility of this resource is the greater, the wider range of rights it can be characterized with for the owner. This fact can be exemplified with different utility of almost identical things for the consumer, when one thing is his property, and the other is rented. In the process of the exchange, none of the parties of this transaction can transfer more authority than it possesses (paragraph 2 of Article 218 of the Civil Code of RF). For this reason, a change in the parties' property rights or actors' rights (in terms of increasing or decreasing their scope or number) will also lead not only to the change of transaction terms, but also to the scopes of subsequent transactions planned for the same exchange (increasing or decreasing in their number, respectively).

- Secondly, based on the introduced concept of property rights regime *within the framework of traditional forms of ownership* (open-access, communal (shared), private and public) *network property rights regimes* are observed. For all types of ownership, except the open-access one, corporate ownership can be represented, and in

the case of the so-called national enterprises, it will be communal, etc (Krasnikova, 2007: 63-70). It is possible to distinguish the following within the framework of network property rights regimes: inaccessible information (traditional version, i.e., information that is a commercial secret);

- chargeable content (as an access to e-books, textbooks, etc. that is provided after paying for it and is practiced by various publishers (Yurayt, LitRes, and others);
- freely accessible information (general information space where all the knowledge and information are accumulated by various agents), which is observed when the boundaries of each traditional form of ownership change (e.g., the Cyberleninka scientific electronic library, etc.).

It should be mentioned that the access to both chargeable (restricted) and free (open) resources has its advantages and disadvantages. Thus, the advantages of accessing the chargeable information resources include saving time for the required information search, presumed high quality of the information product and the reliability of its sources, well-structured presentation format, wide opportunities for indexing and effective retrieval, etc (Koblova, 2014: 102-114). Access to free content is also characterized with saving time for the necessary information search, accessibility (with the Internet available), clear presentation, etc.

When comparing the network property rights regimes with traditional forms of ownership, we can clearly observe that traditionally public ownership remains mainly as such.

For example, answering the question about who should own the Russian natural resources, the population of Russia was divided as following: the state – 41% (in 2000) and 43% (in 2004); people – 30% (in 2000) and 42% (in 2004); all residents of the region, territory, republic where these resources are located – 9% (in 2000) and 10% (in 2004); those persons who directly work with these wealth (farmers, etc.) – 8% (in 2000) and 3% (in 2004); those who became their owners as a result of previous reforms – 2% (in 2000 and 2004); to someone else – 1% (in 2000 and 2004) (Abdullaev *et al.*, 2019: 76). These data indicate the steady tendency to a mixed economy with a strong state regulation and its dominance observed 15-20

years ago, at least in the field of natural resources in Russia despite the fact that the Constitution of the Russian Federation of 1993 states that land and other natural resources, being used and protected in the Russian Federation as the basis for the life and activities of peoples living in the corresponding territory (paragraph 1 of article 9) can be in private, public, municipal and other forms of ownership (paragraph 2 of article 9).

At the same time, a significant influence of technological transformations on the public ownership functioning conditions is expressed in the fact that at the previous stages of socio-economic development the state dominance in infrastructure sectors (transport, communications, utilities) almost automatically ensured its dominance in relevant sectors of the socio-economic sphere. Nowadays, this influence is gradually weakening (Maksimov, 2016).

Nowadays, 15 years after the research data presented (as of 2016), the opinions about the digital data ownership differ and depend on the actor-author of such an opinion. Thus, the representatives of anti-virus protection software developers, namely, InfoWatch CEO N.Kasperskaya decided that the "big data of the Russians" should belong to the state, proceeding from the fact that the users do not own these data, as they "released them to information space, and everything that they wrote there flowed away". However, her critics deemed that people's failure to comprehend their data value does not give the right to develop digital communism.

Against this background, the sphere of application of communal and private property is narrowing because of the increase in the share of open-access ownership in the totality of ownership. . Since in the created situation, as a result of the individual appropriation of information resources, *communal appropriation* mediated by the global information and communication network takes place, and makes it possible to talk about the communal form of ownership of freely accessible information. As a result, the rights to use, possess and dispose this information belong to the whole society personified by its members (Zhou *et al.*, 2018). This situation is caused by the growing autonomy of producers and consumers, their increasing "disconnection" from *hierarchical* ties, as well as their withdrawal from dominance-subordination relations. In addition, it influences the property relations, which are becoming more complex and distributed between different entities.

On the other hand, the economic and other doctrines introduce the ideas of expedience to extend the regime of communal ownership to such a sphere of capital and creative activity application as *service inventions* (Tambovtsev, 2015: 7-18; Khan *et al.*, 2018: 392-402). According to paragraph 2 of Article 1295 of the Civil Code of the Russian Federation, an exclusive right (e.g., the right to carry out or authorize the reproduction, distribution, processing, import, public display, broadcasting, etc.) for a work made for hire (work of science, literature or art created within employment duties established for the employee/author), also belongs to the employer, unless otherwise provided by an employment or civil law agreement between the employer and the author. Whereas, the copyright belongs to the author (paragraph 1 of article 1295) (Part One of the Civil Code of the Russian Federation of November 30, 1994). The essence of this problem is the uncertainty of remuneration amount owed to the author by the employer. Though the copyright for such an invention belongs to the inventor (employee), the exclusive rights (i.e. the possibilities of the invention commercialization) belong to the employer. As a result, the employee's motivation to invent reduces, and interest in finding areas for the invention application completely disappears.

The problems mentioned would not have arisen if the legislation provided for *joint IP ownership*, as in the case of inseparable co-authorship (Article 1258 of the Civil Code of the Russian Federation) (Part One of the Civil Code of the Russian Federation of November 30, 1994). In this context, partners would be obliged to share with each other the profit received from their entrepreneurial activity, carried out independently. The exemption, i.e. the necessity of a prior approval would concern only the cases of transfer (sale) of exclusive rights. Indeed, if they are sold by one co-author to the third party, the other co-author has no right use the invention productively. At the same time, the share of the profit received by each of the parties can be fixed both in the contract and in the law, current scheme does not eliminate but rather stimulates the inventors' innovative activities (Tambovtsev, 2015: 7-18). Thirdly, the emphasis from *ownership of physical objects* is shifting toward ownership of digital objects, created currently using digital technologies. Such cutting-edge digital objects include: cryptocurrencies, tokens, digital counterparts (mathematical models for physical reality calculation), cloud computing (remote computer services), digital cryptocurrency depositories ("e-

wallets”), digital exchanges, and digital property, etc. (Kartskhia, 2019: 139-188; Khedmatgozar & Alipour-Hafezi, 2017: 162-165). In Russia, these changes were not neglected by the law and contributed to the enactment of the supplements and amendments to the Civil Code of the Russian Federation. Thus, the Article 141.1 of the RF Civil Code on digital rights was introduced, as well as other rules on digital services and methods for transacting using digital technologies in accordance with Federal Law of March 18, 2019 No. 34-FL “On Amendments to Parts One, and Two, and Article 1124 of Part Three of the Civil Code of the Russian Federation” (Federal Law of March 18, 2019).

Fourthly, another aspect of considering the ownership networking is the network organization of its structure as an effective form of coordination of the property rights actor(s)’ individual behavior to turn knowledge and information into the actor’s innovative potential. In this context, knowledge in its systematic form is involved in practical processing of the resources (Fakhrutdinova & Mokichev, 2011: 123-129). The fact is that the network ownership structure in terms of the innovative economy causes a multiple synergistic effect through cooperation. The more complex the innovation project is, the more ownership actors are involved in innovative cooperation. Therefore, there are more possibilities to obtain more effects, since the process of creating network organization of ownership actors is followed by a stable set of role-based relations and behavioral characteristics of the ownership actors, which determine:

- the microenvironment of the network organization of the ownership actors, including their interaction with each other and with other actors and bodies at the network intersections;
- internal pattern of the network organization functioning;
- the nature of the relationship between the ownership actors, interested in innovative activity.

The combined potential of ownership is observed not only as a result of cooperation between the ownership actors and the assets exchange. For example, transnational corporations (hereinafter, TNC), which are private enterprises and are not legal entities, consist of (legally) independent or captive entities under the jurisdiction of different countries, but connected to each other through a system of

participating in equity capitals or in other ways that contribute to the economic unity of these structures with a single center for TNC management, and as a result of an internal alteration of the innovative potential of each ownership actor (Belikova, 2019: 59-64). This allows for increase in the efficiency of using property in the process of innovative activity, and to get various positive effects from such interaction (Fakhrutdinova & Mokichev, 2011: 123-129; Zhang & Cheng Guan, 2019: 213-225).

CONCLUSIONS

Thus, it seems that the untapped potential of property interpretation in the context of its regimes remains rather significant and requires further comprehension and analysis, while the issues of legal regulation of property in the network era should be further investigated.

Meanwhile, it can be stated now that functioning of the institution of property is correlated to the estimations and value judgments that correspond to a specific historical period, and are associated with the characteristics of the national economic culture. Therefore, it should be taken for granted that the ethical problem of justice caused by the question of the effectiveness and even the very possibility of the existence of traditional forms of ownership, especially the private one, often does not have a satisfactory solution. Perhaps, in the era of the development and spread of networks in various areas of the economy, this fact partially explains the readiness to reassess to a different functionality of property rights, which fits good to the property rights regimes long discussed in the economic theory.

In any case, the issue of implications of ownership networking remains relevant and promising, and our research will continue.

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