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## DIGITAL LAW AND NORM-MAKING

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### Abstract

This scientific article provides a detailed scientific analysis of the state of law in the era of modern trends and issues of digitalization. The article also provides a detailed scientific and legal analysis of the activities of rulemaking, which is one of the main areas of law enforcement, and the application of digital technologies in this area.

**Keywords:** Law, law, digitalization, trend, state, norm.

### Introduction

The connection between digitalization and modern legal development trends is reflected in the state and society's response to these issues. This relationship creates a practical imperative for the complete digitalization of the state system and the legal sphere, including through modern judicial reforms.

According to Konrad Becker's "Dictionary of Tactical Reality," digital human rights are "the extension and application of universal human rights to the needs of an information-based society. Basic digital human rights include the right to access the internet, the right to freely communicate and express opinions online, and the right to privacy." In 1997, at the Kassel art festival Documenta, a group of Amsterdam activists from the media center De Waag first presented The People's Communication Charter. It formulated demands concerning the preservation of public space as a public domain and its protection from attacks by commercial and police interests. Since 1997, the set of communication human rights has been significantly revised, and work to protect them is consistently carried out by the public initiative CRIS, in cooperation with UNESCO, various NGOs, and other international organizations.[1]



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In our opinion, the concept of “**Digital Law**” *can be defined as “a modern area of law that regulates issues related to information technology”* .

Today, digital law is entering the realm of jurisprudence primarily as a modern institution in the fields of public administration, civil law, and criminal law. In particular, "digital transactions," "digital assets," "smart contracts," "digital commerce," and authentication and identification rules, which are becoming part of our society as modern civil relations, have modernized the sphere of civil legal relations and become an important indicator of the development of modern legal trends.

Furthermore, "cybersecurity," "cybercrime," and crimes committed using other modern technologies, which have become a trend accompanying legal developments in recent years, highlight the need for digitalization, including in criminal law.

In public administration law, digital law primarily connects citizens with government services through information systems and develops "e-government" and "e-state" systems.

In legal theory, "digital law" is studied primarily in relation to information technology. Specifically, the implementation and disposal of digital rights, as well as the restriction of their disposal by other means, are carried out exclusively through an information system. In this case, the person who, based on the relevant documents, is granted the right to exercise these rights in accordance with information technology is considered the holder of the "digital right," that is, the owner of digital property, which is one of the current trends in modern legal development.

Legal scholars and researchers studying digital law as a modern subjective right use the concept of "digital law" as one of the universal human rights adapted to the requirements of the digital society and modern trends in the development of law.

Approaches, both similar and unique, have been put forward by digital law scholars :

Thus, T. S. Yatsenko presented "a brief but quite concrete overview of the main points of view, both foreign and domestic. Foreign points of view interpret digital rights (digital assets) extremely broadly, while domestic interpretations



of digital rights are reduced to a narrower interpretation of them as electronic data certifying rights to objects of civil rights. In his work, T. S. Yatsenko points out the debatable nature of the understanding of digital rights either as an electronic method of registering subjective rights, or as an unstable legal fiction, or as an object identical to the certifiable object of rights" [2].

From the above provisions, one can conclude that digital law, as a type of subjective property rights, is not a fundamentally new object. It merely points to a special, digital (binary) form of existence of traditional property rights—property, contractual, corporate, and others. This clearly demonstrates their connection with uncertificated securities and non-cash monetary funds. The holder of the digital right, that is, the person who has the ability to dispose of the existing right only in the above-mentioned information system, is also associated with this special form of existence of these rights. Since the law does not provide any clarification, and the definition of digital rights implies that these are, in essence, traditional property rights, it appears that the subject composition of the future legal relationship will be the same as in the corresponding traditional legal relationship. It is only important to note that legal relationships regarding digital rights are formed through the mediation of an "information system," which, however, is not a subject of the legal relationship and does not influence the essence of the latter.[3]

We can analyze the position of several authors regarding digital rights. For example, V.D. Zorkin believes that "the digitalization of social life has led to the emergence of previously unknown so-called digital rights. Digital rights are understood as the rights of people to access, use, create, and publish digital works, to access and use computers and other electronic devices, as well as communication networks, in particular the Internet" [4].

According to A. A. Kartskhia, the process of "digitalization of law", or, in other words, the intellectualization of law, is actively underway – i.e., the use of mathematical methods and new digital technologies for the purpose of optimizing processes and legal relations, as well as procedures for creating a new digital reality, which also requires legal regulation or the presence of a state-authorized regulatory body [5].



On the other hand, digitalization and new information technologies encourage transformations in the nature of legal entities' activities, altering the scope of their legal relations, and expanding the horizons of future activity. Law is an excellent ally for the latest technological developments, digitalization, and informatization in society[6].

Against the backdrop of digitalization of government agencies, the widespread implementation of modern technologies in their regulatory activities is a priority, which is manifested in the following positive aspects:

- 1) As a result of the digitalization of the procedure for developing regulatory legal acts, **the established timeframes** ( for the development, approval, examination, and adoption of regulatory documents) are significantly reduced, and the effectiveness of regulatory activities is increased.
- 2) Thanks to the widespread implementation of modern technologies in the development of regulatory legal acts, **red tape, bureaucracy, and corruption are prevented** . Following the principle of " **document flow** ," the development, approval, and review of regulatory legal documents is carried out without the "human factor" and solely using information technology.
- 3) The relevant information systems **monitor the rule-making activities** of government agencies, ensuring the principle of "legality" in this area. This ensures full control over the development, receipt, and adoption of regulatory documents by lawmakers in accordance with the law, which is becoming an integral feature of legal development trends.
- 4) When creating legislation, the principles of "**openness**" and "**transparency**" **are ensured** , and a system for informing the population about the adopted legislation is created.

Furthermore, the digitalization of lawmaking is creating a number of modern trends in law. In particular, "*digital law*," "*artificial intelligence in legislation*," "*digital forensics*," and "*legislative technology programs*" indicate that the development of regulatory legal acts is becoming increasingly modern.

For example, **artificial intelligence** , a modern technology leading to a decline in human activity, is rapidly entering all spheres of society. At the same time, today's increasing workload necessitates the use of artificial intelligence in legislative drafting by lawmakers.



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Before we begin a scientific analysis of this topic, let us take a closer look at the concept of “artificial intelligence” and its definition.

*Artificial intelligence* is a system that can perceive its environment and take actions to maximize the chances of successfully achieving its goals, as well as interpret and analyze data in a way that allows it to learn and adapt as it evolves. For AI to be useful, it must be applicable. Its true value can only be realized when it provides actionable information. If we think of AI in terms of the human brain, AI technologies are like the hands, eyes, and body movements that enable the brain's ideas to be brought to life. Below are some of the most widely used and rapidly developing AI technologies[7].

The main question is at what stage of rule-making “artificial intelligence” is used.

In our opinion, artificial intelligence should not be used during the development and review stages of draft regulations, which are considered crucial stages of legislation. That is, since the provisions of regulations are tools that regulate social relations and create legal consequences, such important documents cannot be entrusted to technology.

**Artificial intelligence can be used to simplify the process of drafting regulatory legal acts.** For example, artificial intelligence can be used to determine and monitor compliance with legislative deadlines (development and approval of regulatory legal acts), detect spelling and technical errors in regulatory legal documents, identify inconsistencies between translated draft texts, and align draft texts with legislative requirements.

Artificial intelligence technologies will make it possible, in particular, to automatically check a draft regulatory legal act for compliance with acts of greater legal force, to determine the need to amend acts of lesser legal force, and to evaluate compliance with the rules of legal technique and the accuracy of references to other laws and by-laws[8].

The unilateral use of artificial intelligence systems by various parties will undoubtedly play a role in changing the nature of diplomacy and international negotiations in the coming decades. For example, in 2018, the Ministry of Foreign Affairs of the People's Republic of China began using an artificial intelligence system as a strategic decision support system, providing its





diplomats with a range of options and assistance in risk assessment. But if such "legal automation" is possible even in domestic legal systems, could it ever make the leap into the realm of public international law? [9]

It should be noted that any technology should serve the benefit of people and their interests. For example, human participation in the development of regulations and the expression of opinions through information systems is one means of effectively ensuring the rights and legitimate interests of citizens, as well as a manifestation of the principle of "human dignity" in the field of legislation, an important aspect of modern legal development.

In conclusion, it should be noted that the introduction of digital rulemaking, free from "red tape" and "bureaucracy", will create a solid and effective legislative foundation.

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