

## THE PHENOMENON OF INTERNET MEMES IN THE LEGAL SPACE\*\*

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The subject of this study is the transformation of modern legal and cultural exchange, which occurs under the influence of trends in digitalization and mediatization of the legal sphere.

The purpose of the article is to determine the legal nature and meaning of memes in online legal communications.

The research was based on an interdisciplinary scientific approach of memetics, the use of which in jurisprudence is aimed at determining the influence of cultural, social and historical phenomena and factors on the development of law, the formation and change of legal norms and practices. This approach made it possible to consider memes as sociocultural phenomena and trace their role in cultural evolution in general and in the field of legal and cultural transformations in particular. The methodology is also presented by formal legal, comparative legal methods and the method of scientific analysis, with the help of which doctrinal, normative-legal sources and materials of judicial practice on the categorization of Internet memes in the legal field of intellectual property were studied. The use of constructivist methodology allowed us to evaluate memes as building blocks of legal communication. Methods of legal modeling and forecasting helped to determine the vectors of meme influence on legal and cultural evolution, as well as to identify risks of the formation of “deceptive” meanings in Internet memes.

Main results. The article highlights the influence of media discourse as the core of modern language processes on legal communication, innovations in the language of law in the context of digitalization. The legal nature of Internet memes is determined through the prism of intellectual property law, which identifies the need to address two issues: respect for the rights of authors of original works and the rights of authors of derivative works – Internet memes – in the context of their viral spread with subsequent multiple variations. Conclusions are formulated about the ability of Internet memes to generate new meanings in jurisprudence; the role of judicial Internet memes in programming and coding of legal behavior, reflecting and reproducing legal culture and digiculture; the reverse influence of the professional legal community on the specific parameters of an Internet meme during its subsequent reproduction and mutations; anti-cultural risks of reproducing of destructive (illegal) patterns of behavior.

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## 1. Introduction

The evolution of law is invariably accompanied by the development of information systems. Means, methods and channels of dissemination of socio-normative culture from ancient times to the present have significantly transformed, passing the stages from oral traditional law, wooden, clay and stone sculptures of laws of ancient society to the latest information and telecommunication technologies, providing instant and extensive transmission of legal norms, concepts and ideas. Due to the mediatization of the legal sphere [1, p. 10] and the virtualization of legal and cultural exchange, an interdisciplinary approach in legal research is becoming increasingly relevant.

Digitalization determines the transformations of the sphere, limits, and stages of legal regulation, sources, subjects of law, their rights, obligations, and responsibilities, legal techniques and technologies, and the language of law. The latter, like other institutional discourses, is actively mediatized under the influence of technological factors, becoming a promising area of research for many sciences [2]. While legal information was monopolized by a narrow circle of specialists from the time of the establishment of the monarchy in Ancient Rome until the second half of the 20th century (due to the accumulation of legal norms and the transition to a textual form of their consolidation and commentary), the modern technological mediation of the legal sphere allows knowledge of legal norms to become accessible to the wide public (with reservations regarding the increase and complication of the legal framework, which becomes an insurmountable task for ordinary legal consciousness, and the persistence of digital inequality). On the one hand, it is about the popularization of legal discourse, and on the other, about the influence of media discourse as the core of modern linguistic processes on legal communication.

Internet memes in the field of law, or memes of the professional legal community, have become a notable phenomenon in modern legal discourse, serving both as a means of online legal communication [3] and as a repository of cultural codes [4]. As the technological component of social

interaction increases, their potential for reflecting and reproducing of legal culture is growing and requires comprehensive research.

## 2. Internet meme as a sociocultural and legal phenomenon

Internet memes have become a significant phenomenon of public life, an element of digital communicative interactions, an important media component [5, p. 21].

A meme is an element of culture that conveys sociocultural codes and is a form of social expression [6]. It draws its roots from the work of Richard Dawkins [7], who argued that the evolution of human culture is driven by the spread of tiny information patterns (memes), similar to the transmission of genetic information [8, p. 22; 9]. The concept of a meme was further developed by D. Dennett, who defined it as “complex ideas that are formed into individual memorized elements” and provided examples such as “the wheel, wearing clothes, vengeance, a right triangle, the alphabet, and the calendar” [10, p. 201].

Later, memetics, which studies memes, was established as a science or an interdisciplinary scientific approach, and in the legal field, it was used to study the genesis and transformations of law [11] and legal culture [12, p. 37]. It is rightfully considered as methodologically convenient approach, as it provides a new unit of measurement for studying the development of culture which is carried out on a unified basis [4, p. 114]. Legal memes are units of transmission of legal and cultural heritage that determine changes in law, as well as the legal and cultural information itself.

In the mid-1990s, Internet memes emerged – media objects (verbal, non-verbal (iconic, visual) or creolized, i.e. their combinations) generated by users through information and telecommunication technologies and repeatedly distributed in the Internet, describing and evaluating events and influencing the construction of social reality. Their most common format includes an image (photo, drawing) accompanied by text [13, p. 144]. This phenomenon became widespread with the emergence of social networks, video platforms, and

special websites where users could generate internet memes based on existing templates [3, p. 261].

A meme serves as a cultural parallel to genes, characterized by imitative behavior [14, p. 100]. Despite the emergence of this term in the pre-digital era, it was the Internet environment that made the spread of memes a common occurrence [15, p. 17]. According to R. Dawkins, the main properties of memes are their longevity, fecundity (the number of copies made per unit of time), and accuracy of replication [7, p. 46]. All of these properties have been improved in the context of digitalization.

Internet memes are a product of creativity and the information industry, combining the properties of semantic depth, novelty, as well as standardization, mass distribution, lack of authorship, and accessibility to a large audience [16, p. 40].

There is a widespread understanding of the Internet meme as a genre that performs an entertainment function in culture [17, pp. 19-20]. The mechanism of its transmission involves numerous variations (the possibility of multiple additions to a single basic media object), which leads to the mass reproduction of Internet memes based on existing intellectual property objects. Despite the apparent inclination of Internet memes towards humor and satirical interpretation, it would be incorrect to view them solely as funny images with text. Memes determine the qualitative uniqueness of modern digital culture in the evolution of cultural manifestations of society. Their polymodal discourse allows memes to be used in a wide range of social, cultural, and political purposes [18, p. 485].

An Internet meme is a dynamic phenomenon capable of generating new meanings, and in the field of law, it is a special source of legal information and a space for communication. Finally, the legal consequences of using Internet memes in the areas of intellectual property and countering illegal activities indicate the “seriousness” of Internet memes.

### **3. The legal nature of the Internet meme in the context of intellectual property**

In foreign countries (USA, Australia, EU members) they regulate the creation and distribution of memes by copyright law. Most Internet memes are defined as derivative works created on the basis of

existing media objects [19]. Memes, in the process of creation of which several original works were used, are referred to as compilation, composite works [19]. Due to the general rule of obtaining the copyright holder's consent for the processing of an original work, the distribution of internet memes as content that does not arise from nothing potentially infringes the intellectual rights to the original works.

The legitimization of the creation and dissemination of Internet memes in American law is based on the doctrine of fair use<sup>1</sup>, according to which the court must assess and correlate the purpose of using the meme, the nature of the original work, the amount of adoption in relation to it, as well as the impact exerted by the use of memetic content on the market or the value of the original work [19]. The free use of the original content for the purpose of transformation into a derivative work (Internet meme) is allowed for non-commercial purposes, subject to the interests of the author of the original work. This possibility is explained in the doctrine by the fact that memes perform a socially significant function, as well as by the explosive growth of the number of people creating them, which makes it impossible for them to enter into agreements with the copyright holder [20]. Legal protection of memes is possible if they pass the minimum level of creativity test [6; 19]. The free commercial use of internet memes based on other people's copyrighted content is not allowed<sup>2</sup>.

The EU has a Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, the draft of which has provoked heated discussions, including on the issue under consideration. The provisions of the draft on the indication by the creators of news content of the persons who can use it, as well as on the exclusivity of materials uploaded to Internet sites and social

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<sup>1</sup> § 107 of the U.S. Copyright Act of 1976.

<sup>2</sup> Grumpy Cat Ltd. v. Grenade Beverage LLC. Case No. SA CV 15-2063-DOC (DFMx). URL: <https://www.adamsdrafting.com/wp-content/uploads/2018/06/GRUMPY-CAT-LIMITED-Plaintiff-v-GRENAD-BEVERAGE-LLC-et-al-Defendants-PAUL-SANDFO.pdf>

networks and the tightening of the responsibility of Internet platforms for copyright violations (tax on links and the establishment of content filters) have been assessed in the doctrine and the media as an actual ban on memes and GIFs. The text of the Directive adopted in as a result does not affect memes, GIFs created on the basis of well-known works, and hyperlinks to news articles<sup>3</sup>.

In many countries, memes are legally protected under the general rules of civil law regarding the protection of derivative and composite works. In Russian legislation, there is no specific regulation for internet memes, and they are not listed as objects of copyright (paragraph 1 of article 1259 of the Civil Code of the Russian Federation). However, there is a common understanding of internet memes as derivative works. Since derivative works are classified as objects of copyright under paragraph 2 of article 1259 of the Civil Code of the Russian Federation, memes may also be protected.

In its Resolution No. 25-P dated June 16, 2022, on the constitutionality of paragraph 3 of Article 1260 of the Civil Code of the Russian Federation, the Constitutional Court of the Russian Federation criticized the previous approach of the legislator, which did not provide legal protection to the author of a composite work if the exclusive right to the original work was not respected. In 2023, article 1260 of the Civil Code of the Russian Federation was amended to provide protection for both the author of the derivative or composite work and the author of the original work in cases of unauthorized use of a derivative or composite work.

However, when considering the so-called “Zhdun” case, the courts<sup>4</sup> noted that the popular

comic images based on the work “Zhdun” are Internet memes created by the collective efforts of network users and meet the criteria for parody in the genre of caricature. They can be used without the consent of the owner of the exclusive right to the original work and without paying them any remuneration (paragraph 4 of article 1274 of the Civil Code of the Russian Federation, and paragraph 99 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated April 23, 2019, No. 10 “On the Application of Part Four of the Civil Code of the Russian Federation”).

Subsequently, this categorization of Internet memes was criticized. As E.A. Pavlova notes, a parody mocks the original work, while “Zhdun” is perceived as a comical character itself<sup>5</sup>. Memes were suggested to be considered as derivative works that create a comical effect, but they are not always parodies. According to L. Shifman, “although any parody includes imitation to some extent, not all imitations are parodies” [15, p. 46]. E.A. Voynikanis speaks about the social rather than artistic function of parody, which should not have creative originality<sup>6</sup>. The correlation between the structure of parody and the Internet meme is also questioned by other authors [6], who point out the commercial nature of parody, which means the infringement of exclusive rights by using a meme based on someone else's work. It is also true that a meme ridicules a phenomenon of social reality. Identifying it with a parody carries the risk of increasing the use of copyrighted works without the author's consent.

Summarizing the approaches of legislation and judicial practice, it is possible to draw conclusions about the need to distinguish between types of Internet memes that cannot be reduced to a common denominator, as well as about the expediency of registering a meme as a trademark used for commercial purposes in order to protect the rights of the author of such a derivative work.

In the latter case, it should be borne in mind the risks of Rospatent's refusal to state register designations that are semantically perceived as

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<sup>3</sup> Copyright: Parliament to have final vote on new rules | Topics | European Parliament. URL: <https://www.europarl.europa.eu/topics/en/article/20190227/STO28902/copyright-parliament-to-have-final-vote-on-new-rules>

<sup>4</sup> Decision of the Arbitration Court of St. Petersburg and the Leningrad Region dated 08/03/2020 in case No. A56-123039/2019, decisions of the Thirteenth Arbitration Court of Appeal dated 12/02/2020 and the Intellectual Property Rights Court (hereinafter referred to as the IPC) dated 04/02/2021 No. C01-274/2021, ruling of the Supreme Court of the Russian Federation dated 10/12/2021 No. 307-ES21-11864.

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<sup>5</sup> Scientific Advisory Board meeting at the IPC dated 02/06/2023 No. 30.

<sup>6</sup> Ibid.

having the meaning of Internet memes that have become widely known, as was the case when Rospatent considered the verbal element “Rossiano” to be an Internet meme “rossiano”/“rusiano” meaning a way of making coffee (as opposed to “americano”) or otherwise related to it, and concluded on this basis that it was incapable of performing an individualizing function, and that granting exclusive rights to such a designation to one person would be contrary to public interests<sup>7</sup>. Rejecting Rospatent’s arguments, the courts noted that the information provided did not indicate either the systematic use of the disputed designation in the business activities of any individuals or the widespread distribution of the meme among consumers. The court decisions emphasized that the concept of an Internet meme is not legally defined, but the memetic nature of the designation alone cannot serve as a basis for denying trademark registration. There are numerous registered trademarks in Russia that include Internet memes. The request to register the trademark “Rossiano” was granted.

It is noteworthy that the problem lies not in the impossibility of state registration of an Internet meme as such, but in the semantic perception of the designation as a well-known meme by consumers, which in a particular case may deprive it of the necessary properties of a trademark. The fact that the designation is an Internet meme or similar to it does not justify the lack of its distinctive power. Its assessment for compliance with paragraph 1 of article 1483 of the Civil Code of the Russian Federation should be based on the perception of this

designation by consumers in relation to specific goods<sup>8</sup>.

In another case, the court recognized that the disputed designation “How about this, Elon” is a well-known meme used to draw attention to goods and services. The absence of the surname “Musk” does not change its perception or modify its meaning, and the disputed designation, while remaining recognizable to consumers, does not allow to individualize the goods and services of a specific person. The designation “How about this, Elon” was deemed unenforceable<sup>9</sup>. As noted by the courts, foreign legal systems also follow this practice: according to the position of the U.S. Patent and Trademark Office, common ideas and expressions that reflect a recognizable concept are not protectable.

In another case, Rospatent’s refusal to register the designation “Omagad” as a popular internet meme “Omagad Omagad” featuring a kitten with wide-open eyes, which originated from a distorted version of the phrase “Oh my God, Oh my God”, was deemed illegal<sup>10</sup>. The interesting position of the court of first instance<sup>11</sup> was that there is direct associative links between consumers and an Internet meme is, even if the disputed designation lacks any element (in this case, an image), as the use of a combined meme in correspondence or oral speech leads to the recognition of not only the meme as a whole, but also its verbal parts. Although the court of first instance’s position regarding the loss of the designation’s distinctive ability due to the extent of its use in the Internet was found to be untenable by the court of cassation, the claim that it is possible to evaluate the components of a meme as a multimodal

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<sup>7</sup> Decision of the IPC dated 03/12/2020 in case No. SIP-181/2020, resolution of the Presidium of the IPC dated 02/04/2021 No. C01-209/2021; decision of the IPC dated 04/02/2022 in case No. SIP-763/2021, resolution of the Presidium of the IPC dated 11/07/2022 No. C01-523/2022; decision of the IPC dated 25.05.2023 in case No. SIP-155/2023, resolution of the Presidium of the IPC dated 20/09/2023 No. C01-1641/2023, ruling of the Supreme Court of the Russian Federation dated 12/19/2023 No. 300-ES23-26821.

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<sup>8</sup> Ruling of the Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation dated 31/10/2019 No. 300-ES19-12932.

<sup>9</sup> Decision of the IPC dated 21/03/2023 in case No. SIP-1109/2022, resolution of the Presidium of the IPC dated 17/07/2023 No. S01-725/2023.

<sup>10</sup> Resolution of the Presidium of the IPC dated 20/05/2024 No. C01-751/2024 in case No. SIP-1177/2023, ruling of the Supreme Court of the Russian Federation dated 12/09/2024 No. 300-ES24-15225.

<sup>11</sup> Decision of the IPC dated 02/02/2024 in case No. SIP-1177/2023.

phenomenon separately deserves further investigation.

#### **4. Modern legal meme culture and the memetization of law**

The studies of memes are based on the field of semiotics, which allows to identify both the obvious and the hidden influence of the meanings embedded in them [21, p. 303]. The power of images is multidimensional and can be used both for good and for harm. It is no coincidence that the assessment of memes from the perspective of a risk-oriented approach as a means of disseminating deviant content is widespread [21, p. 317]. The use of memes is considered in the context of information warfare, cognitive wars, and the promotion of destructive behavior [22]. Researchers “focus on memes as a form of disinformation used to achieve strategic goals through destructive technologies such as automation and artificial intelligence” [21, p. 305]. The control of the creation and dissemination of memes in the online environment is complex, it explains the relevance of studying them for the spread of negative narratives and the formation of an anti-culture.

It is important to emphasize the metaphorical properties of memes, which allow them to connect social groups. The wide spread of memes is combined with their subtle ideological crystallizations, which encompass user-specific meanings [21, p. 314].

Internet memes serve to form and mark a certain social affiliation [18, p. 485]. In the legal environment, they are the product of professional coordination. It is fair to speak about the emergence of a legal meme culture or even a legal digiculture, due to the specific nature of their distribution environment and the embodiment of unique features of modern digital culture.

The features of a meme, identified by R. Dawkins, are fully applicable to the analysis of modern digiculture, such as transmission in society, copying, and reproduction through competition and selection [15, p. 18-23]. By spreading at the micro level, memes shape the thinking, behavior, and actions of social groups at the macro level. Content shared in the Internet can become widespread within a relatively short period of time, and the transmission

of memes becomes significant in the perception of digital users. Everyday imitation practices (mimicry content) are also becoming a noticeable phenomenon on the network. Digital media allows us to trace the processes of variation and selection of memes.

Internet memes of the professional community of lawyers have become an expressive means of explaining legal phenomena and processes, a way of expressing attitudes towards the legal profession, and a means of publicizing legal ideas. The widespread use of heterogeneous visual components in these memes indicates the authors' involvement in a broad cultural context [4, pp. 266-268]. As examples of humorous legal discourse, they are broadcast, replicated, varied, and reproduced by other users as part of a special “meme” communication, influence self-awareness and the overall identity of an individual [23], and programme legal behavior. Internet memes largely reflect the established collective professional legal consciousness, serving as a means of shaping individual legal consciousness. In other words, along with legal norms, strategic documents, legal memes as examples of legal concepts, traditions, and values, as well as auxiliary tools (symbols), serve as an addition to the legal impact mechanism and a tool for shaping legal behavior as an active interpretation of symbolic information [24].

Internet memes have common features that persist in their varying versions, in other words, they follow a common unifying scheme, which allows for a general distinction between meme templates and their details. For example, S. Lantagne distinguishes between static and dynamic (mutating) memes [25, pp. 390-391]. In the latter case, the meme is expanded with new components, and the traditional properties of memes are complemented by their ability to vary during reproduction and selection.

Productive and effective cultural dialogue is largely mediated by mutating Internet memes that replicate legal phenomena and processes. Their constant variations serve as an important testament to current social values and discussions, facilitating communication beyond the original context of a visual or creolized media object in a way that is difficult to achieve in any other way [25, pp. 404-

405]. As important building blocks of the communicative form, mutating Internet memes become part of the legal language of the virtual space and can be considered as a cultural code in the identification of “friend or foe” in the Internet [4, p. 114].

In addition to the most general classification, the typification of Internet memes of the professional legal community can be based on thematic criteria, the combination of semiotic components, the content of the text, and the pragmatics of influence. For example, A.A. Khustenko analyzed them based on the number and composition of semiotic components, their significance, and the degree and method of correlation [3, p. 265]. In legal Internet memes, both the verbal and visual components can be meaning-forming, but they are often dominated by either the textual component or the verbal component [3, p. 270].

In terms of content, legal Internet memes can be divided into those that reflect legally significant events, express the public's attitude towards this profession, as well as the attitude of lawyers themselves towards their work, depict everyday professional situations, reflect on the state of legislation and its application, and assess the legal culture of the population.

## 5. Conclusion

Digitalization and mediatization of legal discourse entail noticeable transformations of legal language. It is about terms that depict certain legal concepts of the virtual space, the specifics of the formulation and linguistic presentation of legal regulations in the field of digitalization, the generation of new meanings in the legal environment. The latter is associated with Internet memes, which, forming a form of thinking economy, serve as the main building blocks of cultural communication on the Internet, capable of responding to the current agenda, broadcasting certain assessments of legal phenomena and processes, and appealing to various legal phenomena. Legal Internet memes, by generating new meanings in law, serve to reflect and reproduce legal digiculture. There is also a reverse influence of the professional legal community on the specific

parameters of the meme. The risks of creating “deceptive” meanings and values in Internet memes, which program and encode illegal behavior, are subject to prediction and prevention.

The categorization of Internet memes in copyright law requires addressing two issues: the respect for the rights of the authors of original works and the rights of the authors of derivative works – Internet memes – in the context of their viral spread with subsequent multiple variations. The uniqueness of mutating Internet memes in contemporary discourse may pose challenges in their categorization within the current intellectual property framework. In this regard, determining their legal nature in terms of domestic legislation on rights to the results of intellectual activity and means of individualization requires determining the balance between fixity (static Internet meme) and innovation (mutating Internet meme).

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