

## THE INSTITUTION OF DIGITAL RIGHTS IN RUSSIAN CIVIL LAW

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The subject of the study is the institution of digital rights, which has recently been enshrined in Russian legislation. This topic is relevant since the definition of digital rights causes numerous discussions and disputes. Practice on this issue has not yet developed, and there are conflicts in the current legislation. The purpose of the article is to consider the scope of digital rights and define the category "digital rights", given that there is a deep difference between its broad and narrow definitions. The following tasks have been solved to achieve this goal: (1) to consider the regulatory framework governing digital rights; (2) to analyze the main approaches to the definition of digital rights; (3) to study various definitions of digital objects; (4) to highlight the main characteristics of digital objects; (5) to propose original definitions of "digital rights" and "digital objects".

**Methodology.** The authors use the general scientific dialectical method, as well as formal-legal, system-structural, formal-logical methods and methods of cognition. The synergetic method is used to clarify the main features of digital rights. It allows isolating new rules and reality from the creative potential of chaos.

The main results and the scope of the study. Considering law as a variable phenomenon, it has been proved that it is constantly changing. Analysis allows the authors to conclude that digital rights are an independent special type of rights that arise only in relation to digital

objects created in digital form. The features of digital rights include: digital format, occurrence only in the cyber-physical space, consolidation in the form of software algorithms, the accounting system is carried out without an intermediary, the owner's digital rights are realized with access to the Internet and a key in the form of login.

The main qualitative characteristics of digital objects include the following: digital objects are not material; in some cases, they cannot be materialized and there is no need for that; digital objects are created using modern high-tech systems; it is possible to make transactions with digital objects only in the cyber-physical space; the right of inheritance for some digital objects is limited to inheritance by will due to the peculiarities of ownership of these objects; digital objects can be disposed of without the participation of third parties and intermediaries; transactions with digital assets are confidential.

**Conclusions.** Based on the study results, original definitions of "digital rights" and "digital objects" have been proposed. Digital right is a digital algorithm that enshrines the powers of individuals and legal entities to own, use, and alienate digital objects of civil rights in high-tech systems, given that technical means provide the owner with the opportunity to exercise their powers.

Digital objects represent an independent legal category, which is a cryptographic code that gives the owner the right to perform any actions with it - to own, dispose of, alienate, make transactions, and other actions not prohibited by law. Legislative amendments to the current Russian legislation are developed.

## 1. Introduction

In the conditions of the transition to the digital economy and the rapid introduction of high-tech systems, values are transforming and new objects involved in the civil circulation emerge. In particular, the use of distributed registry technology has contributed to the emergence of tokens and cryptocurrencies, which can be defined as digital objects with a special legal status. Further use of innovations such as artificial intelligence, big data, smart contracts, robots, neural networks, and many other developments allows arguing that the list of digital objects whose legal features and attributes are not defined and insufficiently regulated by existing legal norms is expanding. Many scholars and experts devote their works to the study of the legal issues associated with digital rights and objects as new categories in Russian civics. Specifically, in his speech at the St. Petersburg International Legal Forum V.D. Zorkin emphasizes the importance of the processes taking place in law in relation to the processes of digitalization. Of interest are thesis studies conducted by A.A. Kartskhia, E.E. Kirsanova, and K.A. Mefodieva on digital objects and digital rights and the monograph by A.A. Vasilyeva devoted to the transformation of law in the digital age. In a separate group, we can distinguish studies on digital objects by V.A. Laptev, A. Guznov, A. Bychkov, V.A. Lapach, L.V. Sannikova, I.M. Konobeevskaya, and several other researchers. Individual issues of legislative regulation of civil digital circulation are explored in the works of R.I. Sitdikova, S.I. Suslova, O.M. Rodionova, V.N. Gavrilov, and other researchers. However, despite the great number of studies on digital rights and objects, there is a legislative and theoretical lack of regulation of these issues, which makes this topic relevant and deserving of more detailed consideration.

The goal of the present study is to determine the legal status of “digital objects” and identify their unique characteristics and features in light of the legalization of the institution of digital rights in the Russian doctrine.

The study employs the general scientific dialectic method, as well as the formal-legal,

systemic-structural, and formal-logical methods of research. The dialectic method provides an opportunity to comprehensively study the legal peculiarities of digital objects and reveal their characteristic features and the difficulties that emerge when these objects are involved in civil circulation. The systemic-structural method is used to describe and analyze the legal support for the implementation of digital rights in the conditions of the transformation of legal relations. Going beyond description and generalization, we aim to determine the volume of digital rights and to define the category of digital rights given the fundamental difference between the broad and narrowly specialized definitions. In some cases, the legislator provides definitions but this task must be undertaken by science.

The synergetic method is used in identifying the specific features and main characteristics of digital rights as it allows deriving new rules and a new reality from the creative potential of chaos. Considering the law as a variable phenomenon, it is proven that it is constantly changing, responding to the new factors of reality. Thus, the development of the Internet has given rise to a new legal category of digital rights, which, in turn, has generated changes in the legal approaches to the definition of property and non-property rights in the context of the development of the digital environment.

## 2. Normative regulation of digital rights and digital objects in civil law

Legislation regulating digital rights is yet in its formative stage, it is quite young and, therefore, is likely to be finalized with consideration of the judicial and notarial practice. It should be noted that at the international level, the categories of digital rights and digital objects are only taking their shape and cause much discussion. In 2019, Russia passed the Federal Law № 34-FZ “On Amendments to Part One, Part Two and Article 1124 of Part Three of the Civil Code of the Russian Federation”<sup>1</sup> (hereinafter referred to as Law № 34-FZ), which regulates digital

<sup>1</sup> Federal Law of March 18, 2019 № 34-FZ “On Amendments to Part One, Part Two and Article 1124 of Part Three of the Civil Code of the Russian Federation”. *Sobranie zakonodatelstva Rossiiskoi Federatsii*. 2019. № 12. p. 1224.

rights. Paragraph 1 of Article 141.1 of the Civil Code contains a definition of digital rights, according to which “digital rights are recognized as the mandatory and other rights named as such in the law, the content of the exercise of which is determined in accordance with the rules of an information system that meets the characteristics established by law”. In 2021, Federal Law № 259-FZ “On Digital Financial Assets, Digital Currency and Amendments to Certain Legislative Acts of the Russian Federation”<sup>2</sup> came into force, regulating the legal regime of the use of cryptocurrency, digital financial assets, and the distributed registry technology. Among the legislative acts governing legal relations in the field of civil circulation of digital objects, we should note the Federal Law of August 2, 2019, № 259-FZ “On Attracting Investment through Investment Platforms and on Amendments to Certain Legislative Acts of the Russian Federation”<sup>3</sup> and the Federal Law of July 31, 2020, № 258-FZ “On Experimental Legal Regimes in the Sphere of Digital Innovation in the Russian Federation”<sup>4</sup>.

### 3. The concept of digital rights

At the international level, it is customary to attribute to digital rights the right to Internet access [1, p. 60-65]. This right can be considered fundamental in modern times as citizens not only communicate and conduct business correspondence online but also use electronic government services, exercise their right to vote, take the census, file tax returns, obtain license

registry extracts, pay utility bills, study, do business, and receive hundreds of necessary services without physically going to the organizations and institutions. The COVID-19 pandemic only boosted the processes of the implementation of the virtual format in many forms of interaction between citizens. For example, when all countries declared a lockdown, schools, and universities carried out the educational process remotely, many workers worked in the distance mode, performed their duties using the Internet, and delivery services for food, medication, and other necessary things were widely used. Today, a person who does not have access to the Internet is unable to function as an active citizen participating in the political, economic, educational, entertainment, social, and other spheres of life. In light of this, depriving individuals of access to the Internet means depriving them of their primary constitutional rights, which have moved from offline to the online format in the context of the development of digital technology.

Let us review the definitions of digital rights offered by Russian researchers. V.D. Zorkin argues that digital rights are the rights to Internet access, to the creation and publication of digital works, as well as the right to use electronic devices and the Internet [2]. Some researchers understand digital rights as the universal human rights realized in the digital space – the right to freedom of speech, to reliable information, to the protection of personal information, and other rights [3, p. 227-234; 4, p. 32-59]. E.V. Popov suggests defining digital rights as the principles of governance of the communication environment [5, p. 2773-2788]. This definition of digital rights emerged based on the English-language term digital rights, which in Western Europe and the United States refers to the right to Internet access and the right to create digital works and publish them online and is also used to denote the technological means of copyright protection in the digital environment [6, p. 225-247; 7, p. 253-266]. It must be noted that in most cases, the definitions of digital rights are broad and abstract and cannot be used in legislation regarding the civil circulation of digital objects. T.Ia. Khabrieva and N.N. Chernogor suggest giving a more specific definition of digital rights that could be used in legislation and judicial practice [8, p. 85-105].

<sup>2</sup> Federal Law of July 31, 2020 № 259-FZ “On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation”. *Sobranie zakonodatelstva Rossiiskoi Federatsii*. 2020. № 31 (part I). p. 5018.

<sup>3</sup> Federal Law of August 2, 2019 № 259-FZ “On Attracting Investment through Investment Platforms and on Amendments to Certain Legislative Acts of the Russian Federation”. *Sobranie zakonodatelstva Rossiiskoi Federatsii*, August 5, 2019. № 31 p. 4418.

<sup>4</sup> Federal Law No. 258-FZ of 31.07.2020 “On Experimental Legal Regimes in the Sphere of Digital Innovation in the Russian Federation”. *Sobranie zakonodatelstva Rossiiskoi Federatsii*, August 3, 2020. № 31 (part I) p. 5017.

Some experts speak categorically and suggest that digital rights should not be distinguished into a separate category altogether, as they only differ from other rights (liability, property, exclusive, corporate, and others) in the way they are enshrined [9, p. 14-18; 10, p. 11-15], and the form of certification of the right cannot affect its essence. Following this line of reasoning, we can arrive at a logical conclusion that a new way of fixation does not generate new rights. However, analysis of the market of cryptocurrency demonstrates that bitcoin owners have different economic opportunities than fiat money owners, for example, the right to dispose of bitcoins exists only if they have Internet access and an access key, and the loss of the access key makes it impossible to conduct transactions with bitcoins but does not terminate ownership. As a different example, the right to an account cannot be unambiguously attributed to traditional property rights, because an account is an intangible digital property created as a result of creative activity and used as a means of interaction between citizens on information sites [11, p. 93-101]. The volume of rights, i.e. the measure of possible behavior, is what composes the essence of subjective rights, so the view of digital rights as a way of fixation does not stand up to criticism.

The rights realized in the field of digital circulation require special attention from the point of their civil law assessment. Article 141.1 of the Civil Code of the Russian Federation defines digital rights as binding and other rights, which raises additional questions about what should be understood under other rights in general: all possible rights or only similar binding rights, i.e. relative rather than absolute rights [12, p.104-111]. Legislative consolidation of digital rights as mandatory and other rights is fraught with a potential blending of legal regimes, and the classification of digital rights as a separate type requires distinguishing these rights from property and mandatory rights by qualifying characteristics, which has not been done by legislators. Property rights arise in the turnover of movable and immovable property, mandatory rights arise from obligations, exclusive rights refer to the sphere of intellectual property. Thus, the question arises:

what are digital rights, can it be argued that digital rights arise in the civil turnover of digital objects, what can be attributed to digital objects, and what characteristics do they have?

Digital rights considerably differ from all other known types of rights in the key characteristics: they exist only in digital format on the digital level and have unique features that distinguish them from the known civil rights. Digital rights arise in the cyber-physical space in a digital form and present a software algorithm containing information about a digital object [13, p. 37-41]. Digital rights are ideal but can take the form of codes, special symbols, algorithms, which, in turn, are transferred to tangible media in the form of flash drives, disks, floppy disks, sometimes they are stored in cloud storage. Digital rights can be owned by citizens and legal entities, they are alienable and have a monetary value. A distinctive feature of digital rights, which allows them to be singled out as a separate type, are the conditions and content of their exercise, which are determined in accordance with the rules of high-tech information systems. The turnover of digital objects in information systems takes place without third parties, i.e. there is no system of rights registration and certification [14, p. 188-197]. Thus, a person who owns a digital object has all ownership rights to this object with Internet access and a key in the form of a login and password.

It needs to be stressed that Article 141.1 of the Civil Code of the Russian Federation uses the term “information system”. Meanwhile, distributed registry systems, which are involved in the creation of digital objects and assets in the form of cryptocurrency, are digital systems and digital systems differ significantly different from information systems. The circulation of digital objects can be performed in both types of systems, so it is more justified in relation to digital rights to use a term that combines information and digital systems – high-tech systems.

To form a highly specialized concept of digital rights that could be used in civics and legislation and would be directly related to digital objects, it is necessary to highlight the main characteristics of such objects, as digital objects are not regulated in the novelties of the Civil Code.

#### 4. The concept of digital objects

The development of telecommunication technologies has led to the emergence of electronic forms for some traditional things, such as creative works, which could be digitized or created in electronic form, currencies, which can exist in a cashless form on payment cards, and paperless securities – shares and bonds listed on virtual stock exchanges. Herein, it should be noted that the legal regulation of relations in the sphere of circulation of objects in electronic form, while problematic, was implemented by analogy [15, p. 199-204]. However, digital objects are fundamentally new objects, as they exist in an intangible form and do not need materialization to be involved in civil turnover, unlike other objects that may exist in both the traditional and digital form, such as works posted on the Internet and published on paper [16, p. 38].

Digital objects involved in civil turnover include cryptocurrency, digital accounts, digital goods, platforms, domains, and other objects that have a certain value and are intangible. E.A. Sukhanov notes that the meaning of the definition of objects of civil law is the possibility to perform transactions with them, which entail a civil law result [17, p. 342].

On the one hand, digital objects present a software algorithm, a digital code, on the other hand, this algorithm allows to identify certain digital objects that are involved in civil circulation, such as cryptocurrency, which in some countries is used as a means of payment and as an investment instrument, as tokens, digital financial assets, bonus points, etc. In the Civil Code of the Russian Federation, digital rights have been legalized as binding and other rights, and Paragraph 1 of Article 128 of the Civil Code defines them as objects of civil rights. Objects of civil legal relations include things in property legal relations or actions in binding legal relations according to the dualistic theory, which is the one prevailing [18, p. 330-334]. There exist other approaches to understanding the objects of law, such as the monistic theory of physical and abstract objects. M. M. Agarkov, for example, defines binding legal relations as objectless [19, p. 46]. Although the object of law is defined differently in different legal relations, no researcher

has blended the basic elements constituting civil legal relations – an object is an object, a subject is a subject, and rights and obligations are the content of legal relations, since rights always function as a means and not an object, and an object of law is something with regard to which there is a legal relation. Thus, digital rights cannot act as an object of law, as the rights and objects are different legal categories.

Analyzing the earlier versions of Article 128 of the Civil Code of the Russian Federation defining the notion of objects of civil rights, we note that, according to Article 128 of the Civil Code of the Russian Federation № 51-FZ as amended in 1994, the objects of civil rights are things, securities, monetary units, other property, works, services, information, results of intellectual activity, and intangible assets. This article is referred to as the most successful, although some lawyers express fair criticism, wondering what exactly the legislator refers to by other property and property rights [20, p. 16-30; 21, p. 21-28]. In the next edition of Article 128 of the Russian Civil Code (of 2006, № 231-FZ), the list of the object of civil rights excludes information, as this object was attributed to a different branch – information law. The results of intellectual activity started to be referred to the objects of civil law only if protected, the concept of other property was not specified. Article 128 of the Civil Code of Russia (as amended in 2013, № 142-FZ), accounting for the development of technology, additionally specifies money in a non-cash form and paperless securities as the objects of civil circulation. Moreover, taking into account the opinions of experts, the results of completed work were also attributed to the objects of civil law. The more complete list of the objects of civil law and the consideration of the turnover of paperless money have led some experts to believe this version of Article 128 of the Civil Code to be complete, yet some experts express an opinion that this edition still did not answer the previously stated question on the notions of other property and property rights [22, p. 16-30]. Furthermore, it is noted that the results of work sometimes cannot be attributed to the objects of civil law since they do not have the primary property of an object of law – tradability.

Modern civics lack a universal definition of digital

objects. Some experts have made attempts to define the legal status of these objects considering that they exist exclusively in the virtual form and transactions with them are carried out online [23, p. 100-127]. To give an example, let us review how the right to bonus points emerges. For instance, Citizen N. signs an agreement with Sberbank to have his salary credited to his debit card. After he makes purchases, his account is credited with “Spasibo” bonus points, which in certain cases can serve as a means of payment. Thus, Citizen N. has the right to own, dispose of, and transfer his bonus points, which by their nature are digital objects involved in civil circulation, do not need materialization, and can be disposed of using high-tech systems in virtual space, and the rights that Citizen N. has acquired over this object should be categorized as digital. Specialists in computer technology note that any object can be digitized and digital objects do not have an individually-defined characteristic but are instead represented in the form of digital codes placed in a distributed registry [24, p. 1-17]. The subjects of a digital right can be both individuals and legal entities who can dispose of this right.

Distinguishing the digital objects of law into a separate independent category has become an objective necessity of the participants in social relations wishing to transfer digital objects and dispose of them. Herein, it should be noted that the circulation of digital objects does not require an intermediary or a third party. This specific feature of digital objects is conducive to the limitation of inheritance rights by law. In cases where a person owns, for example, cryptocurrency and does not make a will in the event of their death providing confidential information in the form of passwords, logins, and access codes, potential heirs will not receive the digital inheritance, as third parties do not have this information and cannot provide it, and heirs may not be aware of the full volume of the inheritance. Therefore, we should note another feature of digital objects – they are inherited only by will if the testator provides all the necessary information to own the digital objects in their last will. For example, Citizen S. purchased a security token, which is a digital asset that confirms the ownership of the company’s profits. In the event of

her death, in the absence of a will, the heirs will not be able to use this digital property even if they know that at the time of Citizen S.’s death, she was the owner of a digital asset in the form of a token.

Objects of civil law have several characteristics, among which is the property value of the object, its usefulness. V.A. Lapach also attributes to the main features of the objects of civil rights their discreteness, systemic nature, and legal binding. Discreteness allows separating the object from others, so discreteness in relation to digital objects will mean special rules of registration of the object, for example, a record in a distributed registry [25, p. 56]. The property of systemic nature of the objects of civil law indicates a system of objects and in relation to digital objects, such a system is characterized by the cyber-physical space and immaterial presentation of the object. Systemic nature allows allocating the place of an object in the system, as digital objects can occupy different places in the system depending on the type of object. Finally, the role of an object in the system is distinguished, for instance, cryptocurrency plays the role of a monetary unit [26, p. 40-41]. Legal binding characterizes the legal bond between a subject and the object of civil rights, which allows exercising the rights of possession, disposition, and alienation. In the context of the possession of a digital object, legal binding can refer to verification, identification, and authentication in the information system [27, p. 123].

## **5. Distinguishing features of digital objects**

The main distinguishing feature of digital objects is the binary form of their presentation: a digital object can be viewed as a software algorithm having not only objective but also subjective (procedural) properties, that is, it can generate other digital objects and complete transactions in the digital environment and actions using high-tech systems [28, p. 86-95]. The cost depends on many factors, in the example of a cryptocurrency, there is significant volatility of the value, so it is difficult to determine. One can make various predictions but the real price of a digital asset can only be determined in a specific time [29].

The basic technology enabling the creation of digital objects is the distributed registry technology

(blockchain), which appeared relatively recently, in 2008 [30, p. 234-247]. The essence of this technology is creating a chain of blocks, each block containing information about the performed transaction. The data are confirmed by all participants in the distributed registry. This technology has a high degree of reliability, it cannot be “hacked”, the possibility of transaction forgery is eliminated, and no intermediaries are involved, which increases the level of data protection [31, p. 31-38].

A distributed registry is a structured database that contains information about transactions and, using a predetermined algorithm, updates this information in real-time on all devices of its participants. With this technology, some digital objects, such as bitcoins, lifetcoins, cryptocurrencies in general, as well as tokens and smart contracts, were introduced into civil circulation in the form in which they can be attributed to the objects of law [32].

Some researchers propose a definition of digital financial assets according to which digital assets are a means of payment the right to which is certified by a cryptographic code, a record of which contains a distributed registry [33-35; 36, p.11]. Despite the rather complicated definition, it can be noted that the essential feature of a digital right, which allows the disposal of digital assets, is that it is a software code, an algorithm that secures the rights of the owner of the digital asset. Drawing an analogy, we should consider that even if the digital objects themselves are not only financial assets, nevertheless, digital rights in the narrow sense can only be represented in the form of cryptography.

With the development of innovation, the number of digital objects will increase. At the moment, the main qualitative characteristics of these objects can be considered as the following:

- digital objects are immaterial, in some cases, they cannot be materialized and do not need to;
- digital objects are created by means of modern high-tech systems;
- transactions with digital objects can only be completed in the cyber-physical space;
- the right to inherit some digital objects is limited to intestate succession due to the peculiarities of ownership of these objects;

- digital objects can be disposed of without the involvement of third parties and intermediaries;
- the transaction of digital assets is confidential.

Russian legislation has made the first steps to regulate digital rights in civil legal relations, however, without definition remain the fundamental categories of a digital object, a digital system, and the subjects of digital rights, which significantly complicates practice and creates inconsistencies in legislative norms and their different interpretations.

## 6. Conclusion

As a result of this study, we make the following conclusions and proposals:

1. Digital rights refer to a digital algorithm that enshrines the power of individuals and legal entities to possess, use, and alienate digital objects of civil rights in high-tech systems provided that the technical means allow the owner to exercise their powers.

2. Digital objects are an independent legal category referring to a cryptographic code that enables the owner of a digital object to perform any actions with it – to own, use, alienate, perform transactions, and other actions not prohibited by law.

3. It is advisable to replace the term “information systems” in Article 141.1 of the Civil Code of the Russian Federation with “high-tech systems”, supplement the article, and read as follows: “Digital rights are the compulsory and other rights named as such in the law, the content and conditions of the exercise of which are determined in accordance with the rules of *high-tech* systems that meet the characteristics established by law”.

4. Article 128 of the Civil Code of the Russian Federation is advised to be supplemented and read as follows: “Objects of civil rights include things (including cash money and certificated securities), *digital objects*, other property (including non-cash funds, uncertificated securities, digital rights); results of works and services; protected results of intellectual activity and similar means of individualization (intellectual property); intangible goods.

Thus, the trends of digitalization are progressing and gaining momentum, which means that the digital objects already involved in civil circulation require legal regulation. As innovation

develops, the list of digital objects will grow steadily, and it is critical to regulate the legal relations related to the civil turnover of digital objects at the legislative level. Legal elaboration is especially needed on the issue of the legal inheritance of some categories of digital objects.



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