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## Current state and role of domain names as an object of legal relations

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### Abstract

The article is dedicated to the legal study of domain names. The authors of the article analyzed the scientific literature on the formation of the concept of “domain names”. Theoretical and practical proposals have been formed to improve legislation in the field of the provision of domain names on the Internet information and communication network. General and special scientific methods were used. In addition, the subjects of the legal relationships under study were identified, analyzed exhaustively and, as a contribution to the research, a draft contract for the provision of paid Internet services was proposed, considering the details of the domain names and at the same time identifying the rights and obligations of the parties. In short, judicial practice materials relating to the attribution of domain names, the means of individualization and the Russian domain name market have been studied. Conclusions have been drawn on the need to improve Russian legislation in the field of paid provision of Internet services, namely the provision of domain name services, by amending and adding to existing regulatory legal acts.

**Keywords:** domain name; Internet services; russian domain name market; means of individualization; legal relations.

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## Estado actual y función de los nombres de dominio como objeto de relaciones jurídicas

### Resumen

El artículo está dedicado al estudio jurídico de los nombres de dominio. Los autores del artículo analizaron la literatura científica sobre la formación del concepto de “nombres de dominio”. Se han formado propuestas teóricas y prácticas para mejorar la legislación en el ámbito del suministro de nombres de dominio en la red de información y comunicación de Internet. Se utilizaron métodos científicos generales y especiales. Además, se identificaron los sujetos de las relaciones jurídicas objeto de estudio, se analizaron exhaustivamente y, como aporte de la investigación, se propuso un proyecto de contrato para la prestación de servicios de Internet de pago, considerando los detalles de los nombres de dominio y al mismo tiempo identificando los derechos y obligaciones de las partes. En definitiva, se han estudiado los materiales de la práctica judicial relativos a la atribución de nombres de dominio, a los medios de individualización y al mercado ruso de nombres de dominio. Se han extraído conclusiones sobre la necesidad de mejorar la legislación rusa en el ámbito de la prestación pagada de servicios de Internet, a saber, la prestación de servicios de nombres de dominio, modificando y añadiendo a los actos jurídicos reglamentarios existentes.

**Palabras clave:** nombre de dominio; servicios de Internet; mercado ruso de nombres de dominio; medios de individualización; relaciones jurídicas.

### Introduction

Domain names as a means of addressing on the Internet have become an integral part of human life. Every day we use sites that are hosted on second, third-level domain names. High-quality Internet projects contribute to improving the quality of life, and websites simplify people's lives. At the same time, these sites are the face of the organization, create the image of the company. The domain name is the key to opening the site.

Many studies of this phenomenon had been conducted even before the accession of the Russian Federation to the World Trade Society, where significant changes in domestic legislation had been made even at the stage of preparation for joining the above-mentioned society. There was a need to bring the national legislative array following the provisions of the Agreement Establishing the World Trade Organization and multilateral trade agreements. In particular, Draft No. 323423-4 of the Civil Code of the Russian Federation (2006) contained repeated references to domain

names. They were included in the list of results of intellectual activity and equated means of individualization of legal entities, goods, services, information resources that are provided with legal protection. The draft contained the same chapter 76, which included section 5 “The right to a domain name”, containing 9 articles, however, these articles did not appear in the latest edition.

The sphere of services on the Internet is quite diverse, new types of services are appearing every day. In this regard, the legislative array regulating these legal relations is diverse, the application of a particular regulatory legal act depends on the service offered.

To date, such a phenomenon as a domain name has been investigated fragmentarily, scientific works of the following authors should be noted: S.Yu. Revinova, who reviewed the Russian domain name market, prospects, and development of a domain name (Revinova, 2016); E.I. Gladkaya and S.V. Petrovsky, who studied the legal nature of domain names in the context of legal regulation of Internet services (Gladkaya, 2014; Petrovsky, 2003); E.S. Pakhomova, whose research was devoted to the contract for the provision of domain names (Pakhomova, 2016); N.K. Naroznikov, who considered the contract for the paid provision of Internet services (Naroznikov, 2010).

Also, special attention should be paid to the works of L.B. Sitdikova, who studied the theoretical and practical problems of legal regulation of information and consulting services, the contract for the provision of paid information services (Sitdikova, 2008); I.M. Rassolov, who studied the theoretical problems of providing services on the Internet (Rassolov, 2009); S.A. Sudarikov considered the right of intellectual property in the network (Surikov, 2010).

## **1. Methods**

We were guided by general scientific methods of cognition (analysis and synthesis, generalization, and analogy); special methods of cognition: legal modeling, critical analysis, etc. in the course of the research.

A comparative legal method in the analysis of Russian and foreign legislation was used. In particular, the logical and legal method of legal cognition was used when analyzing and systematizing the available scientific knowledge about the legal regulation of the provision of a domain name in the Russian Federation and abroad. The system-structural method made it possible to identify the legal nature of domain names.

The use of all the above methods allowed analyzing the area under study, identifying existing shortcomings in legal regulation. The method of

legal modeling allowed formulating of theoretical and practical proposals for improving legislation.

## 2. Results

We believe that a national domain name system should be created that duplicates the list of domains and numbers of autonomous systems that are delegated to Russian users. It is assumed that the above measures will help to protect the Russian segment of the Internet from external threats.

It is advisable to recognize the domain registration as a condition for the emergence of the exclusive right to a domain name, as well as to provide for two types of agreements: on alienation of the exclusive right to a domain name and a license agreement on granting the right to use a domain name.

Domain names should be recognized as a means of individualization in the information and communication network of the Internet to improve the legislation.

The registration of a domain name is recognized as “the conclusion of an urgent consensual civil contract for the provision of paid services between the organization for the distribution of domain names and the potential owner of the domain name” after the registration of information about the domain name and inclusion in a single database. The proposed wording allows attributing this type of contract to a contract for the paid provision of Internet services.

It is necessary to further develop the Russian domain space, attract both individuals and legal entities to this market — Russian and foreign international companies to maintain the country’s competitiveness. At the same time, such an expansion of the domain market indicates the need for control by the state and independent organizations, therefore, it is also necessary to create a legal framework regulating the provision of domain name services.

The terms of the contract for the provision of paid services that meet the modern realities of the studied sphere of relations have been put forward, namely, standard rights and obligations of the parties under the Internet services agreement, considering the specifics of domain names, have been proposed:

Obligations of the contractor:

- provision of the service requested by the customer/consumer in the time and the manner stipulated by the contract.
- providing the necessary and reliable information about the service provided.

- warning the customer/consumer about cases when the latter's requirements may violate the law.
- the direction of the result that meets the established requirements.
- elimination of deficiencies (in case of their detection) in a reasonable time.

Contractor's rights:

- the right to demand the provision of a certain amount of information with an indication of the list and the purpose of the processing.
- refusal to perform the contract if the customer does not fulfill its obligations.
- the right to demand remuneration for the services rendered by him/her.
- Obligations of the customer/consumer:
  - provision of all necessary and reliable information.
  - provision of the request to the extent required for its execution.
  - acceptance of the result of the Internet service within the time and in the manner provided for in the contract; inform when deficiencies are detected, setting a reasonable time for their elimination.
  - assistance in the execution of the contract.
  - payment to the customer for the Internet services provided.
- Rights of the customer/consumer:
  - obtaining reliable and complete information about the services provided.
  - the requirement to eliminate the detected deficiencies in the manner and terms specified in the agreement.
  - unilateral refusal to perform the contract: if the contractor has not committed to work within the terms specified in the agreement; delay in the performance of obligations unless otherwise provided for in the contract.

### **3. Discussion**

The legal status of domain names in the national legislation, to date, has not yet been determined, but there is a close relationship with the rights to trademarks and trade names since they perform a similar function, which

makes it possible to consider them as a means of individualization of an information resource.

In this regard, “unauthorized use of the mark in the information and communication network-Internet, in particular in the name of the domain” was recognized as a violation of the rights of the owner of the trademark in the text of the draft law “On Trademarks, Service Marks and Appellations of Origin of Goods”, however, this amendment did not appear in the final version of the Law of the Russian Federation of September 23, 1992, N 3520-1 “On Trademarks, Service Marks and Appellations of Origin of Goods” (hereinafter– the Law “On Trademarks ...”).

Therefore, today there are no legal grounds to classify a domain name as a means of individualization, and disputes on this issue do not subside in the courts. The court’s approach in the case “commpromat.ru” versus “anticompromat.ru” is noteworthy, where the court considered that the domain name of the former was transformed into a means of individualizing the site on the network. Based on this, the court considered it necessary to prohibit the defendant “anticompromat.ru” from using the specified domain name (Resolution of the Federal Antimonopoly Service of the Moscow District of March 26, 2009, N KG-A40/964-09 in case N A40-44359/07-93-440).

The Moscow Arbitration Court has an opposite point of view, and it indicated the following in confirmation of the impossibility of violating the rights to a domain name: “A domain name is neither a means of individualization, nor is it an object of copyright, it is a” telephone number “on the network, and the very concept of “the right to address” is absent in the legislation” (Decision of the Moscow Arbitration Court of June 10, 2011, in case No. A40-136893/10 (6-1133)). The Intellectual Property Rights Court explained that the main function of a domain name is to convert IP, represented in the form of numbers, into a domain name to facilitate the search and identification of the owner of an information resource, and is like a trademark.

The court also decided that the domain name is fully covered by the Law “On Trademarks...”, which gives the exclusive right to use, dispose of and prohibit the use of the domain name to other persons. (Resolution of the Intellectual Property Rights Court of October 30, 2013, N C01-155/2013 in the case N A40-12151/2013). In our opinion, the court’s position is fair and corresponds to modern trends.

The mention of sites with the corresponding names in the bylaws of certain public authorities is a confirmation, for example, the Order “On commissioning the official website of the Investigative Committee under the Prosecutor’s Office of the Russian Federation on the Internet”, as well as the Federal Law “On Non-State Pension Funds” of May 7, 1998, N 75-FL,

the Federal Law “On Investment Funds” of November 29, 2001, N 8-FL, which states that the fund is obliged to have a website in the information and communication network, including a domain name that belongs to the foundation.

In addition, Article 1484 of the Civil Code of the Russian Federation specifies a domain name in the context of ways to exercise the exclusive right to a trademark (Civil Code of the Russian Federation (Part four) of December 18, 2006, No. 230 – FL).

Considering such a phenomenon as a domain name, fixed in the Federal Law “On Information, Information Technologies and Information Protection” of July 27, 2006, N 149-FL as: “a symbol designation intended for addressing sites on the network to provide access to the information posted on the Internet”.

However, the legislative consolidation of the concept of a domain did not allow the discussions around it to subside. I.M. Rassolov defines a domain name as “a unique symbolic name intended for navigation in cyberspace and identification of an information resource on the network” (Rassolov, 2009). V.B. Naumov defines a domain name as “a special object of law, the use of which is provided within the DNS system, performing the function of individualization on the Internet and having a high defense capability” (Naumov, 2009).

S.A. Sudarikov believes that this is “a part of the network address of a site or resource in the network belonging to a second or third level domain” (Sudarikov, 2010). a domain name is understood in this work as a full domain name, which includes all domains of higher levels, where the “domain” term should be considered the lower level, and “domain zone” – the upper level. The above levels have different technical content; however, they do not need to be distinguished from a legal point of view.

The early version of the draft of Part four of the Civil Code of the Russian Federation (Draft No. 323423-4 of the Civil Code of the Russian Federation (Part four), 2006) contained repeated references to domain names, they were included in the list of results of intellectual activity and equated means of individualization of legal entities, goods, services, information resources that were provided with legal protection.

The specified project contained the eponymous chapter 76, which included section 5 “The right to a domain name”, containing 9 articles. The condition for the emergence of an exclusive right was the registration of a domain; two types of agreements were also envisaged: on the alienation of the exclusive right to a domain name, and a license agreement on the granting of the right to use a domain name.



The draft also provided grounds for challenging the provision of legal protection to a domain name, unfair competition. The issues of termination of the exclusive right to a domain name, the terms of its validity were considered, in addition, it was envisaged that in the event of continuous non-use of a domain name for 2 years, legal protection could be terminated ahead of schedule by a court.

This provision brought domain names closer to trademarks. the adoption of the considered draft law could solve many problems, contribute to the development of national legislation in this area. However, the bill adopted by the State Duma of the Federal Assembly in the first reading was subsequently amended: the provisions on domain names were excluded.

In many ways, the legislator rejected the proposed draft law in connection with the report of the Working Group on Accession to the WTO, which included the position that domain names are not considered as intellectual property in the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, or by virtue of other agreements on intellectual property (Clause 1252 of the Report of the Working Group on the Accession of the Russian Federation to the World Trade Organization (November 16 – 17, 2011)). A certain role is also played by the “The Internet Corporation for Assigned Names and Numbers”, created with the support of the United States in 1998, and controlled by it (Starodumova, Sitdikova, 2020).

The registration of first-level RU and PΦ domain names is carried out by an autonomous non-profit organization “Coordination Center for TLD RU”. The registration of second-level domain names by providers is carried out only if they are accredited by the above-mentioned center, it provides services for organizing the functioning of the network domain, is engaged in the expansion of the use of the information and communication network in Russia in the interests of the state (Charter of the ANO “Coordination Center for TLD RU”, n.d.). The RU and PΦ domains play a special role in the Russian Federation, the latter acts as an internationalized domain name (IDN).

The use of the Cyrillic alphabet in it is a distinctive feature. The appearance of the RU Domain in 1994 marked a new stage in the development of information and communication technologies in Russia, and D.A. Medvedev, being president, approved the initiative to create a domain name – PΦ in June 2008. The following sites were launched on this platform in 2010: <http://government.ru/> and <http://kremlin.ru/> .

Another step was the creation and development of the Russian Internet space “Runet”, which received its name from the RU domain. It should also be noted that the SU and newgTLD domains belong to the national zones, where the USSR acts as the first, its management is carried out by the

Coordination Center, about 119 thousand are registered under this domain, which is comparable to the national domains of Kazakhstan, Latvia, Estonia (Revinova, 2016). Of the new TLDs, the most popular today are Москва and Moscow.

The appearance of each domain name is associated with the registration process arising from civil contractual relations. According to E.I. Gladkaya, registration of a domain name is “the conclusion of an urgent consensual civil law contract for the provision of services between the organization for the distribution of domain names and the potential owner of the domain name” after registration, information about the domain name falls into a single database (Gladkaya, 2014).

Indeed, the scholar’s description of the contractual relations between the parties is logical, since it allows talking about this contract as a paid provision of Internet services. The regulatory legal framework recognized to regulate these legal relations is represented by a large number of sources, depending on the specifics of the services provided. Thus, the Constitution of the Russian Federation contains the fundamental rules, which are contained in Articles 8 and 74, guaranteeing the free movement of goods, services, and financial resources, freedom of economic activity (Tchinaryan et al., 2021; Ryzhik et al., 2020).

Chapter 39 of the Civil Code of the Russian Federation contains a general statute on the provision of paid services, paragraph 2 of Article 779 indicates the application of this chapter to information services, and as is known, Internet services are a type of information. Also, there is a reference to the following in Article 783 of the Civil Code of the Russian Federation (Civil Code of the Russian Federation (part two) No.51-FL dated November 30, 1994): the general provisions on the work and labor contract (Articles 702-729) shall apply to the contract for the repayable rendering services unless this runs counter the specific subject of the contract for the repayable rendering of services (Neznamova et al., 2020).

The provisions of Chapter 39 of the Civil Code of the Russian Federation, dedicated to the regulation of the contract for the paid provision of Internet services, apply to contracts for the provision of information services, the structure of which includes the first. N.K. Naroznikov in his study directly refers to these relations for the provision of Internet services – a contract for the provision of information services using the Internet, which is not a contradiction but rather reveals the essence of the relations under investigation (Naroznikov, 2010).

Also, Internet services include the following in the Tax Code of the Russian Federation, namely in Article 174.2 (the Tax Code of the Russian Federation (part two) of August 5, 2000, N 117-FL): the provision of domain names, the provision of hosting services. Domain names are also included

in the classification of Internet services by E.P. Pakhomov: “hosting service and providing a domain name to the customer” (Pakhomova, 2016: 225).

Considering the contract as a means of legal regulation of Internet services, the contract model proposed by the legislator of Chapter 39 of the Civil Code of the Russian Federation (Civil Code of the Russian Federation (Part two) of November 30, 1994, No. 51-FL) contains only general provisions of the norms, the content of which is insufficient for regulating the paid provision of Internet services due to several features:

- the subject composition of the participating persons: it is not always possible to find out with which person, natural or legal, the relationship takes place, whether the counterparty also has the legal capacity, whether he/she is authorized to conclude such transactions because there is a risk of recognizing the transaction as null and void.
- the lack of the possibility of identifying the subjects of legal relations, which prevents the proof of contractual obligations between them, entailing the impossibility of applying liability measures in case of non-fulfillment or improper fulfillment of obligations.
- the customer is not always allowed to verify whether the contractor is authorized to provide the services in question, there is no possibility of bringing the culprit to justice in case of violation of the rights of third parties.
- there is a practice when a certain program acts as a contractor, the customer sends a request to the database and the program gives out certain information corresponding to the request.
- often there is no possibility of quickly changing the terms of the contract, the ability to agree on it, since several Internet services are characterized by an instantaneous direction of the result, and therefore it is necessary to apply again to eliminate shortcomings.

In addition to the above, the very nature of the service provided in the contract for the provision of Internet services is also endowed with specifics. According to N.K. Naroznikov, it is advisable to determine the condition of Internet service quality as a guarantee of its expected result, quality should be recognized in connection with this essential condition of the contract (Naroznikov, 2010). The question of the contractor’s responsibility for quality should be considered separately in each case.

There is an opinion that the contractor, even in cases where the result is of proper quality, should be responsible for the customer’s failure to achieve the desired effect, which he/she assumed when concluding the contract (Starodumova et al., 2018).

Therewith, the circumstances that the information is mobile are not considered: the information may lose its relevance and reliability from the beginning of receiving the request and by the time of receiving the service. It is advisable to pay special attention to the terms of the service provided since untimely receipt of information in today's ultra-fast realities can lead to several negative consequences. Oblige the contractor to notify about the time of the processed information in cases when the request is processed by the program.

Based on the provisions of Chapter 39 of the Civil Code of the Russian Federation and the specifics of Internet services, it is advisable to include the following in the duties of the contractor: provision of the service requested by the customer in the time and the manner stipulated by the contract; sending the result that meets the established requirements; elimination of deficiencies in the time, in case of detection, to provide full information.

In turn, the contractor has the right to demand remuneration for the services rendered by him/her; to demand the provision of a certain amount of information indicating the list and purpose of processing, to refuse to fulfill the contract if the customer does not fulfill his/her duties.

The rights and obligations of the latter should naturally include: to provide a request to the extent required for its execution; to accept the result of the Internet service in the time and manner provided for in the contract; to report when deficiencies are detected, setting a reasonable time for their elimination; to facilitate the execution of the contract; to pay the customer for the Internet services provided.

The contract for the paid provision of Internet services is terminated with the end of the fulfillment of its obligations by the parties based on Article 425 of the Civil Code of the Russian Federation, and the agreement of the parties is recognized as the basis for the change as a rule. Article 450 of the Civil Code of the Russian Federation (Civil Code of the Russian Federation (part one) of November 30, 1994, No. 51-FL) regulates the procedure for unilateral refusal to perform the contract. In our opinion, taking into account the peculiarity of the services under consideration it is also advisable to include the following in the list: unilateral refusal, if the contractor did not start working within the terms specified in the agreement, as well as delays in fulfilling obligations; if the detected shortcomings were not eliminated in the order and terms specified in the agreement and if the parties did not provide for the number of penalties or fines for non-compliance with obligations. In addition to the services, registration is often performed by hosting providers.

Formed provisions of the agreement of L.B. Sitdikova and S.V. Petrovsky on the provision of paid Internet services can fully apply to domain names, there are no contradictions between these provisions and the Rules for

registering domain names, (Rules for registering domain names in RU and PΦ domains (approved by the decision of the Coordination Center for TLD RU from October 5, 2011, N 2011-18/81)), moreover, they are similar (Sitdikova, 2008; Petrovsky, 2003). Thus, for example:

- the user is obliged to provide the registrar with reliable information to the extent and following the procedure established by the Rules and the contract, to notify about changes in the provided information promptly.
- the registration period is one year; it is possible to extend an unlimited number of times after the expiration of the period.
- a citizen of any country can register a RU and PΦ domain.
- the registrar has the right to suspend the maintenance of the domain, in case of specifying false data.
- the right to apply for the renewal of the domain name registration is reserved for the previous owner 30 days after the end of the registration period.
- the domain is canceled in cases when the registration is not renewed, and in the future, it can be registered by another user.

After reviewing the Rules, the document protects the interests of both parties, which is not enough in hosting services, and what the derived provisions of the paid provision of Internet services serve. As for the parties when registering domain names, they are called the registrar and the user, we also refer to the donor registrar, the recipient registrar, and the administrator. Where the registrar is a legal entity accredited by the Coordinator for the registration of domain names in domains .RU and/or .PΦ; the donor registrar is a registrar who transfers support for domain name information to the recipient registrar; the recipient registrar is a registrar who accepts support for domain name information from the donor registrar; a user is a person who orders or uses services related to domain name registration; the administrator is a user in whose name the domain name is registered in the Registry.

However, the usual terms are more common in Russian civil turnover in practice: the customer and the contractor, which is not a violation but refers to a standard contract for the provision of paid services. Moreover, the participants of these relations offer their sample contracts, so CJSC “Regional Network Information Center” within the framework of the “parking” or “domain parking” service, according to which the client provides domain names to the company for temporary use for advertising purposes, offered a sample contract, according to which the company undertakes to: accept the client’s Internet resource (domain name) for advertising and information belonging to third parties; consult on all issues

of interest to the client who transferred his/her resource; notify about all changes in the work of the site, including possible interruptions; comply with all rules established by law; timely pay income payment.

This approach of the participants in the studied legal relations is commendable, but it should be considered that insufficient legislative regulation can contribute to permissiveness and violation of the rights of individuals.

### **Conclusion**

To date, the existing legislative array does not contain the legal qualification of domain names, does not fully regulate the relations on registration and use of a domain name, although they were contained in the early version of part four of the Civil Code. At the same time, the Government of our state has been paying great attention to the development and use of the information and communication space in recent years.

The Institute for the Development of the Internet began to function in 2015. The state policy has a positive impact on the development of the domain market, which corresponds to global trends, at the same time, it allows talking about the need for control. The adoption of the statute on the paid provision of Internet services would regulate the activities of stakeholders in this field, in particular the activities of e-Commerce, having at the present stage, the demand of most of the population; to create legal protection for contractors and consumers.

Due to the dynamism of the legal relations under study, the legislator practically cannot quickly respond to the rapidly emerging types of services on the network and when omissions are detected about a particular use of Internet resources. However, recently there has been an increase in control over the Internet space in the Russian Federation, in connection with which international experts have classified Russia as a state with a “partially free Internet”. information resources that are antisocial and anti-state in nature are blocked to a greater extent, thus the state complies with national legislation, protects minors from “dangerous” information for them, prevents the formation of illegal behavior among the population.

Also considering the legal regulation of the paid provision of Internet services, in particular the services of providing a domain name, it is necessary to emphasize that they often go beyond the limits of national regulation. With the accession of the Russian Federation to the World Trade Organization, it became necessary to bring the national legislative array following the provisions of the Agreement Establishing the World Trade Organization and multilateral trade agreements. To date, there is no

Federal law regulating the position of domain names in Russian legislation and Internet services in general.

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