



Legal Regulation of E-commerce

Inna Leonidovna Burova¹, Maria Sergeevna Lavrentieva², Renata Romanovna Lenkovskaya,² Vitalij Anatolevich Malcev³, Georgij Nikolaevich Kuleshov²

¹The bar Association of Moscow "Lebedeva, Burova and partners", Moskvoretskaya embankment, 7/1, Moscow, Russian Federation, 109240

²Russian State Social University (RSSU), Wilhelm Pieck street, 4/1, Moscow, Russian Federation, 129226

³Academy of Labor and Social Relations, Lobachevsky street, 90, Moscow, Russian Federation, 117454

Abstract

This article analyzes the current state of electronic commerce in Russian Federation and highlights good foreign practices in this area. The conceptual framework and Internet transactions are also assessed. The terminological imprecisions and adoption of foreign law definitions and principles of transactions are revealed. Amendments and additions to the Russian e-commerce legislation are proposed.

Keywords: *electronic commerce (e-commerce), wholesale, entrepreneurship, economic activity, electronic payment (e-payment).*

1. Introduction

1.1 Introduction of the Problem

The e-commerce is an ambiguous term for the Russian legislation as it is defined by foreign legislation analogy or international instruments. The e-commerce has advanced only because of advent of the Internet. The combined development of the Internet market, web design technology and computer science has resulted in new generation of commerce - electronic commerce (e-commerce).

1.2 Importance of the Problem

The e-commerce is reviewed by both civil law researchers [1-4] and economists [5, 6] from different perspectives. Authors deal with the legal issues of e-commerce as an entrepreneurship in the Internet [7-11], on international platforms [12, 13].

2. Methods

The Method section describes in a set of general scientific and private law methods was used as the methodological foundation for this article, including historical, formal legal, comparative legal, sociological methods, etc. The main methods used in this work were systematic and structural methods that allowed to reveal the legal nature of e-commerce.

The combination of historical and comparative legal methods were applied to reveal the specific features of historical influence on e-commerce development in general and on the Internet wholesale transactions in particular.

The formal legal method was applied to review the legal provisions of e-commerce transactions.

The sociological method helped to substantiate the conclusions, suggestions and recommendations aimed to update the civil e-commerce legislation.

The systematic and structural method was applied to analyse the specific features of e-commerce transactions.

3. Results

This research revealed that it is difficult to determine what the term "e-commerce" means in the Russian legislation, as there is also a similar term "electronic trading" and there are different opinions on the correlation between these two terms.

The article states, that it is vital to introduce new legislation on concluding contracts on the Internet through performance of the required actions, such as click wrap agreement or browse-wrap agreement as well as clearly defining the terms "product" and "electronic trading" in the context of online transactions.

The article also stresses the importance of the enactment of the Federal law on the electronic trade rules that would define the requirements for the potential traders and traders' activities, types of transactions, guarantees and mechanism and means of protection.

It is also stated that at the moment the legislation does not regulates the procedures of transferring, receiving and storing of electronic trading documents adequately.

4. Discussion

Paragraph 2 of article 2 of the Federal Law of 28 December 2007, No 381-FZ "On foundations of state regulation of trading activities in the Russian Federation" defines the term "wholesale" as a type of trading when goods are purchased for entrepreneurship goals, such as resale, or for other goals unrelated to personal, family, home or other similar use. Wholesale relates to entrepreneurship of legal and natural persons that involves the acquisition and sale of goods. The payment could be made in cash or through a non-cash transfer.

As noted by E.S. Holin, wholesale and retail trade are to be distinguished with the help of the Russian Classification of Economic Activities, Goods and Services (OK 004-93), adopted by the de-

cree of National Standard Agency (Gosstandart) of 6 August 1993, No 17 [6]. Under the said Classification wholesale covers activities concerning the sale of goods to retailers, industrial, commercial, institutional or professional users or other wholesalers. On the other hand, however, as it is pointed out by Zvereva A.O and Ivanov G.G., retail trade involves activities concerning the sale of goods for personal or household consumption (letter of the Russian Gosstandart of 8 November 1995, No 17-1-17/1947 "On classification in retail or wholesale businesses") [5].

The Russian legislation clearly distinguishes the retail trade from supply contract (wholesale). In particular, retail trade is possible only with natural persons who buy the goods for final consumption; supply contract applies in case of intermediate consumption, i.e. entrepreneurial processes such as production.

There is a pluralism of opinion in legal literature on electronic trading. Some believe that electronic trading is a domestic trade subsystem and special type of trading. In the first case electronic trading is understood as a set of commercial organizations whose core business and professional activities involve retail and wholesale electronic trade. As a term of commercial law electronic trading means multifunctional professional operations which form trade flows, expand and exploit the new markets, establish international or regional contractual relations for supply, stocks, etc [1]. Others suggest equating the terms "electronic trading" and "e-commerce". This opinion is based on the fact that the term "electronic trading" is used in the Russian law as a translation of the term "electronic commerce". Which, for example, is understood by World Trade Organization as the production, distribution, marketing, sale or delivery of goods and services by electronic means [4, 7].

Still others believe that the term "e-commerce" includes the term "electronic trading". They think that "e-commerce" means a set of absolutely every (not only trading) transactions realized between entrepreneurs and all their counterparts through information technologies [9].

Certain experts analyse the correlations between the terms "electronic trading", "entrepreneurship" and "economic activity" and come to the conclusion that electronic trading is not a type of economic activity, because electronic trading consists of relations that involves different types of economic activity including entrepreneurship. The only difference is believed to be the specific form of electronic documents used in relevant economic activity [8]

The development of trade activities via the Internet caused the spread of a new form of the Internet contract - the performance of the required or certain act on the Internet: click wrap agreement (agreement by clicking) or browse-wrap agreement (agreement by simply using the website).

The Russian legislation does not regulate the click wrap and browse-wrap agreements. It means, according to Rudenko E.U. and Usenko A.S., the general provisions of contract law are applicable in this regard [2].

In the opinion of A.I. Savelyev, click wrap agreement is an agreement that requires the Party to click an "I agree" button under the text of such agreement [3]. We think that the clicking an "agree" button constitute acceptance. As this type of agreement is becoming more common, it has to be enshrined in law.

At the same time in case of browse-wrap agreement you give your assent by entering the website. This agreement means that the information must be used in a certain way. Browse-wrap agreement is a means of protection for website's owner. For example, eBay user agreement includes information that website is not a party to a contract between a seller and a buyer and is not a bidder. This website serves solely for sharing the information about sales, purchases and goods available.

The intensive development of e-commerce requires specific legal regulation to enhance the protection of parties' rights, as this sphere of activity has negative factors [14].

In the authors' view e-commerce has several specific features: extraterritoriality of the Internet, absence of intermediary in e-commerce and anonymity [15]. These factors provide opportunities for tax evasion and reduce the effectiveness of taxation that result in reduce of revenue. The lack of intermediary is a serious taxation problem, because goods (books, films, music, etc) can be distributed in the digital environment in unlimited numbers, thereby facilitating customs duty evasion, and as there no intermediary their taxes would not be paid in the State budget. In addition to the above-noted we want to mention the non-monetary, quality influence on effectiveness of companies. For example, the influence of e-commerce development on effectiveness of such spheres of the economy, as tourism, hotel industry and service sector in general, because in many ways the effectiveness of these companies concerns the Internet and affects the management of companies [16]. When speaking about e-commerce influence on economic and legal relations in general, it is impossible not to mention the education sector, as this sector largely determines environment, parties and intensity of resource use [17, 18].

For example, downloading software on the foreign website by ordinary users is not taxable, as these subjects are not tax agents according to article 24 of Tax Code of the Russian Federation (NK RF). If the software is downloaded by legal persons or individual entrepreneurs that has to be tax agents, it is almost impossible to reveal the fact of such agreement (for example, land transactions on the Internet), most of which are anonymous [19, 20, 21]. Such transactions are not regulated by customs legislation, because there is no material object that has been transported across customs boundaries of the Russian Federation.

The e-commerce anonymity is based on certain factors: the essential characteristics of transaction is hidden from a third party, including tax authorities, information about initiator of a transaction is hidden from a third party and sellers, anonymity is provided by technical facilities that can be assessed by evaluators [22].

The e-commerce issues have been properly addressed in the research of Rudenko E.U. and Usenko A.S. They proposed the following legislative reforms:

1. To draft the Federal law on the electronic trade rules that would define the requirements for the potential traders and traders' activities, types of transactions, guarantees and mechanism and means of protection.
2. To enshrine in law the terms "product" and "electronic trading", internet agreement and website user rules [2].

Thus, these measures could help to bring up the Russian trade model closer to the international standards and provide better perspectives for entrepreneurship.

The problem of defining criteria for quality assessment of electronic payment resources is also an urgent problem nowadays. The Federal law of 27 June 2011, No 161-FZ "On national payment system" is the first statutory act regulating the electronic payment. Currently electronic payments are drawing the close attention of law enforcement agencies [23]. Some recent amendments to the Federal law of 27 June 2011, No 161-FZ "On national payment system" concern the electronic payment. There are other statutory acts governing the electronic payment procedure as well.

The identification of natural persons who transfer money in the amount of up to 600 000 rubles currently remains a major challenge. Three methods of identification are widely used: confirmation of person's identity by providing their National passport at a bank branch; registration on the website of credit institution by providing mobile number and personal information; creation of an account on the portal of public services with further authorization with an electronic signature [10].

Effective tax policy and legislation contribute to the development of e-business in the country. The State is actively engaged in making businesses to leave the shadow economy [24, 25, 26]. For example, the Consumer Protection Act was amended to enshrine the forms and procedure of payment for goods and services. According to this amendment, all retail and service enterprises whose annual turnover exceeds 60 millions rubles have to give the cus-

tomers the option to pay by credit cards. The Central Bank of the Russian Federation has established the cash payment rules for the companies and has imposed a limit for this purpose - no more than 100 000 rubles. The Federal law "On national payment system" was also amended to improve the reliability and accessibility of relevant services [27, 28].

While reviewing electronic commerce, it is necessary to mention that the specific nature of the Internet hinders the document circulation.

A lack of legal safeguards providing the legitimacy and validity of a virtual transaction in e-commerce is another challenge. The e-trading parties are often obliged to provide the hard copies of documents concerning the Internet transaction which in many cases is impossible. Moreover, it is required by law and business practices that all paper-based documents should be certified by handwritten signature of the parties (for example, Invoice Record Book for VAT-calculations). The specific requirements on electronic workflow in e-commerce are not defined.

According to I.A. Sobol, the legislation does not regulate the procedures of transferring, receiving and storing of electronic documents adequately. The researcher believes that it is necessary to determine the criteria of the reliability for electronic documents, and these criteria should to be even stricter than the ones used for the documents in paper form [11].

The replacement of paper documents with electronic alternatives has several positive effects that help to save money and time and reduce the risk of fraud that is common in case of handing over original document to another person.

At present the non-paper transaction procedure is practiced only on several closed or limited networks and in limited spheres of activity. The implementation of electronic documents is a positive trend. The international law recognition of this trend will accelerate this process and make it possible to sell services on international market more efficiently and more cost-effectively [12]. Clearly, the Internet is gradually and steadily becoming more appealing to people who are ready to use it as a platform for their transactions.

Growing number of international transactions reflects the trend towards globalization. New technical solutions have certainly contributed to an increase of cross-border commercial contacts. This specific kind of economic relations should be motivated to spread through legal measures. R.V. Zheleznov believes that "international aspects of legislation manifest first and foremost in the fact that national legislation adopts foreign experience in regulation of similar relations" [12].

The United States of America is the first and number one country in legal regulation of electronic trading. Taking into account the special features of the U.S. law-making process, we should note that their e-trading legislation has been developing integrally: at the federal and state levels. The first act on digital signature was drafted in Utah in 1995. At present not all states enacted the relevant comprehensive legal instruments: some states limited themselves to issuing the brief directives simply authorizing the electronic signature [13].

Both the Federal Trade Commission (FTC) and the Census Bureau of the U.S. Department of Commerce have authority for e-commerce regulation. The U.S. law govern some of the e-commerce issues, such as commercial e-mails, advertisement of goods selling through the Internet, security and confidentiality of electronic transactions. The legislation of the United States of America greatly facilitates the use of electronic signatures which in turn contributes to growth of business conducted through the Internet. The parties' actions in e-business are more predictable and controllable now. Electronic transactions using digital signatures are now considered to be as legitimate as paper-based transactions.

Directive No 2000/31/EC of the European Parliament and of the Council of 8 June 2000 (Directive on electronic commerce) has enshrined legal aspects of regulation of services on the Internet, including electronic commerce, with particular reference to the

transactions within the E.U. countries. The objective of this Directive is to create a legal framework to ensure the free movement of internet services and to provide the legal certainty for all subjects of relations. It also stipulates the transparency requirements for the Internet-providers, requirements for the use of commercial communications and for contracts concluded by electronic means and the limitation of liability of intermediary service providers. In addition to the Directive mentioned above, there is also a number of other E.U. Directives (for example, NoNo 2000/31/EC45, 2006/123/EC46 and /83/EC47) safeguarding the consumer rights on the Internet. Directive No 99/93/EC enshrines legal framework for electronic signatures that in turn facilitates the legal recognition (2016). The electronic signature has two functions:

- 1) confirmation of the identity of a person signing electronically;
- 2) data protection from unlawful intrusion through personalised e-mails.

Under this Directive electronic signature is defined as data in electronic form which is attached to or logically associated with other data in electronic form and which is used for authentication. Only a natural person has a right to use electronic signature to sign the documents [12].

5. Conclusion

Successful example of the legislation of the United States of America indicates that the effective management of e-trading processes on both national and international levels is essential. The term "electronic signature" is of particular interest.

At present it is required by the Russian law and business practices that all paper-based documents should be certified by handwritten signatures of the parties. The specific requirements on electronic workflow and data in e-commerce are not legally defined. The new approach to the problem would be helpful for the legal regulation, security and reliability of subjects of legal relations. It also would help the Russian trading model to adapt to international standards which should lead to a new level of business operations.

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