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The Legislative Support of Circulation and Processing of Personal Data in the Social Networks in Ukraine: Current State and the Prospects of Development

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Проанализировано современное состояние законодательного обеспечения оборота и обработки персональных данных в социальных сетях в Украине. Показано, что для обеспечения безопасности оборота и обработки персональных данных в социальных сетях необходимо пересмотреть понятие «база персональных данных», закрепленное в Законе Украины «О защите персональных данных», а также законодательно отделить процесс обработки от процесса оборота персональных данных. На основании анализа эволюции социальных сетей от баз открытых персональных данных к базам смешанных персональных данных, установлено отсутствие в последних процедуры информирования третьих лиц об особых условиях согласия субъекта персональных данных, предоставленных владельцу персональных данных на оборот и обработку отдельных блоков его данных. Для предупреждения реальной угрозы неправомерного оборота и обработки персональных данных из-за отсутствия процедуры информирования третьих лиц о согласии субъекта персональных данных предложено изложить в новой редакции часть 1 статьи 16 Закона Украины «О защите персональных данных».
Ключевые слова: база открытых персональных данных, база персональных данных, база смешанных персональных данных, законодательство, информирование третьих лиц, неприкосновенность частной жизни, оборот персональных данных, обработка персональных данных, общедоступная база персональных данных, персональные данные, социальная сеть, третье лицо.

Problem statement

The Law of Ukraine "On the basic principles of the development of the Information Society in Ukraine in 2007-2015" [1] and a number of other legal acts identified the need to build and develop an information society in Ukraine, which is inextricably linked with the penetration of the modern information and communication technologies (ICT) into all spheres of social life.

By the end of 2013 according to various experts the number of users of the global information system of the Internet was about 40 percent of the world population, which is approximately equal to 2.8 billion people. The development of ICT and their penetration into social life has been subject to research by numerous scientists and managers worldwide for many years.

It should be noted that in November 2010 the European Commission approved a document developed by the specialists in the field of circulation and processing of personal data under the title "An integrated approach to the protection of personal data in the European Union – EU Communications". On the first page of this document it is indicated that rapid technological change and globalization has largely changed the world around us and brought new challenges to the protection of personal data [2].

The most interesting result of the development and penetration of ICT into social life, in the security context of circulation and processing of personal data, in our opinion, is the creation of social networking websites. On their first stages social networks gathered hundreds and sometimes thousands of users, however, globalization has not passed by this sphere and by the beginning of 2014 one can distinguish several leaders that circulate and process the personal data of over a hundred million and sometimes of more than 1 billion users [3]. Thus, international social networking websites can be considered the largest bases of personal data.

The rapid development of ICT and the popularity of social networks has motivated the European Network and Information Security Agency (ENISA) to study the impact of social networks on the protection of personal data of their users, the results of which were published in the monograph by B. Price, M. Petkovic, S. Spiekermann, D. Wright, I. Brown, P. Dickman, M. Friedewald and M. Langheinrich entitled "To Log or Not To Log – Risks and Benefits of Emerging Life-Logging Applications" under the general editorship of B. Daskala. It should be noted that employees of ENISA use the concept «life-logging» (event log of life), which has evolved from postal correspondence, personal photo albums, memoirs, etc. to social networks [4].

Thus, the present state, the spread and globalization of ICT has challenged scientists and legislators to develop a new and effective mechanism to ensure the privacy of the person in the context of circulation and processing of personal data in social networks in conditions of construction and existence of the information society.

The purpose of this study is to develop concrete proposals to the current Ukrainian legislation to improve the legal regulation of circulation and processing of personal data in social networks to ensure user's privacy.

Analysis of scientific sources. It should be noted that the basic principles of Ukrainian national information policy and management of the information were disclosed in the works of I. Aristovoy [5], and the issues of legal regulation of the processing of personal data have studied such Ukrainian scientists as V. Bryzhko, R. Kalyuzhny, O. Kalchenko, V. Cymbalyuk, M. Shvets [6 , 7]. Certain aspects of the analysis of ensuring the privacy of persons in the context of the protection of person-

al data in social networks were also investigated in the works of V. Gavlovskij [8], V. Seregina [9], O. Homa [10].

The main material. The first quality steps towards the legislative regulation of the security of circulation and processing of personal data were carried out in Ukraine in 2010, when the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data CETS No. 108 was ratified, and the Law of Ukraine "On Protection of Personal Data" which entered into force on the 1st of January 2011, was adopted. However, despite the constant criticism of the declarative nature of Article 32 of the Constitution of Ukraine, which guarantees that no one shall be subjected to interference with his privacy and family, the Ukrainian society perceived the implementation of the first steps the real mechanism of the given constitutional proposition in a negative way. The rejection of the legal community and society as a whole to accept the special law of Ukraine to guarantee the security of circulation and processing of personal data in our opinion may be explained by the fact that Convention No. 108 and a model of special law, which actually is the law of Ukraine "On Protection of Personal Data" were developed in the 1980s, and therefore consider the development of computers (electronic computing machines) and the degree of their penetration into social processes only of those times, whereas today the level of development and globalization of the infrastructure of ICT, combining hundreds of millions of computers, and the development of artificial intelligence (automated information analysis) have become top-priority.

The significant development of ICT infrastructure in recent years, together with the analysis of requests of government officials, entrepreneurs, HR, accountants, managers, lawyers, and many others, in our view, suggest that even with subsequent amendments (of 21.09.2012, of 20.12.2012, of 09.06.2013 and of 01.01.2014) the law of Ukraine "On personal Data Protection" uses outdated terminology and establishes standards for governing social processes that do not meet modern relations in the sphere of circulation and processing of personal data, which leads to ambiguity in understanding its rules and their application.

In the context of the issues raised by us, and taking into consideration that social networks can be considered as the largest bases of personal data, we should pay attention to Article 2 of the Law of Ukraine "On Personal Data Protection", which defines the concept of "base of personal data" and sets its three main features: 1) base of personal data is always named, and 2) base of personal data can exist only in the electronic forms and / or card forms, and 3) base of personal data is aggregate of specially organized personal data [11].

The imperativeness of Article 2 has generated a lively debate among legal practitioners and scholars about the spread of norms of the law of Ukraine "On Personal Data Protection" onto the unnamed base of personal data. In fact, it has been suggested that in case the owner or other authorized persons fail to name their base of personal data, regardless of objective reasons, they can avoid registering it and, as a consequence, the privacy of persons whose personal data are contained therein will not be guaranteed.

Also, in the context of rapidly developing online social networks, where personal data may be presented in an established form (specially organized aggregate) or in a chaotic one, the compulsory feature of a database – as defined in Article 2 – that the base of personal data is an aggregate of specially organized personal data gives rise to a doubt.

Based on the above and doubting that only two database forms exist (e-forms and catalogs) the concept of "base of personal data" should be reconsidered in order to avoid ambiguity in the dissemination of the norms of the law of Ukraine "On Protection of Personal Data" on legal relations in the sphere of circulation and processing of personal data. It can be defined as a set of personal data in any form, including electronic form and / or the form of file cards, parts of which are available individually or as a whole, and can be found using a search engine.

At the moment the development of methods of automatic analysis of information obliges scientists and legislators to separate the processing of information from its circulation, as evidenced by the latest researches in sociology. M. Kosinski, D. Stillwell, T. Graepel published a scientific study, which noted that using an already generated analysis algorithm of "Likes" (preferences) one can define sexual orientation, ethnicity, religious and political views, personality traits, intelligence and happiness, the use of addictive substances, determine the age and sex of the person, etc. with an accuracy of about 90% [12]. Along with this, J. Kleinberg and L. Backstrom developed an algorithm of automatic analysis of marital status and friendships of the researched subject, which gives an opportunity to assess the strength and duration of the subject's personal relations [13], and also now observed the activity of Internet browsers to analyze contents viewed by the user in order to propose, and possibly to impose a particular new information material.

We can assume that the absence of separate concepts of "circulation" and "processing" of information, in this case, personal data, allows owners and managers of base of personal data not only to circulate information, but also to process it in order to obtain qualitatively new information about the subject. Thus, the current state of the legal system, due to the lack of individual concepts of "processing of personal data" and "circulation of personal data" does not guarantee individual privacy, as it allows to mislead the subject of personal data on the activities of the owners and managers of base of personal data against his personal data, as well as considering the volumes of such information.

When considering legislative support for the circulation and processing of personal data in social networks one should pay attention to their evolution. First social networks were bases of open personal data, which is a single unit, providing circulation, and with the development of artificial intelligence they began to process exclusively open personal data accessible to everyone. However, the current stage of development and implementation of ICT in this area sparked the evolution of social networks and turned them into a complex set of individual data blocks that provide circulation and processing of multiple types of personal data, with access to the in-

dividual units of data provided to third parties, depending on the characteristics of their legal status and in accordance with the conditions of the personal data subject's consent.

An important consequence of the transition of social networks from the status of bases of open personal data into the status of bases of mixed personal data, which until now has remained disregarded, is the need to reconsider the procedures of informing third parties about the conditions of the personal data subject's consent.

The necessity to inform third parties about the personal data subject's consent provided to the owner of base of personal data on circulating and processing of these data follows from Article 16 of the Law of Ukraine "On Personal Data Protection" [11]:

"Article 16. Procedure of access to personal data

1. The procedure of access to personal data of third parties is determined by conditions of personal data subject's consent, provided to the owner of personal data on processing these data, or in accordance with the requirements of the law.

2. Access to personal data to a third party is not available when the person refuses to take on the obligation to ensure compliance with the requirements of this Act or can not provide them.

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Due to the lack of distinction in the legislation between circulation and processing information and the fact that the bases of open personal data are databases accessible to the public and the users by providing their data in fact agree to the unlimited processing of all their published data, we can conclude that the owner of the base of personal data informs the third party that the database contains open personal data and that the users consent to the unlimited processing of their personal data published in the database.

However, bases of mixed personal data (like today's social network websites) are complex sets of individual data blocks that provide circulation and processing of several types of personal data, access to which is provided to third parties depending on the characteristics of their legal status (eg. giving access by their status): 1) to all Internet users, and 2) the registered users of the database, and 3) friends of friends, 4) friends, 5) separate friends, 6) relatives, 7) certain individuals, etc.). In fact, access to individual data blocks is ensured by special conditions of personal data subject's consent, making it necessary when viewing content by a third party to inform them about these conditions for a clear definition of their rights and responsibilities.

The absence of informing third parties about special conditions of personal data subject's consent on processing and circulation of each individual data block, which is the case in modern social networks, poses a real threat of illegal circulation and processing of personal data because of the lack of opportunity to clearly determine the scope of rights and obligations of third parties. Hence it is necessary to include the duty of the owner of base of personal data to inform third parties about these special conditions in the legislation.

Conclusions. Based on the foregoing, it can be confirmed that the rapid development of ICT infrastructure is largely changing legal information relations and poses new challenges to ensure privacy in the context of circulation and processing of personal data.

For effective legal regulation of circulation and processing of personal data in social networks, as the largest databases of personal data, we should reconsider the concept of "base of personal data" enshrined in the law of Ukraine "On Protection of Personal Data" which can be defined as a set of personal data in any form, including electronic form and / or the form of file cards, parts of which are available individually or as a whole, and can be found using a search engine.

Scientific research in the field of automatic data analysis suggests that the current state of the law, due to lack of separation of the concepts of "processing of personal data" and "circulation of personal data" does not guarantee individual privacy in the context of processing and circulation of personal data, as it allows to mislead the subject's of personal data about the activities of owners and managers of base of personal data in respect of his personal data, as well as concerning the volume of such information.

It is shown that the first social networks were bases of open personal data, which is a single unit, providing circulation, and with the development of artificial intelligence they began to provide processing of exclusively open personal data accessible to everyone. Modern social networks are bases of mixed personal data, i.e, a complex set of individual blocks of data that provide circulation and processing of multiple types of personal data to which access is provided to third parties depending on the characteristics of their legal status and in accordance with the special conditions of the personal data subject's consent for each separate such block.

In today's social networks (Facebook, Vkontakte, etc.) we found no procedure for informing third parties about the special conditions of the personal data subject's consent provided to the owner of base of personal data on circulating and processing each individual block of their data, which poses a real threat of the illegal circulation and processing of personal data because of the lack of opportunity to clearly determine the scope of rights and obligations of third parties and leads to the necessity to set out part 1 of Article 16 of the Law of Ukraine "On personal Data Protection" in the new edition:

"1.The procedure of access to personal data of third parties is determined by conditions of personal data subject's consent, provided to the owner of base of personal data on circulation and processing of data, or in accordance with the requirements of the law. The owner of base of personal data is obliged to inform the third party about the conditions of personal data subject's consent for each separate blocks of personal data."

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