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Issues of Cyber Law in Conflict of Laws With Comparison of Different Jurisdictions.

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Anotation: Can we regulate a significant segment of cross-border relations that arise in cyberspace with the available legal tools, or is it appropriate to talk about the formation of a new normative body of cyberlaw? The purpose of this article is an attempt to answer this question through the prism of the mechanism for regulating cross-border private law relations that are the subject of international private law. Due to the nature and complexity of the "foreign element", cross-border private law relations, in terms of their regulation, are as close as possible to those that arise in connection with the scaling of cyberspace.

Key words: jurisprudence, law, cyber law, international private law, cyberspace, foreign element.

Introduction.

The methodology of private international law has been adapted for many centuries to the regulation of cross-border relations, having developed a number of mechanisms that have a high degree of flexibility and are able to effectively respond to the challenges of modern society. Cyberspace, being a new environment for the existence of a network society, actualizes old problems, the most important of which are the conflict of jurisdictions and the conflict of law. Ways to solve them are evolving both in the direction of adapting traditional regulatory models, and by searching for and developing new ones, some of which are being studied in this work. The paper argues that the concept of cyberlaw as an autonomous legal system that regulates social relations that develop in cyberspace is untenable, since the nature of the latter is not transformed. However, law needs to comprehend cyberspace and form adequate responses to new forms of objectification of cross-border private law relations. Thus, in the field of jurisdiction, theoretical concepts and the corresponding law enforcement practice are interesting: the Calder effects test, targeting test, etc. In the field of conflict regulation, there is a shift from the localization of legal relations based on lex loci type bindings to flexible conflict regulation based on the law of closest connection and even, arguably, P. Berman's cosmopolitan approach to choosing the applicable law. Cyberspace also modernizes the concept of lex mercatoria, which acquires a new sound. All this greatly enriches the modern doctrine and practice of private international law.

The idea of D. Goldsmith, professor at Harvard Law School, as a key to a puzzle, as knowledge in a certain sense, secret, understandable mainly to "free conflictists", adherents of private international law (hereinafter - PIL). PIL as a branch of law, and especially as a science, remains "legal Freemasonry" and not at all because of its closeness, but due to its unique methodology, original categorical apparatus and a number of institutions that are absent in most branches of law.

D. Goldsmith defines the actual meaning of conflict law, characterizing the latter through a statement of two extremely important and indicative trends: the expansion of transnational activities and the preservation of decentralized lawmaking. The first is the essence of the manifestation of globalization, the building of a networked information society with the increasing movement of communication processes into the sphere of cyberspace. The second is the adjustment of the legal architecture to the new social reality not through the prism of the concepts of "global government", "global governance" and "global law", but in the logic of a state-centered world. In the interrelation of these two tendencies, the modern paradox is "sewn up".

On the one hand, anthropologists argue that we are increasingly living in a "global cultural ecumene", i.e. in the inhabited part of the planet, in which the patterns of local "belonging" are increasingly ignored, and the self-identification of the subject is less and less determined by space: the sense of place or territorial self-awareness, cultural and national identity, linguistic dependence are "blunted". This has a curious effect on the

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law, for example, as "it is possible that the mental burden of foreign jurisdiction is less significant today because of our increased contact with foreign countries." »

On the other hand, we live in the paradigm of a state-centered world while maintaining legal territoriality, locality and fragmentation of the legal landscape. And in the face of an invading global economic system, we may feel the need to cling even tighter to localism.

Main Body.

According to the American sociologist M. Castells, the world is built in the logic of the space of flows, and people try to continue living in the spaces of places. The translation of such a social thesis into legal language was made by D. Goldsmith. In addition, he proposed a way to resolve the paradox - conflict law.

Without reducing PIL exclusively to the law of conflict and, thereby, expanding the possibilities of the first one, we cannot but agree with D. Goldsmith.

On the one hand, “private international law is the law of conflicts of sovereignties. Subordination to the laws of any state means recognition of its sovereignty”. On the other hand, the subject of PIL regulation is cross-border private law relations, which, in fact, are today at the forefront of globalization and information changes. We are convinced that the network society determined by cyberspace is the beginning of the "golden age" of PIL, since the latter has the necessary and already formed methodology capable of responding to the challenges of our time.

The potential of private international law in the context of the formation of cyberspace.

In our opinion, the uniqueness of cyberspace is somewhat exaggerated. At least for PIL specialists, there is no revelation that harm caused by a citizen of country A can occur in another jurisdiction, even through network technologies, because harm occurs not in virtual cyberspace, but on the territory of state B. There is transboundary tort. Similarly, it can be a cross-border transaction, including one concluded through the use of technologies (for example, Blockchain), then we are dealing with a smart contract. All this is the essence of cross-border relations that "splash out" beyond the boundaries of one state, but do they slip out of the jurisdiction of states? No. In other words, technology does not change the nature of relationships, it is only a new way for subjects to communicate, even if it is the Internet of Things. Questions arise that require analytics, evaluation, scientific research, legal fantasy, but this is absolutely not new, but only provides lawyers with work.

In the field of PIL, there are already tools suitable for this work: conflict rules, unification and harmonization, ways to resolve conflicts of jurisdictions, and even lex mercatoria. There is a balanced position of D. Goldsmith, who believes that one should not underestimate the potential of traditional legal instruments and technologies in solving the problems of multi-jurisdictional regulation related to cyberspace. Operations in cyberspace by their nature do not require more attention from national regulators and are no less susceptible to conflict of law instruments, like cross-border transactions. All these and others (for example, the principle of extraterritorial operation of law, the doctrine of international comity, the practice of legal assistance, the concept of international public order, etc.) legal institutions and concepts are already working and, even more valuable, have significant potential and ability to adjust to the conditions network social and legal paradigms.

The conflict of jurisdictions, being a complex area of law, is "exacerbated" to some extent by the formation of cyberspace. According to the figurative expression of D. Sommer, information technology is just a “wrinkle on a serious problem”. P. Berman, professor at the George Washington Research University, postulates that changes in the political and social concept of space form at least part of the context for changing the understanding of jurisdiction. And the reality is that jurisdictional norms always evolve in accordance with how the social constructions of space, distance and society change. The complexity of jurisdictional tricks in the regulation of cyberspace relations increases due to the fact that the consequences of certain actions are dispersed at once over many jurisdictions.

In civil litigation, the mobility of private actors, long before the spread of the Internet, led to the evolution of the grounds of jurisdiction: from the physical presence of the subject (or the possibility of serving a summons on the defendant) towards the so-called "virtual" presence.

The precedent decision in the US practice in this area was the decision in the case of International Washington, in which the U.S. Supreme Court extended personal jurisdiction beyond the physical boundaries of its territory by formulating the long-arm statutes.

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Conclusion.

There is a huge amount of research on the issue of jurisdiction. Jurisdiction is very conditionally understood in a broad and narrow sense. In a broad sense, jurisdiction is the sphere of sovereign power of the state in terms of legislation, court, administration. In the Russian science of PIL and international civil procedure (hereinafter referred to as IHL), the problem of the conflict of jurisdictions occupies one of the central places and is mainly understood in a narrow sense as reducible to the problems of judicial jurisdiction or jurisdiction. At the same time, in foreign science, the concepts of "conflict of jurisdictions" and "conflict of law" / "choice of law" are usually consonant and line up in a similar logic, which suggests that jurisdiction is interpreted broadly and as the applicability of national law outside the state.

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