






# Obligations in the Field of E-Commerce

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**Abstract.** Purpose: The purpose of the article is to show that the expansion of the scope of commercial activity on the Internet does not cause an urgent need to change the current civil legislation in the field of liability law and Supplement with new legal institutions.

Design/methodology/approach: The concept of “Commerce” covers, including trade relations arising through the Internet. In the legal literature, there is an opinion of scientists that the peculiarity of the obligations associated with the promotion of goods to the market causes difficulties in the legal regulation of such obligations. This provision arouses interest in studying the validity of this statement.

Findings: On the basis of the existing judicial practice, the article shows that the expansion of the scope of commercial activity on the Internet does not cause an urgent need to change the existing civil legislation in the field of obligation law and Supplement it with new legal institutions.

Originality/value: It is concluded that despite the existing features of the emergence and performance of obligations arising on the Internet to conclude that these obligations are special and occupy their own place among civil obligations, it would be incorrect.

**Keywords:** Commerce · e-Commerce · Obligation · Obligations arising on the Internet · The conclusion of a contract on the Internet · Internet law

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## 1 Introduction

The terms “commerce” or “commercial activities” are very common and are used as synonyms. In the legal literature, these terms are used to denote a particular type of human activity. Commercial activity, commerce (from the Latin. “Commercium” - trade) - this is a type of entrepreneurial, economic, economic activity related to trade, turnover. In a broad sense, commercial activity is an activity related to commodity circulation, that is, activity to complete transactions of turnover of civil rights objects acting as goods.

It is well known that the sphere of the goods traffic is the market. From an economic point of view, the market is any institution or mechanism that brings together

buyers and sellers of a particular product or service. The market is also understood as “a system of socio-economic and legal relations arising in connection with the acquisition of civil rights objects ...” (Shandra 2018). Traditionally, such relations arise between its participants (between merchants/merchants and consumers) in reality and are formed as civil law. Accordingly, the regulation of these relations is carried out by all legal means of civil regulation.

However, it should be noted that commerce is heterogeneous and with the development of the economy and the intensification of innovative activities, the scope of the commercial activity itself has expanded. L. V. Andreeva notes that “innovation activity is aimed at transforming the results of intellectual activity - inventions, industrial designs, utility models, know-how into products and their subsequent implementation. In the process of innovation, its necessary stages include the formation of the concept of a new product, positioning a sample of a new product at exhibitions, advertising, launching a new product on the market” (Andreeva 2014). Moreover, the subjective composition of those participating in commerce has expanded. For example, the participation of state corporations became possible in commerce (Agnessa et al. 2019). In addition, with the development of the global Internet, commerce participants began to make transactions regarding the information contained on electric information carrier and receiving information services and data, etc. Information and information services themselves began to be considered as goods of a special kind, and alternative payment electronic means began to be used as means of payment., which is subject to the category of goods, which entailed the expansion of the market itself, i.e., the scope of commodity circulation, and the complication of legal relations. These changes caused the emergence of commerce on the Internet - e-Commerce.

The term “e-Commerce” is most often used to refer to business activities related to the turnover of civil rights objects on the Internet. A. I. Saveliev writes: “e-Commerce is a set of relations arising in connection with transactions through the Internet, as well as in the promotion of goods, works, services and other civil rights objects on the Internet” (Savelyev 2016a, b). E-Commerce is also defined as an economic activity whereby a person remotely and through electronic communication channels offers to acquire or confirms intentions to acquire goods and services (Vasilyeva 2006).

At the same time, it is noted in scientific circles that there are currently problems in the legal regulation of e-Commerce relations. So, it is noted that Russian legislation governing relations on the Internet is at an early stage of development; it is said that there is no effective regulatory framework in this area (Glushkov 2007). At the same time, difficulties are noted in the contractual regulation of the obligatory sphere of commerce carried out on the Internet. For example, A. Abdjalilov notes that “the technological features of the virtual environment, the electronic form of contracts complicate the application of the classical provisions of contract law to them” (Abdjalilov 2016). Others note the inadequacy of the traditional provisions of Russian contract law in legal regulation, and sometimes the lack of a properly developed system of norms. An example is the scope of concluding so-called “smart contracts” (Savelyev 2016, b).

At the same time, the categorical nature of such remarks does not seem to be so substantiated. It should be said that any activity related to the transfer of property from one person to another (including commercial) becomes the subject of regulation by the

rules of law of obligations. And the civil contract is the organizing basis for such activities to fulfill the “mortgaged” obligations in it (Demin 2014).

## 2 Material and Method

The methodological basis of the study is the formal logical method, the technical and legal method that determined the interpretation of the norms of law and legal modeling. When analyzing the legal relationship, a systematic approach was used, which is a general scientific method of cognition.

## 3 Result

Traditionally, an obligation is understood as “such a legal relationship from which one person’s right to a certain act of another certain person is discovered” (Shershenevich 2001). I. A. Pokrovsky wrote in relation to the content of the obligation: “If property rights are forms of legal relations to things, then an obligation is a form of legal, private-law relations of individuals to individuals” (Pokrovsky 2009). O. S. Joffe, emphasized that “... if the economic essence of the property right is that it acts as the right of appropriation, then the obligation relationship in its economic content acts as a way of moving this property.” Obligations, - noted O. S. Joffe, “mediate the process of moving property or other results of labor, also of a property nature. Therefore, they always act as property civil relations” (Ioffe 2004). E. A. Sukhanov, supporting O. S. Joffe on the nature of obligations, notes that “the rules of law of obligations formulate the process of transfer of property benefits from one person to another person, i.e. the dynamics of civil law relations” (Sukhanov 2006).

Under current Russian law, an obligation is understood to mean the performance by one person (debtor) in favor of another person (creditor) of a certain action, for example: transfer of property, performance of work, provision of services, contribution to joint activities, payment of money, etc., or abstinence from a specific action, and the creditor, in turn, has the right to demand that the debtor fulfill his obligation (Article 307 of the Civil Code of the Russian Federation). Thus, the obligation represents a certain legal relationship between the individual entities. And it should be noted that “civil law regulation is aimed at streamlining the actions of entities that transform the surrounding reality, and any action performed in relation to social benefits leaves a mark in the social sphere. If such an action is governed by civil law, the trace is in the nature of civil law consequences” (Chegovadze 2012). Hence the fulfillment of an obligation, that is, the execution of actions conceived by the parties, leads to the transfer of property benefits from one person to another. At the same time, no one doubts that all relations arising through the use of the Internet related to goods exchange also develop as obligatory legal relations and are regulated in the same way, i.e., by the same regulatory structures used to regulate traditional obligatory relations.

The conclusion is confirmed by law enforcement practice. So, in one of the cases, a citizen placed an order for the purchase of goods and transferred a certain amount of money through an electronic payment system from his electronic wallet to the

electronic wallet of the seller. In connection with the seller's non-fulfillment of the obligation to transfer the purchased goods, the citizen went to court to recover the amount of electronic payment paid. Considering the dispute, the court proceeded from the fact that between the parties there were obligatory legal relations for retail sale with a remote way of acquiring goods. Moreover, the buyer requested that the paid electronic money be returned in a different (non-cash) form, since the electronic payment system has difficulty withdrawing funds from the electronic wallet. However, the court refused to satisfy this requirement, because, as the court indicated, the buyer, voluntarily joining this system, agreed to the settlement in this way (decision of the Balashikha city court of the Moscow region of 17.10.2018 in case No. 2-5356/2018) Thus, the court applied the existing regulatory structures for legal regulation of obligations arising from the retail sale contract to resolve the dispute. And as you can see, the court recognized the acceptable form of the goods turnover chosen by the parties, the procedure for fulfilling the obligation and the method of making settlements between the parties.

Another area of obligations legal regulation in the field of commerce is the legal regulation of "smart contracts". In the legal literature it is noted that at present it is necessary to adjust both the theory and civil regulation of obligations arising from smart contracts. It is said that "changes will be required in the Civil Code regarding the definition of automated contracts as a form of fulfillment of an obligation. Such contracts are concluded, for example, in the digital market when conducting algorithmic trading" (Vaypan, 2017).

The concept of a smart contract in the legal literature has not been established. Smart contracts usually mean a contract that exists in the form of program code that ensures the autonomy and self-fulfillment of the terms of such a contract upon the occurrence of circumstances predetermined therein. ... they can not only be concluded without human intervention, but also executed without human intervention (Savelyev 2016a, b). "A smart contract is an algorithm designed to automate the process of executing contracts. ... this is a set of rules and a sequence of actions for execution" (Osmolovskaya, 2018). And it is noted that "volitional activity is absent in smart contracts at the execution stage, and at the time of conclusion of the contract, you actually agree that its execution will occur automatically and that nothing will depend on you" (Bagaev 2018). It is also said that the regulation of relations between the parties within the framework of a smart contract is largely ensured by a fundamentally different regulator - program code that is self-sufficient and autonomous in relation to law and, strictly speaking, does not need the latter for its successful existence (Savelyev 2017). The concept of a smart contract is proposed to be introduced into federal Russian legislation. So, in the Draft Federal Law "On Digital Financial Assets" (prepared by the Ministry of Finance of Russia) under a smart contract it is proposed to understand an agreement in electronic form, the fulfillment of rights and obligations under which is carried out by automatically performing digital transactions in a distributed register of digital transactions in a strictly defined such a contract of succession and upon the occurrence of the circumstances determined by it.

As an example of the scope of application of smart contracts, the sphere of cargo transportation is given where automated tracking of goods becomes available,

verification of goods, issuance of permits for the import or export of goods, etc.; or purchasing goods remotely, where the receipt of the necessary goods, its shipment, automatic debit of the buyer's funds are automatically tracked (Savelyev 2016a, b). At the same time, it is overlooked that the fulfillment of the obligation under a smart contract is ultimately carried out by a specific business entity in favor of a particular person. The program itself performs the operation, that is, only that which is previously determined by these participants in the goods turnover, and cannot "make" a decision contrary to the attitudes (expressed will) of these persons. In addition, it is worth noting that in the fulfillment of the obligation no other executor appears and the norms on the fulfillment of the obligation by a third party are not applicable in this case (Article 313 of the Civil Code of the Russian Federation).

Of course, it must be assumed that actions can be carried out through the "participation" of a program. For example, advertising on predefined Internet sites (sites) can occur automatically, without the intervention of a specific subject. However, this will only happen to the extent that there is the will of a particular business entity that determines the amount of advertising, the duration of the advertisement, the cost of the advertisement. And in case of loss of interest in such activities, the program can be disabled or deleted. Or, for example, a bank transfer is also performed using a computer program. But this is precisely because the bank itself allowed the computer to perform such operations. In this case, the statement that "in a smart contract" is important is the behavior of the computer, and not the behavior of the debtor, which is the core of the concept of "obligation" (Savelyev 2016a, b). It cannot be said that the technical characteristics of a particular equipment or program determine or establish specific conditions of the contract.

Moreover, it is worth noting that for the fulfillment of ordinary civil obligations, the actual completion of actions is often sufficient, for example, transfer of property, performance of work, provision of services, etc. A feature of the fulfillment of obligations in the field of commerce is their mandatory support with primary accounting documents, based on the requirements of Article 7 of Federal Law dated 06.12.2011 No. 402-ФЗ "On Accounting". This article indicates that each fact of economic life is subject to registration by the primary accounting document. In this regard, it seems that the field of electronic commerce is no exception and any actions related to the fulfillment of obligations are included in the economic life of the subject of commercial activity and are subject to accounting with the obligatory execution of primary accounting documents. This is fully impossible without the participation of a specific business entity and the program code cannot replace the concept of the subject or party to the obligation.

## 4 Conclusion

We can conclude that the expansion of the scope of commercial activities on the Internet did not cause an urgent need to change civil law in the field of law of obligations. Of course, obligations in the field of electronic commerce have their own characteristics, however, to conclude that these obligations are special and occupy their own place among civil law obligations would be incorrect.

Moreover, obligations in the field of electronic commerce are subject to regulation by the same legal structures that are used to regulate commercial activities carried out outside the Internet. The effectiveness of legal regulation in this case often depends not on the improvement of civil legislation, but on its adaptation by the law enforcer. In addition, the views of those lawyers who believe that there is a need to redraw the theory of obligations in connection with the development of innovative technologies and focusing attention on the legal impact on the “behavior” of computer or software, and not the subject of commercial relations, seem erroneous.

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