

**Svetlana Gennadyevna Pankratyeva** - Senior lecturer of the chair of mathematical methods and information technologies of the Far-Eastern Institute of Management – branch of RANEPa (Khabarovsk). *E-mail: shakti-77@rambler.ru*

### **The history of the development of legislation in the sphere of legal regulation of creation and use of databases**

*The article deals with criminal and civil legal problems in the regulation of relations in the sphere of information technologies, in particular the use and creation of computer programs and databases. Analyzed legislation in the field of creation and use of databases and the rights to it, highlights the main stages in the development of legislation in this area. A comparative analysis of copyright laws, on the legal protection of programs for electronic computers and databases, highlighted major gaps considered laws. Also revealed changes in the field of creation and use of databases, which came into force with the introduction of the Civil Code of the first and fourth, thanks to which standard fastening received a number of measures that narrow the opportunities for abuse of the database, allow authors and other copyright holders more successful protect their rights and interests in this area.*

### **История развития законодательства в сфере нормативно-правового регулирования создания и использования баз данных**

*В статье рассмотрены уголовно-правовые и гражданско-правовые проблемы, возникающие при регулировании отношений в сфере информационных технологий, в частности использования и создания программ для ЭВМ и баз данных. Проанализировано законодательство в сфере создания и использования баз данных и прав на нее, выделены основные этапы развития законодательства в данной сфере. Дан сравнительный анализ законов об авторском праве, о правовой охране программ для электронных вычислительных машин и баз данных, выделены основные пробелы рассматриваемых законов. Также выявлены изменения в сфере создания и использования баз данных, вступившие в силу с введением Гражданского кодекса РФ части первой и четвертой, благодаря которому нормативное закрепление получил целый ряд мер, которые сужают возможности для посягательств на базы данных, позволяют авторам и другим правообладателям более успешно защищать свои права и законные интересы в рассматриваемой области.*

**Keywords:** *database; legal regulation of databases; criminal and civil law issues in the regulation of the use and creation of computer programs and databases; exclusive rights to objects of copyright; computer program; adaptation,*

*modification, distribution, reproduction, public release, the use of computer programs and databases.*

**Ключевые слова:** *база данных, правовое регулирование баз данных, уголовно-правовые и гражданско-правовые проблемы регулирования в сфере использования и создания программ для ЭВМ и баз данных, исключительные права на объекты авторского права, программа для ЭВМ, адаптация, модификация, распространение, воспроизведение, выпуск в свет, использование программы для ЭВМ и базы данных.*

Analyzing the legal sources on the regulation of relations in the sphere of information technologies, in particular the use and creation of computer programs and databases, keenly felt the need for their legal regulation. Problems in this area, there are criminal-law and civil-right character.

For criminal law are issues of criminalization of offenses committed against or with the use of information systems, the use of information stored in computer memory, as evidence, and so on. D. In the framework of civil law is necessary to determine the legal regime of the data-valid documents created and transmitted by electronic means.

Legal regulation of social relations on the creation and use of computer programs and databases is the basis for the development of other legal aspects of information, because the software – an integral part of any computer equipment and all the other object of legal regulation in this area are based on them, or using them.

How developed legislation in the field of creation and use of databases and the rights to it?

For the first time the term "database" appeared in 1955 with the introduction of punched cards, the history of the modern concept of the database begins with the 1960s after the emergence of the so-called operational network databases.

In law, the term was first coined in the RSFSR Law of 24.12.1990 N 443-1 «On Property in the RSFSR". According to this law, "intellectual property are works of science, literature, art and other forms of creative activity in the sphere of production, including discoveries, inventions, rationalization proposals and industrial designs, computer programs, databases, expert systems and know-how, trade secrets, trademarks, trade names and service marks" More than anything about databases the law in question does not say. Not given any definition of the database or storage times or methods of their use, dissemination and protection. Thus, the classification database to protected objects in the said law only declared. This law repealed in connection with the adoption of the Federal Law of 30.11.1994 N 52 "On the introduction of the first part of the Civil Code of the Russian Federation".

The next step was the law from 31.05.1991 N 2211-1 "Fundamentals of Civil Legislation of the USSR and Republics" (approved by the USSR Armed Forces.), In which the databases have been identified as collections and treated the objects of copyright: "The objects of copyright include literary works (literary,

scientific, educational, journalistic, etc.), dramatic, musical works with or without text, music-dramatic, scenario works, audiovisual works (cinema, television, video works), radio works, works of fine and decorative arts, architecture, urban planning, landscape art, scenography, design, photography, cartographic works, choreographic works and pantomimes, translations, computer programs, collections (encyclopedias, anthologies, databases data, etc.) ...".

This law also secured exclusive rights to objects of copyright, including compilations (databases), including: the right of authorship; right to a name; the right to privacy; the right to publish; the right to use; the right to remuneration for permission to use, and use of, as well as the transfer of the right to use the object of copyright. It also covers the terms of copyright action.

The last stage of development of legislation in the Russian Federation on the legal protection of databases in the adoption of the RF Law dated 23.09.1992 № 3523-1 «On legal protection of programs for electronic computers and databases" law of the Russian Federation and from 09.07.1993 N 5351-1 «On Copyright and related Rights".

The law "On legal protection of programs for electronic computers and databases", the following concepts are introduced:

computer program – it is an objective form of representation of a data set and commands intended for the operation of electronic computers (computers) and other computer devices in order to obtain a certain result. Under computer program also refers to the preparatory material produced during its development, and the audiovisual displays generated by;

database – an objective presentation and organization of data sets (eg: articles, calculations), systematized so that these data could be found and processed by a computer;

adaptation of a computer program or database – is the introduction of changes made exclusively with a view to ensuring the functioning of a computer program or database in specific technical facilities of the user or under the control of user specific programs;

modification (processing) of software or database – is any changes other than adapting;

program play computer or database – is to create one or more copies of a computer program or database in any material form, as well as their entry into a computer memory;

distribution of software or database – is the provision of access to reproduced in any material form of a computer program or database, including network or other ways, as well as by selling, renting, leasing, lending, including import for any of those objectives;

public release (publication) of software or database – is the provision of a copy of a computer program or database with the consent of the author of an indefinite number of persons (including through entry into the computer memory and the issue of the printed text), provided that the number of such instances It must meet the needs of this group of persons, taking into account the nature of the works;

the use of a computer program or database – this public release, reproduction, distribution and other actions on their introduction into economic turnover (including in modified form). Not recognized by the use of a computer program or database transfer information through mass media on the published software or database.

The law clearly states that computer programs and databases are protected by copyright. Computer programs provided with legal protection as literary works and databases - as to compilations. Also identified objects of copyright, conditions for the recognition of copyright, the timing of its action, described the personal and exclusive rights to the database, the conditions of use, reproduction and database adaptation, as well as the protection of the rights and responsibilities ways for infringement of copyright in a computer program, and database.

The basis of the legal regulation of copyright relations in the Russian Federation was the Copyright Act. He installed protected objects of copyright, regulate legal relations arising on the creation of objects of copyright, including an object such as a computer program and database. In many ways, this law follows the provisions contained in the "On legal protection of programs for electronic computers and databases" Act. At the same time, however, there are some significant differences in these laws. For example, the duration of copyright in the Law 1992 "since the creation of the computer program or database during the lifetime of the author and 50 years after his death, counting from January 1 of the year following the year of death of the author" and the Law 1993 of "the copyright is valid for the entire life of the author and 70 years after his death, except as provided in this Article." A few examples in the Act in 1993 appears an article about the transition of the copyright in the public domain, it is also described in detail the conditions of detention, the form of responsibility and Copyright Treaty, the Law 1992 on this says nothing, etc.

Both considered the Act to date, no longer in force at the entry into force of the Federal Law of 18.12.2006 number 231 "On introduction of the fourth part of the Russian Federation Civil Code."

According to the Civil Code of the Russian Federation 4 computer programs and databases are the results of intellectual activity and equated to them means of individualization of legal entities, goods, works, services and businesses that provide legal protection (intellectual property). On the results of intellectual activity and equated means of individualization (results of intellectual activity and means of individualization) are recognized as intellectual property rights, which include the exclusive right is a property right, and in the cases stipulated by the Civil Code, as moral rights and other rights (*droit de suite*, right access, etc.).

The Civil Code of the Russian Federation Part 4 supplements and clarifies the laws of 1992 and 1993. Due to the Civil Code, standard fastening received a number of measures that restrict opportunities for attacks on the database, allow authors and other copyright holders more effectively protect their rights and legitimate interests. These objectives are, in particular, the articles that introduce the statements in turn, free licenses, disclosure of the database by the manufacturer,

as well as simplifying the state registration of intellectual property and extend the rights of citizens on the use of the database.

Thus, the RF Law "On the legal software protection for electronic computers and databases" and Federal Law "On copyright and related rights" secured copyright protection for computer programs and databases, and played a very important role in the changes in Russian copyright, and the fourth part of the civil Code of the Russian Federation introduces additional measures for the protection, dissemination and use of database.

### **Список литературы**

1. Закон РСФСР от 24.12.1990 № 443-1 (ред. от 24.06.1992, с изм. от 01.07.1994) «О собственности в РСФСР» // СПС КонсультантПлюс.
2. «Основы гражданского законодательства Союза ССР и республик» (утв. ВС СССР 31.05.1991 № 2211-1) (с изм. от 03.03.1993) // СПС КонсультантПлюс.
3. Закон РФ от 23.09.1992 № 3523-1 (ред. от 02.02.2006) «О правовой охране программ для электронных вычислительных машин и баз данных» // СПС КонсультантПлюс.
4. «Гражданский кодекс Российской Федерации (часть четвертая)» от 18.12.2006 №230-ФЗ (ред. от 28.11.2015, с изм. от 30.12.2015) (с изм. и доп., вступ. в силу с 01.01.2016) // СПС КонсультантПлюс.

### **References:**

1. Zakon RSFSR ot 24.12.1990 № 443-1 (red. ot 24.06.1992, s izm. ot 01.07.1994) «O sobstvennosti v RSFSR» // SPS Konsul'tantPlyus.
2. «Osnovy grazhdanskogo zakonodatel'stva Soyuzs SSR i respublik» (utv. VS SSSR 31.05.1991 № 2211-1) (s izm. ot 03.03.1993) // SPS Konsul'tantPlyus.
3. Zakon RF ot 23.09.1992 № 3523-1 (red. ot 02.02.2006) «O pravovoj ohrane programm dlya ehlektronnyh vychislitel'nyh mashin i baz dannyh» // SPS Konsul'tantPlyus.
4. «Grazhdanskij kodeks Rossijskoj Federacii (chast' chetvertaya)» ot 18.12.2006 №230-FZ (red. ot 28.11.2015, s izm. ot 30.12..2015) (s izm. i dop., vstup. v silu s 01.01.2016) // SPS Konsul'tantPlyus.