

**INFORMATION SECURITY IN UKRAINE: LEGAL BACKGROUND
AND POLITICAL SETTING**

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ABSTRACT

An analysis of information security in Ukraine has been made. The definition “information” within the context of informatization processes has been clarified from the viewpoint of legal background.

Key words: information, information security, personal data protection, access to public information

Functioning of any State just like the fulfillment of its’ constitutional obligations becomes vastly dependent on the development of contemporary technologies, information society and sound functioning of the information or cyberspace. Nowadays vibrant existence of cyberspace depends largely on the security of information communication technologies infrastructure, which allows legal usage of cyberspace, of information resources and services functioning within and operating due to it. Soundly functioning infrastructure is backbone of State’s fulfillment of its’ constitutional obligation to the citizen, insurance of continuity and effectiveness of government administration as well as uninterrupted and efficient development of the economy of any state.

Growth over past 5-10 years of threats that are a result of the rapid informatization worldwide forces state to be more attentive to its own security in this area. Increasingly in the works of western scholars one refers to the need of building

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a what is called “information sovereignty” or “cyber sovereignty”. Significantly, unlike the post-Soviet research in the field of information security which is concentrated mainly around information-psychological elements western scholars concentrate primarily on the technological component. Moreover, the content component is vastly dependent on technology. Which was particularly evident after incriminating by E. Snowden scale espionage of the US National Security Agency.

BASIC DEFINITIONS AND CONCEPTS

Yet, in order to continue our reasoning one should look how in the existing legislature within the framework of interpretation of the information issue. According to the Art. 1 of the Information Law of Ukraine, it is necessary to understand ‘information’ as a documented or publicly announced data on the events which occur in the society, the state or the surrounding natural environment.²

The important feature of information deriving from the above mentioned is the fact that it has practically unlimited potential of dissemination and transformation into any other form of human and state activity – i. e. slipping into any other piece of legislature, especially in the realm of security. This seems to be especially relevant under the conditions of the information war that is fiercely being conducted against Ukraine since the times of Euromaidan in 2013-2014. In the academia literature ‘information security’ has being defined as a safety of the person, of the society, and of the state in the realm of information both from internal and external threats, where information sphere is a field of activity related to production, dissemination, processing and usage of information.³

Among sources of internal threats Ukrainian scholars pinpoint the adverse criminal behavior accompanying processes of state and criminal structures merger; obtaining of access to secret information by criminal structures; increase of nega-

² Information Law of Ukraine, from 02.10.1992, Verhovna Rada Bulletin, 1992, #48, Article 650.

³ P. Orlov, Information and Informatization: Legal Maintenance, Scientific practical manual, Kharkiv: Ministry of Internal Affairs, 2000, p.9.

tive influence of organized crime on social life; decrease of political legitimacy via neglected civil interests; insufficient financing of information security undertakings; untrustworthy economic power of the state. Among external threats activity of foreign information structures directed against interests of the state as well as aggravation of the international competition for IT and its resources possession are outlined.⁴

Sources of the information danger are divided into the ones of natural origin and those artificially created by human. The vulnerabilities of the information security are vastly caused by the absence of a united policy in the field of information security maintenance, the imperfection of the legal base and insufficient enforcement practice and control over information market development, low level of the informatization of the state authorities and commercial institutions, negligible level of security interests for natural persons and legal entities in the information sphere. It is essential to review a complex of laws and normative acts which regulate legal relationship in the field of collecting, processing, saving and using the information.

DISADVANTAGES OF EXISTING LEGAL MEASURES IN THE REALM OF INFORMATION SECURITY

Analysis of the Doctrine of Information Security of Ukraine demonstrates the need for further development of crucial legal documents which are essential for the further development of the information security architecture of Ukraine. Basic rules for the implementation of activities in the information sphere, i. e. the creation, receipt, usage, dissemination and storage of information and the protection of human subjects of information relations contained in Art. 32 and 34 of the Constitution of Ukraine and in laws of Ukraine “On informa-

⁴ A. Matveeva, Information Security and Problems of Criminal Legislation Improvement, Criminal Law in 21st Century: Materials of the International Scientific Conference in Moscow State University: Lexext, 2002, pp.181-186.

tion”⁵, “On Access to Public Information”⁶, “On Personal Data Protection”⁷, “On Basic Principles of Information Society in Ukraine for 2007-2015”⁸, “On Printed Media in Ukraine”⁹, “On Television and Radio Broadcasting”¹⁰, “On Appeals of Citizens”¹¹, “On Classified Information”¹², “On Operative-Investigative Activities”¹³, “On Protection From Unfair Competition”¹⁴, “On Principles

⁵ Law On Information // Закон України від 2 жовт. 1992 р. № 2657-XII. / [Електронний ресурс]. – Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?Nreg=2657-12>, accessed June 28, 2015.

⁶ Law On Access to Public Information // Про доступ до публічної інформації : Закон України від 13 січ. 2011 р. № 2939. / [Електронний ресурс]. – Режим доступу : <http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?Nreg=2939-17>, accessed June 28, 2015.

⁷ Law On Personal Data Protection // Про захист персональних даних : Закон України від 1 черв. 2010 р. № 2297 / [Електронний ресурс]. – Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?Nreg=2297-17>, accessed June 28, 2015.

⁸ Law On Basic Principles of Information Society in Ukraine for 2007-2015 // Про Основні засади розвитку інформаційного суспільства в Україні на 2007–2015 роки : Закон України 9 січ. 2007 р. № 537-V // Відомості Верховної Ради України. – 2007. – № 12. – Ст. 102. – 23 берез], accessed June 28, 2015.

⁹ Law On Printed Media in Ukraine // Про друковані засоби масової інформації (пресу) в Україні : Закон України від 16 листоп. 1992 р. № 2782 / [Електронний ресурс]. – Режим доступу : zakon.rada.gov.ua/cgi-bin/laws/main.cgi?Nreg=2782-12, accessed June 28, 2015.

¹⁰ Law On Television and Radio Broadcasting // Про телебачення і радіомовлення : Закон України від 21 груд. 1993 р. № 3759 / [Електронний ресурс]. – Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?Nreg=3759-12>, accessed June 28, 2015.

¹¹ Law On Appeals of Citizens // Про звернення громадян : Закон України від 2 жовт. 1996 р. № 393/96 / [Електронний ресурс]. – Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=393%2F96>, accessed June 28, 2015.

¹² Law On Classified Information // Про державну таємницю : Закон України від 21 січ. 1994 р. № 3855 / [Електронний ресурс]. – Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?Nreg=3855-12>, accessed June 28, 2015.

¹³ Law On Operative-Investigative Activities // Про оперативно-розшукову діяльність : Закон України від 18 лют. 1992 р. № 2135 / [Електронний ресурс]. – Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?Nreg=2135-12>, accessed June 28, 2015.

¹⁴ Law On Protection From Unfair Competition // Про захист від недобросовісної конкуренції : Закон України від 7 черв. 1996 р. № 236/96 / [Електронний ресурс]. – Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=236%2F96-%E2%F0&p=1218034688041545>, accessed June 28, 2015.

of Prevention and Combating Corruption”¹⁵, “Convention on Cybercrime”¹⁶ and some others.

Furthermore, number of regulations which consider specific actions in the realm of information activities such as Taxation and Customs Code of Ukraine are considering creation and usage of specific tax and customs information as well.

Degree of criticism can be targeted to certain provisions of the new edition of the Law of Ukraine “On Information”. The position of lawmakers on the issue of combining in one legal act general provisions of information policy, information activities, legal and administrative regulation of the information sector and at the same time the inclusion into this general document very specific issues regarding activities of journalists and media remains to be unclear. Number of experts are convinced that in order to improve the Law of Ukraine “On Information” the legislator is to exclude the provisions of chapter 3 on “The activities of journalists, media and their employees” and submit these measures to the special law, such as the Law of Ukraine “On state support of mass media and social protection for journalists”. In that case discrimination against other participants of media sphere will be removed. Some other conflicting measures remain to be present in other legal acts regulating social relations in the field of information security, therefore endure to be a source of peril.

INFORMATION POLICY IN UKRAINE

In Ukrainian case institutions, involved in the issue of information security policy creation one can count on the fingers of one arm, these are such locus as Council of National Security of Ukraine and the National Institute for Strategic Studies. However, the state as a main actor has an overarching voice via its law, that was introduced in 2007 on the “The basic rules of the development of

¹⁵ Law On Principles of Prevention and Combating Corruption // Про засади запобігання і протидії корупції : Закон України від 7 квіт. 2011 р. № 3206 / [Електронний ресурс]. – Режим доступу : <http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?Nreg=3206-17> , accessed June 28, 2015.

¹⁶ Convention on Cybercrime Конвенція про кіберзлочинність від 23 листоп. 2001 р. / [Електронний ресурс]. – Режим доступу : http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?Nreg=994_575 , accessed June 28, 2015.

informational society in Ukraine in years 2007-2015”, where we find the following: “Successful production and distribution of competitive national information products is one of the conditions necessary to establish stable national identity via, among others, creation of stable national memory”.¹⁷

At this level, the preparedness of the state for the participation in information exchange is determined by the following criteria: • quantity and quality of information products produced in the country and their own state, • power, branching and resources available for further development of telecommunications networks, • the state’s ability to effectively regulate the production and dissemination of information (activity news agencies, media, cultural industries, foreign broadcasting organizations, etc.), • the degree of accessibility for citizens of all public information sources (the concept of universal access), • the practical protection of intellectual property and copyrights. Moreover, according to the Ukrainian Law on Television and Radio Broadcasting, national audiovisual products are considered “programmes, films, audiovisual works produced by natural or legal persons of Ukraine” (Art.1).¹⁸

In France, which became a textbook example of a rigid policy in protecting its national identity, 60 % of air time is filled with French audio-visual products, out of which 40 % must be broadcast at prime time. Ukrainian legislation in this area is no less severe than the French one. Thus, the Law on Television and Radio Broadcasting states that “the total amount of broadcasting is supposed to be covered for at least 50 percent with national audiovisual product or musical works of Ukrainian authors or performers” (Part 1 of Art. 9). Moreover, the Law on Cinematography stipulates “a set quota demonstration of national films, which is not less than 30 percent of the national screen time” (Art. 22).¹⁹ But unlike France, the aforementioned laws are in most cases not met. It should be noted that public broadcasters in Western Europe are still the leading communicators in the field of public relations, making out around 20 % of the national space-frequency resource of information. There is a difference in Ukraine—public

¹⁷ Law On the Basic Rules of the Development of Informational Society in Ukraine in Years 2007–2015, <http://zakon2.rada.gov.ua/laws/show/537-16> , accessed June 28, 2015.

¹⁸ Law On Television and Radio Broadcasting, <http://zakon2.rada.gov.ua/laws/show/3759-12>, accessed June 28, 2015.

¹⁹ Law On Cinematography, <http://zakon2.rada.gov.ua/laws/show/9/98-bp>, accessed June 28, 2015.

broadcasters covering about 5 % of the national information resource may soon become private, owned by foreign capital. The system of information needs deep social reforms in order to have its own identity and philosophy. However, the state for now is, unfortunately, on the periphery of the information field. A strategically important task of the state information policy is the introduction of digital broadcasting and the transition to this technology is now a global trend. According to the Regional Agreement “Geneva-06”, which Ukraine is a part of, all European countries are obliged to cease analogue television broadcasts by 2015.

On November 27, 2007, the National Council on Television and Radio Broadcasting adopted the State program of digital broadcasting in Ukraine. A full transition to this standard is to take place by July 2015.²⁰ Here also the Program of the East Central European Initiative should be recalled, an intergovernmental organization comprising seventeen countries (Albania, Austria, Belarus, Bosnia Herzegovina, Italy, Macedonia, Moldova, Poland, Romania, Slovakia, Slovenia, Hungary, Ukraine, Croatia and the Czech Republic) established in 1989 for multilateral cooperation in East Central Europe and participation in European integration processes. One of the completed forms of cooperation between countries of the region is a common approach to solving the problems of international information exchange, providing the basic rights and freedoms in the field of information, the creation of a united East Central European information highway, and the establishment of an information economy and introduction of information technologies in all spheres of society.

East Central European countries have inherited political and economic levers of control over the information field (telecommunications, broadcasting, mass media), which tightly follow the interstate and external circulation of information. Geopolitical change, such as the dissolution of the Soviet Union, has led to the progressive advancement of a number of East Central European states. However, there still remain some states having the monopoly on information resources, networks and communications, which is *sui generis* a normal state of things. On the other hand, the government regulation of media significantly slows down the process of European integration. The European Union initiated the development of information policy to apply information society and information economy. As far as Ukraine is concerned, basic principles of the state information policy were

²⁰ Resolution on the Introduction of the State Program of Digital TV and Radio Broadcasting, <http://zakon2.rada.gov.ua/laws/show/1085-2008-п>, accessed June 28, 2015.

declared, based on former state institutions competence, and a series of concepts, programs and action plans were adopted.

However, at the level of the practical implementation of information policy there are uncoordinated activities of various departments, inconsistency and a lack of transparency in the implementation of planned measures. As a result, Ukraine is not yet among the countries that can boast information independence. Currently, following situation is to be observed:

- an ineffective system of state regulation of national media space, a lack of a consolidated view of directions of its further development, a lack of qualitative cultural industry and of a national system of information disseminating on a global scale;
 - a low level of presence in the global media space, and a high informational dependence on foreign governments and media organizations.²¹
- Given the current state in the information sphere of Ukraine, the priority goal of information policy should be: (1) to create a strong and competitive national system of information production, capable of ensuring the consolidation of society on the basis of common values, goals, ideas and to promote the comprehensive development of personality as well as (2) further technological modernization to expand presence in the international division of labour in the field of ICT. Here we come to understand that the main goal of information policy and information management in every state, and especially in a state with a totalitarian legacy, is the formation of a coherent identity of the nation. This would merge the nation around it, and fit with a wider geopolitical context. For Ukraine, it is a cognitive belonging to the historical and geographical phenomenon in East Central Europe.

In order to create a strong and competitive national system of information production, capable of ensuring the consolidation of society on the basis of common values, goals, ideas and promotion of the comprehensive development of personality, one needs this “common identity content”, one that would integrate Ukraine inside the country but also with the rest of the world. The so-called Copenhagen school of security studies, headed by Barry Buzan, has coined the

²¹ Interview with Viktor Nabrusko, State Secretary of the National Union of Ukrainian Journalists, <http://www.telekritika.ua/bezpeka/2010-10-18/56680>, accessed June 26, 2015.

notion of “regional security complex”, a formation where the interdependency between states that form this very security complex is very strong.²² One can agree that Central Europe forms this kind of regional security complex. Therefore, constant by its nature identity creation process is very much dependent on the sound politics of information security.²³

POLISH EXPERIENCE IN INFORMATION SECURITY ISSUES

Polish entry into NATO and the development of modern communication technologies forced to carry out complex legal changes in the area of information security of Poland. Regretfully authors of the emerging legal acts, despite of fulfillment a titanic work, did not escape many mistakes, which until today imprint their sign on the information security of Poland. These errors resulted from a misunderstanding of the principles of information protection and IT security in NATO, as well as lack of knowledge and experience in the field of information security, particularly in the field of cryptographic protection.

In the Polish legal act on “The protection of classified information” only very few concepts essential for NATO standards appeared (Art. 2), inter alia state secret, secrecy, state protection service, information and communication system, IT network, IT security accreditation, documentation of security of system or information network. Unfortunately such concepts as National Security Authority, cryptographic protection system, cryptographic device and tool, cryptographic material, certification of cryptographic devices, cryptographic protection certificate, distribution of cryptographic materials, the main office cryptographic, a national body materials distribution cryptographic (ang. National Distribution

²² B. Buzan, O. Wæver, *Regions and Powers: The Structure of International Security*, (Cambridge: Cambridge University Press, 2003), 564

²³ In 1994, in “Warsaw Ukrainian Notes” a prominent medievalist, founder of the Institute of East Central Europe Jerzy Kłoczowski wrote about the historical tradition of Ukrainians belonging to Europe since the adoption of Christianity, later on empowered by the rise of an exceptionally dense network of Greek Catholic parishes from Przemyśl to Kiev. See J. Kłoczowski, *Ukraina a Europa Środkowo– Wschodnia*, “Warszawskie Zeszyty Ukrainoznawcze”, (Warszawa, 1994), 15–20

Authority), the main foreign office, etc., even though some of them are used in the text of the Act and they are in NATO documents.

Thus, actual governmental policy of any state in the realm of “Information security and sovereignty” should be defined not only at the level of different legal acts, yet rather as a Strategy or Action Plan that could summarize key activities of the State in this area and identify key indicators/goals to be achieved. Moreover, information policy should not be based solely on the restrictive model, but rather create growth opportunities for all areas that are identified as key to ensuring “information sovereignty”. Because when those mechanisms do not work properly, the consequences of excessive classification might have important impact on democracy.

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