Information as a Hulk: replacing Black Widow with information legislation

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SUMMARY

We may associate information with the Hulk – famous hero of Marvel Comics. The flow of information can be named as „information cycle" and it has ability to produce unkind impact over our lives that smash everything. Nevertheless, we can enjoy benefits of information when it is peaceful and silent. Just like the Hulk when he is angry and like Dr. Bruce Banner when he peacefully conducts scientific studies in his laboratory. The essential social and public role of information is hard to refuse, but this role is not always positive. Thus, we need the Black Widow – another Marvel's hero, to keep „Information Hulk" under control. The best way is information legislationand legal regulation, but in conformity with information ethics and cyberculture. Information legislation and human rights are like two equal.

l pieces of an apple – if information space wants to stay safe, it should feed by both of them.

Key-words: access to information, information security, information ethics, information law sphere, electronic rights, information management.

INFORMAŢIA, CA HULK: ÎNLOCUIREA VĂDUVEI NEGRE CU LEGISLAŢIA DESPRE INFORMAŢII

SUMAR

Putem asocia informațiile cu un Hulk – celebrul erou monstru umanoid din cărţile cu benzi desenate ale lui Marvel Comics. Fluxul de informaţii poate fi denumit „ciclu informaţional" şi poate avea un impact nedorit asupra vieţii noastre, cu efect de a distruge totul. Cu toate acestea, putem profita de informaţie atunci când ea este liniştită şi calmă. La fel ca Hulk, când este furios, şi ca Dr. Bruce Banner, atunci când conduce paşnic cercetări în laboratorul său. Este dificil să refuzi rolul public şi social esenţial al informaţiilor, dar acest rol nu este întotdeauna pozitiv. Aşadar, avem nevoie de Văduva Neagră, o altă eroină a lui Marvel Comics, pentru a menţine controlul asupra „informaţiei Hulk". Cel mai bun mod, în acest sens, este legea informaţiilor şi reglementarea legală, dar în conformitate cu etica informaţională şi cultura cibernetică. Legea informaţiilor şi drepturile omului sunt ca două părţi egale ale unui măr – dacă spaţiul informaţional doreşte să rămână în siguranţă, el trebuie să fie alimentat de ambele părţi.

Cuvinte-cheie: acces la informaţii, securitate informaţională, etică informaţională, drept informaţional, drepturi electronice, gestionarea informaţiilor.

Target setting. Information can be created, accessed, edited, shared, collected, disseminated, etc., and its not the end of story. After dissemination or collection it can be re-created and re-disseminated repeatedly. Therefore, I may call the travelling route of information as „the information cycle". Experts propose another term – „information lyfe cycle" in order to prove that information is alive [7, p.31]. Information is constantly in motion, causing creation, transmission and reception of new information. Yet, information is chaotic in its very nature and needs legal regulation. Not all information flows are in in the form of cycle. Thus, taking into account the main features of information movements, I can distinguish 2 main types of routes:

a) Cyclical flow of information – active movements within the cycle;
b) Information movements facilitating the cycle – supplementary information movements.

Generally speaking, both types of movements can be studied as parts of the entire information cycle. In this case, some information actions are related to the active cycle of information, while others are related to the processes that ensure this cycle. For example, securing information, forming databases, etc. encourage active information flow. To put it simply, any information movement takes place in connection with the information cycle. Researchers also use the term „information processing cycle" as another synonym for the objective and comprehensive study of information

movements [17, p.26]. Although both terms are appropriate for the legal analysis of information movements and the investigation of related human rights, in my opinion, it would be simpler to use the term „information cycle". The cyclical nature of information embodies its infinite movements, and the end of any information cycle may lead to the beginning of another cycle. This is due to the endless nature of communication process. Information cycles imply a multifaceted flow of information, which researchers divide into several stages for the effectiveness of scientific research. It is not possible to find a revelation system of stages in the literature because it is easy to approach it from different angles. More or less, I can agree with D. Haynes that the definition of the information cycle stages depends on the goals of the individual cycle [12, p.113]. In my opinion and from the point of legal analysis of the information sphere and human rights, one can study information cycle in the following general stages:

c) Appearance of information –by means of creation, acquisition, reception etc.;
d) Analysis of information – collection, research, change, criticism etc.;
e) Presentation of information – transmission, dissemination, distribution, sending etc.;
f) Use of information – investigation, application, research etc.;
g) Emergence of new information – combination, systematization, innovation etc.

Relevance of the research topic. It should be noted immediately that information cycle also hides a number of shortcomings. Thus, information challenges are natural elements of any cycle. Stages of information cycle are very conditional, mixed and they can replace each other. Moreover, an information cycle can itself cause another cycle to begin or end. It is possible to imagine other small cycles that are adjacent to the main information cycle. On the other hand, not all movement forms of information happen within the active cycle, e.g. information security, information libraries, informational civil transactions are also types of information flows, but not in the form of active cycle. Creating any website or registering on social media is also an information movement, but it does not automatically constituteactive cycle stages. Thus, one may study such actions as auxiliary (secondary or provisional) information actions that ensure the main active cycle and do not remain outside of it. Ultimately, activities such as information security, information registration and information control also ensure the information cycle. Therefore, I may claim that any movement of information is related to cycle and no matter where and in which circumstances it happens: digitally or in real life.

Conducted research level. Since individual information legislation is a relatively new area of jurisprudence, emerging challenges of information cycle are still raising serious conceptual and practical problems in legal spheres. One can hardly find a sample of complex research in national as well as foreign literature what covers all aspects of information cycle as the subject matter of various traditional legal fields. Nevertheless, certain issues related to information law and policy are analyzed by national experts as A.I. Aliyev, G.A. Rzayeva, B.A. Maharramov, R.M. Aliguliyev, E.A. Aliyev and foreign experts such as P. Torremans, T.P. Jaeger, G.N. Taylor etc.

The objectives. Primary goals of the current study can be defined as formulation of a multidisciplinary look to information cycle, conceptual combination of information legislation and ethics, understanding the roots and further development of information law, establishing a ground for universal regulation of global information space.

Main content. Of course, it is very difficult to imagine all these mixed and complex stages of information without proper regulation and management. Some researchers suggest the term „information lifecycle management" in accordance with the term „information lifecycle" [23; p.181]. Nevertheless, given the legal nature of my research, I think, it would not be appropriate to apply the term „information cycle management". I believe that it would be more acceptable to use the term „information management" to understand the role of law and the importance of information legislation in information areas. Research works in this area show that the concept of „information management" includes elements of action on quality control of information, its control, use, development and protection. A group of experts analyzes the management of information cycle as an area included within the information governance [2, p.23]. I can also adopt the term „information governance", which has a broader meaning and includes socio-legal information control criteria. According to researcher Robert Smallwood, information governance means managing information to ensure compliance with corporate governance, legal and other regulations, and to reduce risks and costs [27, p.7]. Since this definition covers both code of conduct and legal regulations, it may be applied in all areas of both public and private sectors. Thus, information governance is, among other norms, governance based on legal norms. I believe that it is possible to give a similar definition to the interpretation of information legislation too. Information legislation can be defined is a system of legal norms governing the movement of information in any type and form –within the active cycle and the movements of other types that support this cycle. Information legislation should entail details such as grounds for information governance as well as the criteria of quality, security, use and application. Any information cycle can have both positive and negative consequences. I think that the main disadvantages introduced by information and its cycle can be presented as follows:

– Information cycle harms the very nature of social equality. It creates differences in information skills, ability to manage information, etc. More dangerously, cycle leads to digital divide. An informed society benefits more from the results of information than poor societies. Same is about elder and younger generations whose level of information skilss is not equal;
– Effective cycle is prestigious. Information cycle requires many additional costs and resources;
– It creates many new social relations that are difficult to accommodate and regulate;

– Its movements can be manipulative (I can call it an „invisible hand");
– It is often subordinated to economic interests by sacrificing other values;
– It has the potential to undermine values of human rights, which are fundamental social elements.

To prevent all these threats, information cycle needs public regulation, especially legal interference. The normative base for legal regulation – that is, the information legislation – is the main condition. Only the legal regulation of information cycle can strictly define the laws of information flow, prevent dangerous movements, punish violators, and restore public informational justice. Legal rules in information field should not be analyzed separately from the norms of technical, ethical and social character. The relevant literature also emphasizes the importance of legal norms that normalize ethical values in order to achieve high information ethics [31, p.242]. Besides, the term „information ethics" was proposed by scientists in the 1980s and began to be used as a general term covering the authenticity, quality, trust and reliability of information [10, p.21]. Regulation in the information space can be carried out through various social norms. These include public moral and ethical norms, norms of business conduct and, finally, legal norms. Given that today the digital information space – cyberspace – has a special place in the scope of information cycle, the same social norms can be applied to cyberspace too. However, as in the information space, there is lasting debates in cyberspace as to which types of norms are more appropriate for regulation [29, p.4]. When studying information legislation and information ethics, in my opinion, it is important to touch upon the public and individual importance of information. Information in itself is a tool that guides individuals and society to development, but also helps to define social patterns. In this sense, the proposal of researchers to give moral status to information coincides with the solution of social, psychological and other types of problems [28, p.1].

There is another area that examines the role of information legislation along with various social norms and values, and this area is information policy. In my opinion, one of the best definitions of information policy is presented in the book „A Companion to Nazi Germany", the book that is dedicated to the study of the information policy of fascist propaganda in Germany from the point of view of information policy. The book belongs to Sandra Brahman. According to Brahman, information policy is the sum of laws, regulations, doctrinal positions, and other decisions and practices that have an impact on the public sphere in relation to the creation, processing, share, flow, access, and use of information [3, p.164]. In my opinion, the issues raised in connection with information policy definition at the end of the last century are still valid for information legislation and can be the purposes of legal regulation in information field too. On the other hand, these problems are not only in the field of electronic information, but also in the dissemination of information by traditional means. There are also serious gaps in the control of information quality and, in general, in the field of information monitoring. These gaps are due to a number of objective and national subjective reasons, such as the complexity of control in the global information space, the imperfection of technical mechanisms for control etc. Experts in this field suggest that exchange of information increases the existing information load and use the term „information overload" to emphasize that too much informational content has a serious negative impact on the quality of information [9, p.6]. Although the term „information overload" is used in many research on information, little is known about its interpretation as a term. According to a relatively common opinion in the literature, „information overload" is the inability to find the necessary information for various reasons due to the excessive amount of information[19, p.7]. In fact, one can cite information overload as the reason for the excessive expansion and complexity of information legislation. In addition to the issues discussed above, the information overload also has a negative impact on the process of collecting and processing information. In particular, factors such as the abundance of information in the electronic space, the lack of verification of the reliability of electronic information sources seriously damage the work of digital libraries.

As mentioned earlier, information policy covers a wide range of issues and can be studied from different angles. Some experts even claim that information policy is a mechanism that serves only the interests of the state and justifies state intervention in the field of information [32, p.28]. In my opinion, it is possible to partially agree with this claim. Of course, in conservative countries (China, North Korea etc.) where there are a number of strict state control mechanisms, we can accept that the information policy is implemented exclusively by the state, and no information that is not allowed by the state to enter the national information space. But at the same time, we must look at the issue from a broad perspective. At a time when the global information space is being formed, not all activities for the establishment and implementation of information policy are carried out by governmental mechanisms. Experts also note that the scope of information policy is expanding due to the evolving ICT, and therefore research on information policy in the literature is devoted to only a part of this policy or a specific issue [15, p.13]. Another subjective factor that complicates the field of information policy is related to the diverse views of various authors in this direction. According to S. Braman, author of important research in this field, a statistical analysis conducted in 2010 showed that articles on information policy were published in about 60 different journals on various profiles, and in these articles information policy on business, health, energy, economics, food, regional policy, sociology, environmental protection, computer science, national security, philosophy, biotechnology, public and private administration, communication, technical sciences etc. topics have been studied [6, p.2].

Such a diverse approach to information policy poses serious obstacles in defining its subject. However, since all approaches and concepts are based on

the flow of information, I can elaborate the subject of information policy based on the concept of information itself. It is possible to approach the legislation in the field of information on the basis of the same information concept too. In general, information legislation:

1. Aims to direct inexhaustible information, but also combats information manipulation.
2. Strives to make the ever-expanding global information space accessible at all times and in all places for all people.
3. There are development in ecology, economy, politics and many other areas that are seriously impacted by information legislation.
4. Information legislation has a serious impact over private sector, corporate issues, various areas of entrepreneurship, where even information does not play a central role.
5. Information legislation influences the occurrence of positive and negative processes in almost all legal spheres of public and private life.

Due to the wide scope of information legislation, I can propose a classification of legislation based on various criteria in order to study it systematically. For example, legislation on access to information, information security legislation, privacy regulations, Internet legislation, legislation on e-government, digital governance law and others can be divided. Apart from most other areas of legislation, information legislation may be considered nationally or internationally. International information legislation is intended to regulate public relations of information nature in the international sphere. The international scale of information legislation is currently dominated by ICT, global information society, cross-border information exchange, international human rights standards in the field of information, mass media etc. These issues have been accepted by a number of researchers as a separate area of law, but are still the subject of controversial international information law [38, p.29]. I think that it is quite early to talk about the well-established international information law as it lack some theoretical gorunds. Additionally, recognizing the international wing of information law may lead other legal fields also to be divided to national and international spheres.

In a broad sense, the legislation on information cycle – means the legislation on information movement in different contexts and forming the normative basis of different areas of law – civil, criminal, administrative, etc. For example, informing the detainee about his/her rights, providing him / her with legal protection, court proceedings beyond closed doors when the is issue is privacy, etc. are usual subject matters of criminal law fields. Although studied within the field of criminal law, the end result is still the cycle (or circulation) of information. For that reason, the above-mentioned problems also apply to the legislation on information cycle. In his book „Understanding information policy" I. Rowlands, one of prominent experts of information sphere, introduces an exceptionally important view about the structure and content of information policy [25, p.15]. According to Rowlands's scheme, information policy should overview information as a type of public goods as well as trade object while combining principles of information openness and protectionism. I think the same scheme and principles may be used to formulate the legislation of information sphere too. Rowlands's proposal is exceptionally important for the creation of the system of international legislation in information sphere. Simply put, legislation on information as public goods and trade object is essential to legally regulate global information space. While striving to systemize international information legislation, we should not leave behind the international regulation of information rights and freedoms too. Human rights and freedoms, freedom of expression and information in particular, plays the role of cornerstone for international information law and legislation. On the other hand, at the international level, the term „information legislation" is quite conditional. International law fields are quite fragmentary due to non-centralized international legislator, judicial bodies and implementation. And it is the same with respect to international information sphere too.

International system of sources formed as a result of decentralized international legislation defines legal rules for international law participants [8, p.18]. These sources also apply to international legal relations in the field of information. That is, when examining international information law, we must refer not only to written conventional norms, but also to customary law, judicial precedents, general principles of law and other sources. Current legislation in international information law contains different norms of different character. Recognizing the importance of protecting freedom of information, the UN General Assembly appreciated it in 1946 as a guarantor of all freedoms sanctified by the United Nations and proposed the organization of an international conference on freedom of information [35]. We need to bear in mind that the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (Article 19), which are fundamental universal human rights instruments, enshrine freedom of expression, but not the direct freedom of information. However, if we look at the structure of the article regulating freedom of expression, we see that it includes freedoms such as obtaining, receiving, transmitting and disseminating information. Thus, freedom of expression itself combines primary elements of freedom of information. And we may call this freedom as freedom of expression and information. This freedom may be considered in international information law as a norm of customary law. Because it is generally accepted that the Universal Declaration itself is a part of customary law [33, p.179]. Among authors, Patrick Birkinshaw, describes freedom of information as the right of citizens to access information held by public authorities [4, p.29]. However, I think that freedom of information needs to be looked at more broadly. In my opinion, linking freedom of information only to access to governmental information may limit the very meaning of freedom of information. In its original nature freedom of information is the normative freedom of movement of information [13, p.48]. That is, freedom of information is freedom of information cycle.

The inclusion of some of other human rights norms related to information and ICT in various areas of international law allows us to approach the legislation in the field of international information in a broader-sense. For example, a resolution passed by the General Assembly of the International Criminal Police Organization (INTERPOL) in 2018 allows car manufacturers to access INTERPOL's database of stolen motor vehicles [14]. Besides, the Organization for Economic Co-operation and Development (OECD) cited the digital tax challenges imposed on companies operating in the digital space as a first step in its Action Plan to Combat Tax Base Erosion and Profit Shifting [22, p.14]. Similar norms apply to the OSCE, NATO and other organizations, corruption, human trafficking, terrorism, etc. It can also be found in the documents of anti-corruption agencies. However, these norms do not yet mean that we must automatically include them to international information law. International information legislation, in its narrow sense, regulates public relations that are active in the circulation of information and whose ultimate goal is the exchange of information. In my opinion, the main international standards of human rights that can be applied to the international information sphere and the directions of implementation of these standards can be grouped as follows:

– Human rights norms – international human rights standards on privacy, information rights, freedom of expression etc.;

– Norms related to information and knowledge societies – these norms include requirements for other basic human rights in addition to freedom of information and expression. In information society human rights such as social rights, cultural rights, right to education in particular, serves as background of information infrastructure;

– Norms related to the Internet and new technologies – The rights that people have offline – that is, in real life, should be protected to the same extent when they are online. In addition, artificial intelligence is associated with many human rights in the digital space. In this regard, serious attention has been paid to the regulation of human rights in the context of Internet governance. For this reason, it is possible to study the national, regional and universal level of Internet governance from the first days of its discovery;

– Norms related to telecommunications, mass media and press – many human rights documents are related to media, especially the application of freedom of information in the media, defamation, fight against terrorism etc. The importance of the media in current ICT age is repeatedly highlighted by the UN bodies as well as regional human rights organizations. Deeper regulation of the telecommunications sector is currently being carried out by the International Telecommunication Union;

– Sustainable development norms are mainly based on the UN 2030 Agenda for Sustainable Development.The 2030 Agenda entails norms proving that this Program is based on international human rights treaties. The UN General Assembly has established that the development of the information society, science and technology play a significant role in the implementation of the 2030 Agenda;

– Norms on intellectual property rights – these norms are necessary for the analysis of the deepening contradictions between intellectual property, especially copyright and information rights, as a result of the impact of ICT. For example, the exclusive use interests of a trademark owner may conflict with the right of third parties to comment on a trademark. Public access to information and specific personal copyrights may also conflict. For these reasons, it is important to examine the documents of the World Intellectual Property Organization (WIPO) as well as norms established by the World Trade Organization.

As can be seen from the list provided above, human rights norms in the international information space are not limited to freedom of information and the UN human rights instruments only. However, the basic international human rights norms in the field of information are regulated by the UN and its specialized agencies. These organizations are called the „UN system" or the „family of UN organizations" [20, p.118].The UN family includes UN funds, programs, specialized agencies and other related organizations, and its activities are regulated by the General Directorate of Coordination. However, there are different views of authors who distinguish between the UN family and the scope of the UN system. The human rights activities of the UN family are part of a one single system, but are fragmented in nature. Yet, UNESCO's work on human rights within the UN family is more advanced and innovative than others. Retail within the system is linked to reforms by former UN Secretary-General Kofi Annan. As a result of the reform package proposed by Kofi Annan in 1997, the main activities of the UN are divided into four areas: peace and security, economic and social issues, humanitarian issues, development and cooperation [21, p.104]. K. Annan's project „Renewing the United Nations: A Program for Reform" states that human rights should be applied to all areas of UN activity and in all areas [37, p.63].In my opinion, the inclusion of human rights in such a broad spectrum has in itself laid the foundation for a human rights approach to various areas, including the international information sphere. A serious burden, such as the application of human rights in various areas within the framework of UN reforms, has been entrusted to the High Commissioner for Human Rights – specifically Mary Robinson, who has worked with all UN human rights institutions, including the „Bretton-Woods institutions" – the International Monetary Fund and the World Bank [5, p.299].

The special nature of information cycle necessitates a new approach to the division of law into traditional areas of international and national law. Such tendencies force the national legislator to take a more modern approach to the implementation of international information law standards towards formation of global information law standards. Some scholars highlight the importance of cooperation between norm-setting bodies, NGOs, and trade enterprises in order to more successfully define the strategy for the

implementation of international norms [26, p.208]. In my opinion, there is a serious need for such cooperation in the global information sphere too. In the global information sphere, it is possible to directly involve a number of large ICT companies in the implementation process of international law. However, current international law is largely based on the norms established by states and governmental control over implementation. It is the official governmental legislature whodetermines how an international norm will be understood in national law and in what form it will be applied [24,p.284]. Thus, a number of international documents related to information law have special implementation provisions. For example, Article 2 of the 1966 UN Covenant on Civil and Political Rights imposes implementation obligations on member states. Nevertheless, the concept of „implementation" must be approached in a broad sense. I consider, implementation is not only the transformation of an international norm into a national norm, but also the implementation of the expected result against the background of the behavior envisaged by the international norm, the processes leading to the adoption of the norm.

Conclusion and recommendations. There are different views in the literature on public relations, which fall within the subject of information law field. Consequently, positions about the scope of information law legislation also varies that need to be shaped. This should be explained by the complex nature of information law. In general, the information policy scope proposed by I. Rowlands previously, may be a fundamental ground for building information legislation in general scope. Yet, this general scope of legislation is not the normative basis for only information law field, but also for the fields as intellectual property law, e-commerce law, etc. Thus, there is a need to elaborate specific and narrow approach to information legislation what would serve only information law field. At the same time, we can not forget that information law itself is a complex law field. Information law can ensure its existence only by the support of human rights law, criminal law, administrative law and civil law. Of course, most of the fundamental relations in information law involve the state or an administrative entity. However, the development of ICT, the information cycle in the digital environment, the use of human rights in the information sphere do not depend only on administrative entities. For example, in connection with the protection of digital human rights, companies operating on the Internet are subject to intermediary liability [18,p.142]. The active participation of administrative state entities in matters related to these obligations is not required. Therefore, information law, in my opinion, covers public relations of complex nature what may belong to different areas of law at the same time, but have a purely informational nature as a result of ICT developments and information cycle. These public relations can be analyzed not only from the point of administrative law, but also from the point other areas of law and are within the subject matter of the field of information law. Different approaches to the nature of information law field are also reflected in the definition of the scope of information law relations. In my opinion, a following classification can help us to generalize these approaches:

– Relations on international information exchange;
– Relations based on basic human rights and freedoms in information sphere;
– Relations on the organization and activity of the media and the Internet;
– Relations on electronic document circulation;
– Relations on e-entrepreneurial activities;
– Personal data processing relationships;
– Library and archive relations;
– Information security relations;
– Relations on the solution of information disputes.

The latest classification I presented better covers information legislation. However, I must admit that the legislation in all the above areas is not of high quality. It is very difficult to apply information legislation, especially in the electronic space. For this reason, information legislation cannot be considered only as a set of legal norms. Information legislation needs to be updated. Because the speed of information cycle has also changed. Traditional information legislation should be in an electronic version. In my opinion, the information legislation should be updated in the following aspects:

1. The information legislation should clarify the responsibilities not only of the state, but also of Internet providers, legal entities engaged in electronic activities, and individuals who are electronic users.
2. Traditional human rights legislation is not sufficient for the information space. Better quality human rights norms in the field of information should be developed.
3. The activity of traditional law enforcement agencies is weakening in the information sphere. Digital police, digital agents, etc. based on new technologies. must be created.
4. Information legislation should not restrict Internet freedom. However, it should develop legal framework for Internet freedom.
5. Information legislation should pay special attention to security issues. Always a new virus is developed for each new antivirus program. This process also serves economic interests in the field of information. Information legislation should prevent the information sphere from serving only economic interests.
6. Separate information law court branchesor mediation centers should be established for the effective resolution of information disputes on the basis of information legislation.

I think, traditional information legislation should not be the only solution to these problems. Scientific organizations and civil society organizations should also support the improvement of information ethics and culture. It is better to approach the improvement of information legislation on the basis of human rights. The human rights approach will allow more effective methods to be applied to all information law violations.

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