

NATALIA DOROKHOVA

Candidate of Legal Sciences, Associate
Professor of the Department of Civil Law
of the Kutafin Moscow State Law Univer-
sity (MSAL)

**INFORMATION SERVICES CONTRACT:
EVOLUTION IN RUSSIAN CIVIL LAW**

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Abstract: There is analyzes of the legal regulation of agreements on the provision of information services in the article. The insufficiency of articles in the second part of the Civil Code of the Russian Federation is noted. The author identifies the most significant normative acts of the first years of regulation of this area and provides an overview of further development. The question of the defenses of the agreement on the provision of information services developed in the science of civil law is investigated. The author offers his own definition of this contract. The article contains examples from judicial practice, as well as business practices. The author classifies information service agreements using legal reference systems. Among the most popular types of agreements on the provision of information services in recent years, the author identifies agreements with information services in the form of information databases on the Internet, as well as in mobile applications: cian, avito, taxi aggregators; agreement governing the use of cloud information storage; contracts for online school services. The main practical problems in the field of research are also noted, such as the complexity of the legal qualification of the contract and, as a result, the applicable standards (with aggregator); the difficulty of proving the fact of the provision of information services; responsibility of the service provider.

Key words: information services agreement, information, contract, services, aggregator.

Article 779 of the Civil Code of the Russian Federation refers to such type of contract for the paid services provision as an agreement for the information services

provision, to which an agreement for the provision of consulting services can also be attributed. Despite the increasing practical application of information services agreements, it has never been enshrined in the Civil Code of the Russian Federation. The author hereof intends to consider the evolution of legislative regulation of information service contracts, as well as the development of doctrinal approaches.

Information service contracts are covered by a number of laws and regulations: Article 26 of the Federal Law On Archives in the Russian Federation¹, Article 5 of the Federal Law On Banks and Banking Activities,² Decree of the Russian Federation Government On Information Services in the Field of Hydrometeorology and Environmental Pollution Monitoring³, Order of the State Customs Committee of the Russian Federation of 23.12.1998 No. 863 On Approval of the Procedure for Conducting and Organizing Work on Providing Chargeable Services by Central Customs Laboratory and Regional Customs Laboratory and Distribution of Received Funds, approves the form of an example contract for conducting information, consulting and research services, etc⁴. In 2010-2012 numerous by-laws setting requirements to the content, terms and quality of information and consulting services provided by state authorities, e.g. Order of the Ministry of Foreign Affairs of Russia from 14.05.2012 No. 7063 On the Approval of Administrative Regulations of the Ministry of Foreign Affairs of the Russian Federation on the Provision of Public Services of Public Information and Consulting Services Provision have been adopted⁵. Federal Law of 18.03.2019 No. 34-FZ introduced Article 783.1 of the Civil Code of the Russian Federation "Peculiarities of the contract for the

¹ Федеральный закон «Об архивном деле в Российской Федерации» от 22.10.2004 № 125-ФЗ // Собрание законодательства РФ. 2004. № 43. Ст. 4169. Federal Law On Archives in the Russian Federation dated October 22, 2004. No. 125-FZ // Collection of Legislative Acts of the Russian Federation. 2004. No. 43. P. 4169.

² Федеральный закон «О банках и банковской деятельности» от 02.12.1990 № 395-1 // Собрание законодательства РФ. 1996. № 6. Ст. 492. Federal Law On Banks and Banking Activities dated December 2, 1990. No. 395-1 // Collection of Legislative Acts of the Russian Federation. 1996. No. 6. P. 492.

³ Decree of the Russian Federation Government On Information Services in the Field of Hydrometeorology and Environmental Pollution Monitoring dated November 15, 1997. No. 1425 // Rossiyskaya Gazeta. 1997. No. 232.

⁴ Order of the State Customs Committee of the Russian Federation dated 23.12.1998 No. 863 On Approval of the Procedure for Conducting and Organizing Work on Providing Chargeable Services by Central Customs Laboratory and Regional Customs Laboratory and Distribution of Received Funds // Tamozhenny vestnik. 1999. No. 3.

⁵ Order of the Ministry of Foreign Affairs of Russia dated 14.05.2012 No. 7063 On the Approval of Administrative Regulations of the Ministry of Foreign Affairs of the Russian Federation on the Provision of Public Services of Public Information and Consulting Services Provision (Registered with the Russian Ministry of Justice on 05.07.2012 No. 24812) // Rossiyskaya Gazeta. 2012. No. 162.

provision of information services”, where, despite the name, the features of this contract are not disclosed¹.

It is noted in the literature that the introduction of Article 783.1 of the Civil Code of the Russian Federation is justified by the intended use of an information services agreement in the collection of information during the process of big data generation, i.e. structured and unstructured information of huge volumes which can be processed by modern technical and software tools².

The legal definition of the contract in question is contained in Article 13(1) On Informatization, Information and Information Protection of the Model Law of the Commonwealth of Independent States: “Under the contract of information services provision, the performer undertakes, in accordance with the customer’s assignment, to find and/or process certain information and transfer it to the customer, and the customer undertakes to pay for these services”³.

There is still no legal definition of the contract in Russian domestic law, but its definitions have been developed by civil science.

For example, A. E. Sherstobitov points out that under the contract for information transfer one party (executor) undertakes to process and transfer information in the manner which allows using it in practical activities and the other party (customer) undertakes to accept it and pay for services on processing and transfer of material carrier of information⁴.

An information contract is defined as an agreement between an information centre and a consumer “For provision of data on a specific request, the content of which is strictly individual: the consumer is given specially selected necessary information”⁵.

R. N. Morodumov views the contract for the repayable provision of information services as “an agreement by virtue of which the performer undertakes, to render services in the form of providing a certain volume of information obtained by

¹ Federal Law of 18.03.2019 No. 34-FZ On amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation // Rossiyskaya Gazeta. 2019. No. 60.

² *Mikhailov A. V.* Prospects for the development of business legislation in the digital economy // Entrepreneurial Law. Law and Business Appendix. 2019. No. 3. P. 7–13.

³ Model Law of the Commonwealth of Independent States On Informatization, Information and Information Protection adopted in St. Petersburg at the 26th plenary session of the Inter-Parliamentary Assembly of the CIS Member States (Resolution No. 26-7 dated November 18, 2005.) // Newsletter. Inter-Parliamentary Assembly of Member States of the Commonwealth of Independent States. 2006. No. 37.

⁴ *Sherstobitov A. E.* Civil law regulation of obligations to transfer information: Abstract. Thesis paper.: Candidate of Juridical Sciences. M., 1980.

⁵ *Dozortsev V. A.* Information as an object of exclusive right // Delo i pravo. 1996. No. 4. P. 35.

means of collection, sampling, analysis, synthesis, etc. on the instructions of the customer, and the customer undertakes to pay for these services”¹.

A. Galaev offers the following definition of a contract for the provision of information services: “... an agreement under which the performer, at the customer’s request, undertakes to perform an action or activity to collect, process, store or transmit information (messages, data) regardless of the form of its presentation, where such activity or action is the result of creative and qualitative performance”².

In my opinion, the contract in question can be defined as follows. Under the contract for retrieval, processing, storage and (or) transmission of information the service provider undertakes to perform actions on retrieval, processing, storage, transmission of information (one of them or a set of them), and the service recipient accepts or undertakes to accept the result of the service.

Development of legislative regulation in the sphere in question remains fragmented and haphazard. Article 783.1 of the Civil Code of the Russian Federation was mentioned above; its content does not seem to bring any significant changes in regulating relations of information services provision. Of the relatively recent acts, though not of a state body, but of a state corporation, I would like to mention the Procedure for concluding and supporting contracts in bankruptcy proceedings (liquidation) with respect to financial institutions approved by the decision of the Board of the State Corporation “Deposit Insurance Agency”³. Thus, this act discloses the subject matter of the information services agreement disclosed in the standard form of the information technology services agreement:

1. SCOPE OF AGREEMENT

1.1. The Contractor shall provide the following information technology services to the Customer under this Contract:

1.1.1. Support of provision of the Customer’s applied Information Technology Services (hereinafter referred to as the Customer’s IT Services) to the Customer’s end users in accordance with Appendix No. 1 to this Agreement.

1.1.2. Maintenance of the Customer’s IT-services in accordance with Appendix No. 1 to this Agreement.

¹ Morodumov R.N. A contract for the provision of information and consultancy services on a fee-for-service basis: Thesis paper. ... Candidate of Juridical Sciences. Volgograd, 2004. P. 96.

² Galaev A. Yu. A contract for the provision of information services on a fee-for-service basis: Abstract. Thesis paper. ... Candidate of Juridical Sciences. M., 2009. 22 p. / http://uni-mvd.order.hcn-strela.ru/inc_files/801/Galaev_Avtoreferat__oktyabr.doc (accessed on March 9, 2010).

³ Procedure for concluding and supporting contracts in the course of bankruptcy proceedings (liquidation) with respect to financial organisations (Approved by a decision of the Board of the State Deposit Insurance Agency dated 04.12.2017, Protocol No. 138) // Consultant Plus legal reference system.

1.1.3. Execution of Customer's instructions to search, systematise and present information contained in automated banking systems and required for bankruptcy proceedings (information on debtors, depositors, etc.)."

Despite scanty development of legislation, new types of information service contracts are appearing in business practice.

In 2000–2012 such in-demand services as marketing, auditing, valuation services, information services of legal reference systems were considered as independent services of information nature.

In business practice information services contracts are widespread with the help of various legal reference systems (LRS): "Consultant", "Garant", "Codex", etc.

Under an agreement on information service with the help of a legal reference system the service provider undertakes to provide the service recipient with relevant search tools and perform actions to process and transfer legal information, and the service recipient accepts or undertakes to accept the result of the service.

Several types of information service agreements with the help of legal information systems can be distinguished in terms of their content and subject matter: 1) information service contracts for a fee with any users; 2) information exchange contracts with non-commercial organisations and public authorities; 3) information service contracts without a fee with a certain category of users.

The scope of the agreement is processing and transfer of information. Processing means distribution of information to relevant thematic databases, updating the databank, compilation of surveys, etc. Information may be transferred in several ways: employee of the Service Provider delivers and installs to the Service Receiver additions on CD-ROMs, flash drives or other data carriers; Service Provider performs updating of the Service Receiver's ATP via the Internet. Performance of the above actions is the main obligation of the service provider. The service provider also provides the service recipient with appropriate search tools (in this case an electronic search system, a computer program).

The definition of marketing is given in the Letter of the Pension Fund of the Russian Federation from April 11, 1995 No. 09-12/2094-IN On Marketing Contracts. On the basis of a number of normative acts, the above document concludes that marketing is information and advisory services on a complex study of the market: current and forecasted for the future demand for client's products, supply of respective goods, study of information about competitors, prices, quality of goods and their subsequent servicing. It is further concluded that the marketing contract refers to a contract of work and labour, and in the case of legal actions under this contract, to a mixed contract¹.

¹ Letter of the Pension Fund of the Russian Federation dated April 11, 1995. No. 09-12/2094-IN On the marketing contracts // Consultant Plus legal reference system: Legislation.

Among the types of information services agreements that are widespread at present, I would like to single out agreements with information services in the form of information databases on the Internet, as well as in mobile applications: cian, avito, taxi aggregators; agreement regulating relations on the use of cloud information storage; agreements under which online school services are provided.

Thus, some civil servants point out that the most acceptable contractual construction for an aggregator is the use of a contract for the provision of services: “The aggregator undertakes to provide information services, including by placing information about the customer on its information platform, the customer undertakes to pay for these services (Article 779 of the Civil Code). From the context of art. 128 of the Civil Code it follows that we may consider information as a result of a service or as a result of intellectual activity. However, the meaning of information is much wider and the object of civil rights is not only the result of a service or intellectual activity. So, aggregators of the second type, which limit their activity to providing a platform for placing information on the Internet, just as an object of the contract with consumers have information as it is, which in this case is neither the result of a service (only the aggregator consumer relations, as the customer aggregator relations involves service), nor the result of intellectual activity”¹.

The issue of legal qualification of contracts with aggregators needs further elaboration in the light of paragraph 18 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 26.06.2018 No. 26², according to which the person who is approached by the client to conclude a passenger and luggage carriage contract is liable to the passenger for damage caused in the carriage if he has concluded the carriage contract on his own behalf or from the circumstances of the contract (such as advertising signage, information on the Internet website, correspondence between the parties when concluding the contract, etc. The good-faith citizen-consumer may have formed the opinion that the contract of carriage was concluded directly with that person and that the actual carrier was his employee or a third party engaged to perform carriage obligations. Thus, judicial practice sometimes qualifies such contracts as agency contracts. For example, the Moscow City Court noted in its ruling that: “In dismissing the claim against Yandex.Taxi LLC, the district court did not take into account the provisions of paragraph 1 of

¹ *Deryugina T.V.* The legal nature of the contract mediating the legal relationship involving the aggregator // Civil Law. 2018. No. 6. P. 3–6.

² Decision of the Plenum of the Supreme Court of the Russian Federation dated 26.06.2018 No. 26 On certain questions of the application of legislation on the contract of carriage of goods, passengers and luggage by road and on the freight forwarding contract // Bulletin of the Supreme Court of the Russian Federation, 2018. No. 8.

Article 1005 of the Civil Code that under a transaction made by an agent with a third party on its own behalf and at the expense of the principal, the agent becomes liable, even though the principal was named in the transaction or entered into direct relations with the third party to perform the transaction. Under a transaction performed by an agent with a third party on behalf of and for the account of the principal, the rights and obligations arise directly with the principal. According to the explanations in point 18 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 26.06.2018 No 26, the person approached by the client to conclude a passenger and luggage transport contract is liable to the passenger for damage caused in the course of transport if he has concluded the transport contract on his own behalf or from the circumstances of the contract (such as advertising signage, information on the internet website, correspondence of the parties when concluding the contract, etc. The good-faith citizen-consumer may have formed the view that the contract of carriage was concluded directly with that person and that the actual carrier was his employee or a third party engaged to perform carriage obligations. However, the case file showed that Yandex.Taxi had not acted on its own behalf but on behalf of the principal when accepting an order from G. to provide passenger taxi services. The fact that the passenger subsequently entered into a direct relationship with the principal's employee, the taxi driver, and the fact that he was able to obtain information about the principal, in accordance with the above provisions of Article 1005 of the Civil Code, does not in itself affect the obligations of an agent who entered into relations with a third party on his own behalf"¹.

It would seem that the issue of the qualification of contracts with aggregators by the courts is not so much a legal question as it reflects the social importance of this institution and the desire to protect the weaker party in the contract. Certainly, the issue of liability of a taxi aggregator, which is financially more secure than a driver directly providing transportation services, is relevant and is aimed at protecting the rights of consumers of transportation services, however, it can be resolved by setting additional requirements for the service provider rather than by reclassifying the contract.

The next common type of contract for the provision of information services in business practice is an agreement for the storage of information in cloud storage. There is no legal definition of cloud storage in Russia, but a bylaw defines cloud computing. Thus, according to Presidential Decree No. 203 of 09.05.2017, cloud computing is an information technology model for providing ubiquitous and convenient access using the Internet to a common set of configurable computing

¹ Appeal decision of the Moscow City Court. dated 04.04.2019 with regard to case No. 33-4939/2019 // Consultant Plus legal reference system: Juridical practice.

resources (cloud), storage devices, applications and services that can be promptly provisioned and unburdened with minimal or virtually no provider involvement¹.

The legal literature notes that an agreement on the use of cloud storage can be qualified as a lease agreement, a licence agreement, a contract for compensated services, a mixed contract, an unnamed contract. An analysis of court practice is also provided which confirms that a contract for the use of cloud data storage is often characterised as a contract for the provision of compensated services. This includes the decision of the arbitral tribunal of the Novosibirsk Region dated June 4, 2014 in case No. A45-402/2014, where a memorandum of intent was concluded between the parties whereby a party undertook to provide access to software and perform other actions related to the sphere of information technology. Upon legal assessment of the memorandum, the arbitral tribunal found it to be a fee-for-service agreement, as under the memorandum one party undertook to provide access to the software and the other party undertook to pay for the services in accordance with the terms and conditions set forth therein².

Information service contracts with various online schools have become widespread. The Internet and social networks are full of such offers. In this case, virtually all contracts in this area are built on the model of a contract for the provision of services. As an illustration, here is an extract from a public offer of one of the online schools:

Public offer agreement on providing services (public offer)

1. General provisions.

1.1. This document is a formal offer to conclude a paid services agreement (the public offer) of Nikolay Vladimirovich Shapkin, hereinafter referred to as the Contractor, and contains all essential conditions of providing information and entertainment services (in accordance with Art. 435 and Part 2 Art. 437 of the Civil Code).

1.2. Any natural person who has visited <https://easydance.online>, intends to purchase a service of information and entertainment nature and pays to receive the infotainment service, becomes a Customer.

2. Scope of offer

2.1. Provider undertakes obligations upon Customer's assignment to render services on providing courses on the Internet, and Customer undertakes to pay

¹ Presidential Decree No. 203 dated 09.05.2017 On the Strategy for Development of Information Society in the Russian Federation for 2017–2030 // Collection of Laws of the Russian Federation, 2017, No. 20, Art. 2901.

² V.: Taran K.K. The legal characteristics of the contract governing the cloud storage relationship in Russia and the US // Law and Economics. 2018. No. 12. P. 45–52.

for these services in accordance with the Price-list approved by the Provider on the date of acceptance of the present offer.

2.2. Complete list of training courses, their cost, topics, content, time, terms and order is available at the Executor's official web-site <https://easydance.on-line>¹.

Regarding practical problems, I should also note that in court practice it is not uncommon for the fact that information services have been provided to be disputed. As evidence of the actual provision of services, documents other than acts of acceptance are also encountered. Thus, the actual provision of information services through a reference legal system was confirmed by a printout of data from the server of the service provider's information replenishment for a disputed period, as well as a clipping from a log-file (document testifying the passage of traffic (information) between the IP-addresses of the claimant (service provider) and the defendant (service recipient)). Additionally, a court enquiry was filed to confirm whether the IP address specified by the claimant belonged to the defendant and whether the traffic between the claimant's and the defendant's IP addresses during the disputed period. In response to the request, the defendant's ISP confirmed that the IP address belonged to the defendant (submitted a relevant contract) and confirmed the traffic data².

Based on the above analysis, the following problems can be identified in theory and law enforcement practice in this area:

- 1) the complexity of the legal qualification of the contract and, as a consequence, of the applicable rules (e.g. in the case of a contract with an aggregator);
- 2) difficulty in proving provision of information services due to the intangible nature of information;
- 3) the liability of service providers in cases where the provision of information services involves activities of a source of increased danger (e.g. taxi aggregators).

As regards normative regulation of relations connected with rendering of information services it seems that the agreement in question has sufficient specificity to be classified as a separate contractual type. I believe that an information services agreement is an independent type of contract which should be set out in a separate chapter in the special part of the Civil Code of the Russian Federation. This separation may be made on the basis of the focus criterion: the contract is aimed at carrying out such actions with information as search, processing, storage, and (or) transfer. The necessity of special legal regulation is conditioned by the specificity of the subject matter of the contract.

¹ <https://www.easydance.online/oferta> (accessed on September 10, 2019).

² 9th Arbitration Court of Appeal award dated 10.08.2009 No. 09AP-8268/2009-GK with regard to case No. A40-34889/08-59-310 // Consultant Plus legal reference system: Juridical practice.

Contract on Information Services could be a possible title for a new chapter of the Civil Code. Structurally, this chapter should be placed after Chapter 39 of the Civil Code. This chapter should regulate such issues as the legal definition, applicable law, the rule of inadmissibility of unilateral refusal by a service provider to enter into an information services agreement, the right of a service recipient to unilaterally withdraw from the agreement and consequences of such withdrawal, quality requirements for information services and consequences of violation of such requirements, provisions on liability of parties under the agreement.

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Information about the author

Natalia Dorokhova (Moscow, Russia) Candidate of Legal Sciences, Associate Professor of the Department of Civil Law of the Kutafin Moscow State Law University (15 Kuusinen St., 125252, Moscow, Russia; e-mail: dorokhovana@gmail.com).

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