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The Russian E-commerce Market During COVID-19: Legal Regulation and Trends / Российский рынок электронной коммерции в период COVID-19: правовое регулирование и тенденции

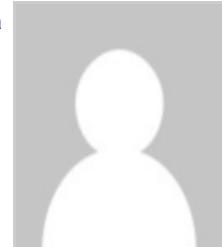
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Аннотация: Предметом исследования в данной работе являются особенности правового регулирования и развития рынка электронной коммерции в период коронавирусной инфекции COVID-19. Автор подробно рассматривает понятие и содержание «электронной коммерции», под которой понимается экономическая сфера, объединяющая в себе торговые и финансовые операции, которые осуществляются посредством бесконтактного

взаимодействия сторон. В статье также анализируется система правового регулирования рынка электронной коммерции, определяются тенденции дальнейшего совершенствования. Особое внимание уделяется влиянию пандемии на гражданско-правовой оборот, в результате которого рынок электронной коммерции стал доминирующим способом товарообмена в Российской Федерации. В исследовании приводится статистика товарообмена на онлайн-площадках за 2021-2022 год, которая значительно выросла в сравнении с предыдущими годами. Основными выводами авторов являются то, что пандемия COVID-19 ускорила процессы цифровизации всех сфер общественной жизни, в результате чего торговые и финансовые операции в большинстве своем стали осуществляться посредством сети «Интернет», заложила фундамент цифровой экономики; на сегодняшний день электронный торговый оборот стал преобладающим, однако не лишен недостатков правовой регламентации; тенденции укрепления цифровой трансформации направлены на разграничении правового положения и ответственности участников торгового оборота ("маркетплейс", "интернет-магазин" и проч.), расширении перечня видов цифровых активов и определении их правового режима (аккаунт, учетная запись и проч.).

Ключевые слова:

гражданско-правовой оборот, С O V I D - 1 9 , электронная коммерция, цифровая трансформация, гражданские правоотношения, цифровые права, владелец агрегатора, маркетплейс, цифровая экономика, цифровые активы

The COVID-19 pandemic had a significant impact on all spheres of public life in the Russian Federation; in particular, it gave rise to an acceleration of the digitalization of civil law turnover, the introduction of a self-isolation regime contributed to the fact that almost all persons engaged in entrepreneurial activity switched to a remote work format, and consumer demand did not fall but switched to the electronic digital format of consumption through various platforms on the Internet.

Meanwhile by itself, the introduction of the digital mechanism into civil law began even before the coronavirus pandemic: on May 7, 2018, the Decree of the President of the Russian Federation, "On national goals and strategic objectives of the development of the Russian Federation for the period up to 2024" came into force. According to this Decree, the Government of the Russian Federation, in cooperation with the state authorities of the constituent entities of the Russian Federation, had to form a flexible and structured system of legal regulation to influence the digital economy and carry out the task of transforming civil law turnover based on digital technologies [\[1\]](#). In this regard, amendments were made to the Civil Code of the Russian Federation the following year. In accordance with the Federal Law "On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation," the wording in Article 128 of the Civil Code of the Russian Federation was changed by enriching the system of objects of civil rights with digital ones. Taking this into account, the legislator supplemented the Civil Code of the Russian Federation, namely Chapter 6 of Article 141.1, according to which "the binding and other rights named in this capacity in the law are recognized as digital rights, the content and conditions of which are determined in accordance with the rules of the information system that meets the criteria established by law" [\[2\]](#). Further, the continuation of the digitalization of property turnover can be seen in the amendment of paragraph 2 of Article 434 of the Civil Code of the Russian Federation, defining the rules for concluding an agreement in electronic

form [3]. The signing of the specified contract is carried out using a biometric or electronic signature. Thus, this Federal Law, which gave rise to significant changes in the civil legislation of the Russian Federation, laid the foundations for the digital transformation of civil (property) turnover.

Nevertheless, despite the legislative consolidation of digital rights before the pandemic, the possibility of their implementation and fulfillment of obligations on the Internet, for the most part, was only optional, providing flexibility in legal relations, and the main civil turnover still took place in the real world. People preferred to use the traditional method of commodity exchange, but the introduction of "lockdown" forced them to reconsider their views, as a result of which the transition to the digital environment was not long in coming. A rapid increase in civil law turnover on the Internet began from that moment.

To date, the most popular method of commodity exchange is the e-commerce market or, in other words, e-commerce. E-commerce is an economic sphere that combines both trade and financial transactions that take place in a contactless way, that is, without the personal presence of the parties. This means that the parties, regardless of their location, can conclude a civil contract and, regardless of how far they are from each other, fulfill obligations under the contract concluded between them [4, p. 182], the era of smart contracts, the use of distributed registry systems has begun.

One of the types of e-commerce is electronic commerce, which refers to the interaction between the seller (manufacturer) and the buyer (consumer) through the use of the Internet to exchange goods. During the period of the spread of COVID-19, e-commerce became the dominant way consumers could satisfy their needs and entrepreneurs could make a profit. One of the most popular sites in the Russian Federation is "Wildberries" and "Ozon," and if we turn to the statistics for 2021, we can safely say that the turnover on these online sites has increased almost two-fold compared to 2020.

For 10 months of 2021, the sales volume of SME representatives of the Wildberries site increased by 98%, and the self-employed by 1221%. SMEs and the self-employed are the predominant sellers on the Wildberries site; they make up 90% of all sellers. At the Ozon site, the changes are almost the same as at Wildberries. However, it is worth noting that the percentage of SMEs increased almost several times in 2021 and now accounts for 85% of all sellers on the Ozon site. As representatives of small and medium-sized businesses themselves correctly note, the digital environment is of much greater interest for commodity exchange than offline (real world). This is due to the fact that the Internet space provides much more convenience than personal contact, so it is worth continuing to develop the e-commerce market even after the consequences of COVID-19 [5].

It is worth considering that we are discussing marketplaces here, which should be distinguished from traditional online stores. A marketplace is an online trading platform that is an aggregator, i.e., an intermediary between a supplier and a buyer. It provides conditions under which the consumer does not need to contact the supplier directly while purchasing goods, and the supplier does not need to bear the financial costs associated with the promotion of their goods. A marketplace is an analog of a regular shopping center, with the only difference being that it works online.

Let's not forget about the growth of sales in online stores, for example, "M. Video" and "Eldorado." They should be distinguished from marketplaces by the following criteria:

- unlike online stores, marketplaces do not have stores that would represent their interests

offline (in the real world). They can only have order pick-up points;

- marketplaces have a much larger and more diverse range of products, unlike online stores.

An online store can be compared to a department store or a hypermarket that sells goods of the same type from different manufacturers [\[6, p. 3\]](#). As an example, the activities of JSC "M. Video-Eldorado," which has only household appliances and electronics as products. Wildberries LLC, in turn, sells electronics, household appliances, clothing, and footwear. Among other things, online stores can represent the interests of one performer (manufacturer), but in this case, the manufacturer is forced to independently carry out its own business activities on the Internet, directly interacting with the buyer (consumer). Such an example is the Adidas online store, whose company of the same name is also a manufacturer with outlets in the real world.

Many online stores also cooperate with marketplaces, providing them with goods, and those, in turn, contribute to its sale and receive bonuses for it. But do not cancel the fact that online stores can independently engage in the commodity exchange. According to statistics, online sales of online stores also increased significantly during the pandemic. Statistical data of "M. Video-Eldorado" record a sales growth of up to 504.8 billion rubles in 2020, and of these, online sales accounted for about 300.4 billion rubles, taking into account value added tax, i.e., the growth of online sales was 108.6% [\[7\]](#).

If we consider in more detail the advantages of e-commerce, then first of all, it is necessary to note the originality of the introduction of business on the Internet. Using the example of the Ozon site, one can consider how this identity is directly expressed: absolutely any person, by going to the official Ozon website, can purchase any product that is available in the site catalog, while the conclusion of an agreement on the online site has several distinctive features. The consumer (buyer) is always invited to familiarize themselves with the user agreement in electronic form, which acts as an offer. In turn, if the buyer is satisfied with the conditions specified in the electronic agreement, then they provide acceptance in the same electronic form, which occurs through the "click-wrap" method, i.e., the client must click on the appropriate icon to confirm acceptance of the terms of this electronic agreement. It is also possible to verbally conclude an electronic contract using various means of voice or video communication. The main point here is that these funds should be able to fully transfer all the terms of the electronic agreement to the buyer, and they, in turn, should be able to accept or reject the terms of the electronic agreement in exactly the same way without any problems [\[8, p. 142\]](#). Examples of such applications can be Zoom, Skype, or Google Meet.

As previously noted, over the past year, the number of sellers has increased on online platforms, of which small and medium-sized businesses occupy a large number. This is due to the fact that online platforms have a low entry threshold; that is, with minimal costs, e-commerce can bring a profit. In addition, entrepreneurship through the digital space significantly reduces costs and quickly brings goods to the market [\[9, p. 167\]](#).

But it's not only marketplaces and online stores that are able to meet human needs. During the closure of cinemas, so-called online cinemas (video services) began to be in great demand. According to the results of 2020, online cinemas in the Russian market increased their profits by 66%, which is the highest figure in the last 6 years. The total customer base of online cinemas grew by 17%. Video services that have taken a large share of the consumer market are listed in Table 1.1 [\[10\]](#).

Table 1.1

Leading video services	IVI	Okko	Megogo	Kinopoisk	Amediateka
Market share	32%	20%	9%	8%	7%

It is also worth noting the Decree of the President of the Russian Federation "On the retail sale of medicines for medical education" dated 17.03.2020, which allowed the remote sale of medicines [\[11\]](#). At that time, there was a huge demand for them, and the specified legal act of the President of the Russian Federation allowed pharmaceutical enterprises to increase their profits through online sales. This led to the fact that in the first 6 months of 2021, the online sale of medicines increased by 24%, i.e., to 46.2 billion rubles [\[12\]](#).

The success of the implementation of trading platforms, and digital tools that ensure their implementation in meeting the property and other needs of civil turnover participants did not lead to stagnation after the lockdown, the transition to a digital form of life activity became an obvious vector of civilizational development of the state and society, all political, legal and economic processes, the traditional system of property turnover has outlived itself, risks and the threat of a repeat marked the expansion of the use of digital mechanisms in the country's commercial and civil turnover. At the state and regional levels of the country, measures were taken to introduce "QR codes" for visiting public catering places, entertainment centers, organizations for sports events and bathing places, and making deals, which led to a greater increase in online sales.

At the same time, speaking about the legal regulation of the e-commerce mechanism, it should be noted that it is still a fairly new field of activity for the Russian Federation, which began to develop rapidly with the onset of the coronavirus pandemic. Before the pandemic, the e-commerce market, in particular, all e-commerce, was only an elective, which was only intended to simplify the process of commodity exchange. At that time, the main regulatory legal act that regulated civil legal relations on the Internet was the Civil Code of the Russian Federation, which enshrines the concept of "digital rights" [\[13\]](#). With the onset of the pandemic and the introduction of restrictive measures, the rapid growth of online commerce began and called for the need to improve Russian legislation. In particular, the Decree of the Government of the Russian Federation No. 2463 of 31.12.2020 was adopted, defining the rules of the remote method of selling goods [\[11\]](#). The basic law regulating the turnover in the online environment was the Law "On Consumer Rights Protection," fixing a new subject of consumer relations: "the owner of the aggregator of information about goods (services)" [\[14\]](#). Further, the federal law "On Financial Transactions using a Financial Platform" regulating the legal relations of financial organizations with consumers was adopted and entered into force [\[15\]](#). The need to adopt this regulatory legal act was due to the fact that during the pandemic, these organizations began to provide their services through websites. Earlier, it was mentioned that online financial transactions are one of the varieties of e-commerce, but at that time, such activities were not sufficiently developed in the Russian market, and therefore, no source of law would regulate such relations. For this reason, the legislator decided to issue the aforementioned regulatory legal act.

The post-pandemic period confirmed that digitalization is one of the priorities for economic recovery. It is possible to observe the popularization of distance learning through services such as Google Meet or Zoom. This format also includes various online courses and online training. The market that provides services of this kind is called "EdTech." And if in 2020,

due to the pandemic, there was an unexpected increase in interest in this type of service among consumers, then in 2021, the situation stabilized, leading to a smoother growth of 80%. Statistics show that in 2022, a smoother audience growth is expected, but with a higher percentage, because entrepreneurs are trying to cooperate with foreign countries [\[16\]](#).

In addition, in the Russian Federation, you can get almost all the necessary services through an application on your mobile phone or the Gosulugi website: the ability to make an appointment with a doctor or for them to make house calls, purchase land rights, etc. [\[17\]](#).

Thanks to the measures carried out by the state within the framework of the "National Action Plan ensuring the restoration of employment and incomes of the population, economic growth and long-term structural changes in the economy," digital elements have begun to systematically acquire their natural development in civil law. The formation of logistics mechanisms has already started, which will not be conditioned by retail chains. Therefore, marketing elements in this mechanism will be essential. With such a working mechanism, manufacturers can independently and comfortably engage in their activities in the consumer market while independently setting a pricing policy for their own goods with a minimum percentage of deductions for the online platform and transform their activities within reasonable limits [\[18, p. 2\]](#). We are talking here about marketplaces, which, as mentioned above, have become the leading intermediaries on the Internet, and by providing such conditions, they attract more and more suppliers and consumers (buyers), which is confirmed by statistics. Thus, they simultaneously simplify civil law turnover and contribute to the development of the Russian Federation's economy.

At the end of 2021, the President of the Russian Federation met with members of the Government of the Russian Federation, at which V. V. Putin was tasked with abandoning anti-crisis measures due to the fact that the economic downturn had been overcome and at that time, a transition to systemic measures that would help stimulate the economy was needed [\[19\]](#). But if we consider that trading in the digital space is characteristic of the post-covid period, which is currently the predominant form of profit-making, we can say that online entrepreneurship has become an integral part of our lives.

Online entrepreneurship is a completely new format of entrepreneurial activity implemented through online digital platforms. This activity is currently the most promising for people just starting to engage in entrepreneurship due to the low entry threshold and a wide choice of ways to distribute their goods and services. The advantage, among other things, of doing business in a digital environment is universality: using one website, for example, "Wildberries," to conclude almost any contract of sale, regardless of the distance the buyer is from the seller. In the post-covid period, this way of doing business has become the most popular. Nevertheless, it is necessary to consider the specifics of its legislative regulation.

To date, the legislator has adopted the following regulatory legal acts to ensure entrepreneurial activity on the Internet: Federal Law "On Digital Financial Assets, Digital Currency and Amendments to Certain Legislative Acts of the Russian Federation"; Federal Law "On Financial Transactions using a Financial Platform"; Decree of the Government of the Russian Federation dated 31.12.2020 No. 2463.

The Decree of the Government of the Russian Federation dated 31.12.2020 No. 2463 is of interest. Since online entrepreneurship has become predominant in the post-crisis period,

adopting this Resolution was an important step in overcoming the economic crisis. This act highlighted a section dedicated to the remote method of commodity exchange. Its provisions contributed to the legal regulation of commerce in the digital environment. In particular, there was a norm that imposed the obligation to place the seller's (manufacturer's) offer on the website for the buyer (consumer) to get acquainted with it [\[20\]](#). Thus, this section introduced provisions that supplemented the Law "On Consumer Rights Protection," which contributed to improving economic turnover in the Russian Federation, ensuring the rights of participants in property turnover.

The activity of financial platforms regulated by the Federal Law "On Financial Transactions using a financial platform" is important, which was adopted at a time when online trading began to grow rapidly. According to Article 2 of the specified Federal Law, a financial platform is understood as "an information system that ensures the interaction of financial organizations or issuers with consumers of financial services through the Internet information and telecommunications network in order to ensure the possibility of financial transactions and access to which is provided by the operator of the financial platform" [\[21\]](#). Its adoption would be primarily due to the fact that credit institutions began to carry out their activities online, and to ensure control of the flow of financial assets on the Internet, the Federal Law "On Digital Financial Assets, Digital Currency and Amendments to Certain Legislative Acts of the Russian Federation" was adopted. It was in this regulatory legal act that such concepts as "digital financial assets" and "digital currency" were introduced, as well as amendments were made to the Federal Law "On Joint Stock Companies"; the Federal Law "On the Securities Market"; the Federal Law "On Countering the Legalization (Laundering) of Proceeds from Crime and the Financing of Terrorism"; Federal Law "On the Central Bank of the Russian Federation (Bank of Russia)"; Federal Law "On Insolvency (Bankruptcy)"; Federal Law "On Advertising"; Federal Law "On Enforcement Proceedings"; Federal Law "On Combating Corruption"; Federal Law "On the National Payment System"; Federal Law "On Control over the Compliance of Expenses of Persons Federal Law "On the Prohibition of Certain Categories of Persons to Open and Have Accounts (Deposits), Store Cash and Valuables in Foreign Banks Located Outside the Territory of the Russian Federation, Own and (or) Use Foreign Financial Instruments"; Federal Law "On Amendments in the Federal Law "On Attracting Investments using Investment Platforms and on Amendments to Certain Legislative Acts of the Russian Federation" [\[22\]](#). Thus, the legislator regulates the legal regulation of not only electronic trade turnover but also electronic financial services.

Questions are raised by the norms enshrined in the Law "On Consumer Rights Protection." Paying attention to paragraph 13 of the preamble, which defines the "owner of the aggregator," from which the following attributes can be distinguished:

- any organization (organizational and legal form does not matter) or sole proprietor;
- ownership of a computer program and (or) a website;
- the buyer (consumer) has the opportunity to study the offer submitted by the seller (performer);
- conclusion of a purchase and sale agreement or a contract for the provision of services free of charge online with subsequent payment for goods or services in cash or by bank transfer [\[23\]](#).

After analyzing these signs, it can be concluded that the legislator has fixed the definition

of the previously mentioned marketplace, the signs of which overlap with the above-mentioned ones in all points. Thus, providing an opportunity to familiarize with the offer to conclude a contract is just an offer, and the conclusion of the contract already indicates that the buyer has agreed to the terms by acceptance—all these features are characteristic of the marketplace. At the same time, the concept of an "online store" also has the above attributes. But, as you can see, the concepts of "marketplace" and "online store" are not legally fixed. They are used in everyday life and are often used in scientific literature. The legislator's preference for the concept of "owner of the aggregator" raises a number of questions, in particular, related to the process of activity of this aggregator. When analyzing Articles 9 and 12 of the Law "On Consumer Rights Protection," it can be established that the task of the aggregator is to inform the buyer (consumer) about any product that the latter is going to purchase. In the same case, if the aggregator provides incorrect information about the product, then it is the owner of the aggregator who will bear civil liability, expressed in the form of compensation for damage. In this regard, it is not entirely correct to determine the owner of the aggregator only as an intermediary ensuring the interaction of the buyer (consumer) and the seller (manufacturer) in the digital environment, as they also carry out activities for the conclusion and execution of contracts on the Internet. It follows from this that the provisions regulating the activities of the aggregator lack specificity. According to M.V. Vronskaya, "The definition and subsequent dispositions of the norms of the law on consumer protection are of a narrow consumer nature, do not disclose the legal essence and status of the 'aggregator' and do not reflect the whole range of issues of the problem field ..." [\[12, p. 143\]](#). The legislator in the concept of "aggregator owner" focuses on the information and intermediary function, although the same online stores, unlike marketplaces, do not act as an intermediary in all cases because the manufacturer can independently create a website on which they will sell their own goods without any problems.

As you can see, the leap in the development of the e-commerce market began during the spread of COVID-19. According to analysts' forecasts, for 2022, commodity exchange on the Internet will not only not be inferior to 2021 but should also grow. In particular, restrictions on the remote sale of certain goods are expected to be lifted. For example, JSC "Russian Post" stated that from 03/31/2022, it would begin conducting an experiment on the delivery of Russian wine; that is, a person who has reached the age of 18 has the right to place an online order of Russian wine and order its delivery to the place chosen by them. Of course, the main problem of e-commerce is legislative gaps that burden legal relations arising on Internet sites. Considering that the e-commerce market is only strengthening every day as the main way of turnover, eliminating these gaps is one of the priorities for the legislative body of the Russian Federation.

With all of the above, it should be noted that whatever analysts' optimistic forecasts about the growth of the e-commerce market in the Russian Federation, at the beginning of March 2022, many companies began to leave the Russian market. For example, the eBay online platform, which is one of the most popular in the world, and the Nike company have ceased their activities in Russia. But the most significant is that such payment systems as Mastercard and Visa are disconnected from service in the Russian Federation [\[24\]](#). These payment systems are among the most reputable in the world, so disabling them means that citizens of the Russian Federation will no longer be able to make purchases in foreign countries through Mastercard and Visa. Such circumstances have led to the fact that many Russian entrepreneurs will no longer be able to cooperate with foreign colleagues and exchange goods, and consumers, therefore, will not be able to purchase goods directly from a foreign manufacturer. If we talk about online platforms using the example of "Wildberries"

and "Ozon," then we need to understand that they are domestic, so the exchange of goods using them in the territory of the Russian Federation remains possible, but how they will cooperate with foreign manufacturers, the question remains open. It is safe to say that Russian entrepreneurs who previously collaborated with foreign online platforms such as the above-mentioned "eBay" or "Amazon" will no longer be able to conclude contracts with them.

Summing up, it should be noted that the digital space has for a long time become an integral part of all spheres of public life in the Russian Federation, and the COVID-19 pandemic has significantly accelerated this process, which allowed the e-commerce market and all related business activities on the Internet in a short period to become the predominant way of commodity turnover. In the current situation, even with restrictions related to the international commodity exchange, the popularity and economic benefits of e-commerce within the Russian Federation remain unchanged, although it requires certain legislative changes that would improve the legal regulation of the e-commerce market itself.

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