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Reinventing “Magic Circle” in the Age of Internet Government Control: the Lessons of Videogame Law for Modern Practices of Legal Interpretation

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Аннотация

The restrictions for disseminating certain kinds of information that is considered publicly offensive and (or) dangerous has made topical a fundamental problem of the limits of reasonable interpretation and application of law to the contexts that could be characterized as virtual, playful or otherwise non-serious. From the standpoint of interdisciplinary approach including mostly philosophy of law and game studies, the underlying problem reflected in the representative examples above, has substantial similarities with the “magic circle” concept studied in the research direction that is conventionally called “videogame law”. However, existing theories of magic circle, both in game studies and law, are not satisfactory to resolve this problem. The article suggests that the solution can be found in theoretical sociology concept of “generalized symbolic media”. If an object of social relationship is an “external referent of value” of such media and has convertible “socio-currency value”, this means that such object is significant enough to be included into the scope of legal regulation. However, for the application of law to be appropriate without doubt, such an object should also share functional similarity with the core meaning of the relevant legal norm. Together, these two criteria, conventionally designated as “the criterion of seriousness” and “the criterion of reality”, are necessary and sufficient to assert that interpretation and application of law is not absurd, but reasonable in cases related to virtual reality that is characterized by possibility to include simulation that is out of scope of law.

Ключевые слова: virtual reality, magic circle, theoretical sociology, law, medial turn, semantic limits of law

Introduction

In the experience of the Russian Federation, a recent trend of states to seek “sovereignization” in the informational space finds one of its implications in establishing the rules restricting “information prohibited for dissemination [in the Internet]” [Efremov A.A., 2018: 202]. By the date this paper is finished, more than a few criteria for blocking of dissemination of such information in the Internet were established by the Federal Law of July 27, 2006 “On Information, Information Technologies and Protection of Information” (hereinafter the “Information Law”). Some of the criteria are explicitly mentioned in Part 5 of Article 15.1 and in Part 1 of Article 15.1.1 of the Information Law. Furthermore, the courts furthermore have the competence to recognize information as prohibited for dissemination in the Internet in “open” cases in view of Part 2 of Article 15.1 of the Information Law. In each case, however, such information has to be considered as publicly dangerous or offensive, by means of either legislative assumption, or court argumentation respectively.

There is already a plenty of cases where certain information disseminated in the Internet has been considered as “prohibited for dissemination” according to the abovementioned rules. From the standpoint of theory of law, constitutional law and information law, many of these cases do not pose any substantially novel kind of legal problems, except for the “classic” ones, such as, for instance, the problems of the limits of freedom of speech, balancing of constitutional values and general efficiency of website blocking in view of the legislative intention. However, there is a number of cases where, from common sense perspective, “things went wrong” for unusual reasons. For instance, mass media refer to one of the decisions of Zavodoukovsky District Court, Tyumen Region[1] by means of the following illustrative opinion of anonymous Roskomnadzor employee: “We once received a court order to block a site with information about making dynamite in Minecraft. The site said that if you mix sand and coal, you get dynamite. And you think what to do with this court decision: you cant execute it and block Minecraft (italics are mine. — V.A.). As a result, we talked to the

1. Decision of the Zavodoukovsky District Court, Tyumen Region, of 12 July 2016, Case No. 2-662/2016. Available at: URL: https://Zavodoukovsky—tum.sudrf.ru/modules.php?name=sud_delo&srv_num=l&name_op=doc&number=25808719&delo_id=1540005&new=0&text_number=l (accessed: 02.10.2018)

lawyers and wrote to the prosecutor’s office to ask them to review the decision” [Yakovlev A., 2018].

There is also an earlier similar case: the Federal Drug Control Service once blocked one of the forums of the online game Eve Online due to the fact that the player discussed ‘drugs’, which were used’ by videogame characters, on that forum [Likhachev N., 2012]. Each of these cases, as well as similar cases that eventually could be found in the materials of practice, may seem to be insignificant and ludicrous, but the point of this paper is to demonstrate that, instead, they help to reveal a fundamental problem of law that becomes relevant in modern times.

As can be seen, in each of the cases mentioned above, the question is implied that in some cases related to the digital game environment, the interpretation and application of law may be absurd. However, it is not easy to propose a universal criterion of absurdity there. The fact of realization of social relations in the virtual space of a computer game itself cannot be a universal explanation. As an illustration, in 2020 an in-game library with real extremist materials was created on one of the servers of the same Mi necraft videogame[2]. But the very fact of using such materials, which are clearly subject to legal regulation of the “real world” cannot be the only opposite criterion either. Let us imagine that some videogame refers to fictional extremist materials, but such materials become prototypes for the real world. Or, referring to the second of the above examples, a game dedicated to fictional drugs suddenly becomes a tool for propaganda of the objects limited for economic exchange. This state of affairs tacitly suggests that there should be some other explanation, perhaps of general theoretic nature, that could explain why in some cases seemingly fictional, non-serious and/or game phenomena could be included into the scope of “real” law without violation of common sense, while in other cases they clearly should remain in distance from day-to-day social reality.

The ideas presented in this paper are based on the hypothesis that, from the standpoint of interdisciplinary approach including mostly philosophy of law and game studies, the underlying problem reflected in the representative examples above, has substantial similarities with the ‘magic circle’ concept studied in the research direction that is conventionally called ‘videogame law’. In view of

2. Reporters sans frontieres cree une faille pour vaincre la censure en construisant un refuge pour la liberte de la presse. Ou ? A l’interieur de Fun des jeux video les plus populaires du monde, Minecraft. 2020. Available at: https://rsf.org/fr/actualites/rsf-inaugure-la-bibliotheque-libre-un-centre-numerique-de-la-liberte-de-la-presse-au-sein-dun-jeu (accessed: 19.03.2020)

this, the contemplated problem can also be understood as the problem of the limits of reasonable interpretation of the legal texts that excludes something that is “inside” such magic circle from the scope of application of “real” law. From methodological perspective, it is suggested that theoretic sociology would also be of great help in identifying what has “real” legal significance and hence can define what is indeed “publicly dangerous” and/or “offensive”, and what should remain within the boundaries of playful virtual laws for the purpose of legal application. Lawrence Lessig once mentioned that studying the pervasive legal issues of cyberspace might help us to understand more some general principles of law [Lessig L., 1999:502]. In a similar way, reinventing of the magic circle along the lines suggested in this paper may help to separate legally significant cases from the legally insignificant ones both for practical and theoretical purposes.

1. The Concept of the Magic Circle and its Criticism

The term ‘magic circle’ is widely used in cultural studies, sociology and interdisciplinary approach of game studies. Legal scholars later adopted it too. In this paper, it would make sense to have a general look at the discussion of the magic circle concept in game studies and then verify the relevance of various ways the lawyers adopt it. The reason is that it is tempting to use this concept, as it is known by this moment, in an attempt to find an easy solution to the contemplated problem.

From the beginning, this concept has meant an assumed conventional boundary between the space of a game and “real life”. The history of the use of this metaphorical term goes back to the work of J. Huizinga, ‘Homo Ludens. According to the Dutch thinker, “[formally speaking, there is no distinction whatever between marking out a space for a sacred purpose and marking it out for purposes of sheer play. The turf, the tennis-court, the chessboard and pavement-hopscotch cannot formally be distinguished from the temple or the magic circle” [Huizinga J., 1938: 20]. He applied this term even to the law itself: “Every place from which justice is pronounced is a veritable temenos, a sacred spot cut off and hedged in from the ordinary’ world. The old Flemish and Dutch word for it is vierschaar, literally a space divided off by four ropes or, according to another view, by four benches. But whether square or round it is still a magic circle, a play-ground where the customary differences of

rank are temporarily abolished” [Huizinga J., 1938: 77]. The concept of magic circle has been widely discussed in game studies. However, recently it was subject to criticism.

According to M. Consalvo, when J. Huizinga wrote about magic circle, he based this idea on “a magic circle for play, which bounded a space and set it apart from normal life. Inside the magic circle, different rules apply, and it is a space where we can experience things not normally sanctioned or allowed in regular space or life”; . [such a] conceptualization of the magic circle was developed in the 1930s, **long before the advent of digital games** (emphasis added — V.A.), by a theorist with particular views of what did and did not constitute play... our sense of space and place was radically different from what it is now. In suggesting a place “set apart” from everyday life, that space could be envisioned as geographic space fairly easily — the playground, the boxing ring, the hopscotch outline” [Consalvo M., 2009: 409]. In contrast, digital games are rather a dynamic activity. Such an activity disperses in the experience of day-to-day life. The dividing line between games and other aspects of life is not clear and stable — instead, people get into and out of games in an intermittent manner, so that the concepts of “frames” and “keys” of E. Hoffman and G. Fine are more appropriate [Consalvo M., 2009: 414]. V. Lehdonvirta presented another example of the criticism of the magic circle concept: fluid character of everyday life does not allow delineating virtual and real worlds clearly [Lehdonvirta V., 2010].

In contrast, J. Stenros defends the concept of magic circle for the purposes of game studies. According to him, it still is relevant to describe (1) a “psychological bubble”, i.e. “a protective frame” surrounding the player who is in psychological state corresponding to the game process, (2) a metaphor for a social contract that constitutes a game activity, and (3) a kind of arena for gameplay that is “temporal or spatial site”. The latter might be the most relevant for the present study, since such kind of site’ “…is culturally recognized as a structure for playful action, or an inert ludic product. As the social negotiation of a magic circle becomes culturally established and the border physically represented, arenas emerge as residue of the playing (the tennis court, April Fool’s Day, **game products** (emphasis added. — V.A.). These sites are recognized as structures that foster play even when empty (and they can be constructed in ways that seek to foster playfulness), but require use to be activated as the border of the magic circle remains

social. As socially recognized they have severed the need to be engaged in with a playful mindset” [Stenros J., 2012: 14-15].

However, such discussion of magic circle belongs to the context of game studies, and not of jurisprudence. The approaches criticizing the contemplated concept without substantial reservations are not helpful for law. It is acceptable for game studies to assert that virtual world and real world are intertwined, but in law that would undermine legal certainty. At the same time, the approaches that insist on keeping the magic circle concept are also not particularly informative and specific. Returning to the initial examples of the paper, on the opposite, what we need are quite specific principles on how to discern where it would be acceptable to apply law in respect of certain kind of social relationships focused on information exchange. Even if it is not a general ‘magic circle’ so that the metaphor works to its fullest (i.e. directly referring to circle’ as a figure that is round and plain), it can be a different figure, not necessarily round, but there should be a principle of how we draw it.

Certain lawyers have perceived this idea in application to massive multiplayer online games, and there are at least two more or less established adaptations of the magic circle metaphor in law. B. Duranske suggested a ‘magic circle test’ that has to be applied to social relationships in multiplayer online games: “An activity that occurs in a virtual world is subject to real-world law if the user undertaking the activity reasonably understood, or should have reasonably understood, at the time of acting, that the act would have real-world implications” [Duranske B., 2008: 75]. We should pay tribute to pioneer enthusiasm of the author. However, such a test actually implies the question of whether an individual may be subject to legal liability (intent and negligence are tacitly referred to in the test), but does not shed much light on the core question of whether real law generally can invade a virtual world. Liability is not the only matter here — the core question may concern any other kinds of impact of law. Furthermore, by now the concept of “committing actions in the virtual world” seems not particularly clear, especially in view of the previously mentioned criticism of the game studies’ concept of the magic circle. In other words, this approach is very good for its time, but it inherits the weak points of the general theory of magic circle, that is lack of clarity on demarcation between what is virtual and what is real. Even with J. Stenros’ defence of magic circle, the arguments of M. Consalvo and V. Lehdonvirta on the intermittent nature of games and mutual dispersion of virtual

and real, respectively, remain undisputed and have the same significance in jurisprudence as they do in game studies.

Elaborating the discourse further, J. Fairfield suggested an approach that conventionally can be called a consensual theory of magic circle’. According to him, “[u]nder the old conception of the magic circle, such a result [differentiated attitude to virtual property depending on the subjective composition of the legal relationship participants] makes no sense: either virtual property is “virtual,” and interests in it are utterly unprotected by law, or it is “real” and fully protected against all comers. Under the new conception articulated by this Article, players in virtual worlds are real, the actions are real, and even the digital objects of their actions are real. The critical question is not whether the property is real or not, or whether a theft of property is real or virtual, but whether a given act as relates to the property is inside or outside the scope of consent of the parties (emphasis added. — V.A.). As between the game god and the player, the EULA may clearly indicate that the god may alter or delete a given digital object at will. But as between players, one player’s theft of another’s property may well exceed the scope of consent and thus be actionable in fraud or conversion” [Fairfield J., 2009: 834-835].

Without doubt, J. Fairfield’s adaptation of the magic circle concept into the jurisprudence is good, but not universal enough. His theory of consent allows resolving of legal conflicts or collisions limited to private interests, but can be debatable in application public interests. Of course, we can introduce high-level fictions of consent made by sovereign people in a constitution and subordinate laws, but this will not save us in all situations. Imagine a legal text, drafted already under such a fiction. Question of whether we can extend the meaning of certain word in such a text to some phenomena of virtual reality may arise again, and we will have to return to the starting point. In view of this, we need to rephrase the core question and switch from the initial idea to find delineation between virtual and real to something else.

2. Qualification of the Problem from the Standpoint of Legal Theory

The principal position developed in this study is that the problem of the relationship between “virtual” and “real” in law, as discussed in this article, is not a narrowly specialized problem, such as of civil or information law. On the contrary, the problem is universal. We can

present the original formulation of the problem as follows: in what cases can real law regulate relations in the virtual world? However, as we see from various criticism to the concept of magic circle, the difference between the virtual world and the real is uncertain or absent. Nevertheless, one of the ways to re-conceptualize the question in other form would be speaking about conditional limits of the law in the mediaspace, defined by socially significant meanings and sometimes difficult to discern due to the deceptive conditions of the ludic turn[3] (deceptive’ because of various simulacra) that is inherent to the medial turn[4] in general.

The high purpose of law is to give certainty to an uncertain social reality. The problem we are considering from the perspective of legal theory can be interpreted as a problem of application of law and a problem of effect of legal norms. However, the central part of the problem, in which all its aspects converge, is interpretation of law as a constitutive component of legal theory and practice. Is it possible to interpret a legal text as a basis for a legal norm that applies to certain social relations mediated by a mediaspace, sometimes characterized by simulation? If we change the perspective of the analysis of the magic circle in this way, its viable interpretation in jurisprudence relates to the limits of the reasonable interpretation of law, or even certain kind of limits of law in general. At the same time, such limits are defined in relation to the mediaspace, i.e. the space of meanings, and in relation to the scope of possible meanings of this or that legal text, whether they include certain relations mediated by media reality. Hence, it is possible to designate the problem under study as a problem of defining the semantic limits of law.

In the history of legal thought, Lon Fuller had already tacitly touched this, although this part of his ideas has not find proper

3. The concept of ludic turn (or game turn’) has been described in detail by J. Raessens who noted, in particular, that “[t]o start with the first element, media use may initially look like harmless, disinterested fun. Think of all the creative adaptations of Star Wars on YouTube. It can also, however, become involved in political ends. Think of the Turkish court recently blocking access to YouTube because it allegedly hosted videos that attacked Ataturk, the founder of the Republic of Turkey; the element of make believe refers to the dual nature of media” [Raessens J., 2010:14].

4. As the Russian mediaphilosopher V.V. Savchuk noted, “«[a]fter a series of major for the twentieth and early twenty-first century turns, more and more insistently voices are heard to recognize the summing and, at the same time, fundamental medial turn»; «…media is both a method of communication, and an instrument of production, and a sophisticated method of simulation (emphasis added. — V.A.), and an instrument of political struggle». The following observation is also important: «[a]fter the linguistic one, a medial turn comes — an ontological evidence of a change in reality — that being and media-reality are identified and interchanged, dissolving into each other. The stages of its formation are as follows: reality is mediated by thinking, thinking by language, language by sign, and sign by media. Being built on top of each other, “being” in modern conditions is given only through the media» [Savchuk V.V., 2014: 24].

elaboration until now. In “Anatomy of the Law”, he wrote the following passage: «Within any society there are contentions which run so counter to generally shared assumptions that they would be rejected out of hand by any judge of sound mind (emphasis added. — V.A.). A man kills his father; in answer to a charge of murder he pleads that his father was a virtuous man with a firm belief in heaven; the taking of his life, therefore, dispatched him into an infinity of happiness such as he could never enjoy on earth; one who confers such a boon should be rewarded, not punished. An official embezzles a large sum from the state; he answers the charge against him by citing a preamble of the Constitution declaring that the state exists to promote the greatest happiness of the greatest number; the money he took made the defendant very happy; the resulting infinitesimal diminution in the wealth of every other citizen could not possibly produce a perceptible decrease in his happiness. (If these illustrations seem out of place in a serious context like the present, it may be remarked that St. Thomas Aquinas dealt at some length with the problem of the first; Jeremy Bentham gave earnest attention to the issues presented by the second.)… Contentions like those just suggested are not ruled out of order by any statute, judicial decision, or custom. Their rejection does not depend on law; on the contrary, it may be said that the law depends on their rejection in the forum of ordinary lay opinion. Some extralegal consensus on what is clearly out of bounds is essential to shrink the periphery of explicit law to workable dimensions” [Fuller L., 1968: 113].

Thus, we took special legal problems of multiplayer computer games as a starting point. In the end, we have come to a rather universal problem, typical for any case of simulation, imitation or mimesis — in the broadest sense, this all can be conventionally characterized by the term virtual’ and its derivatives. The possibility of such universalization defines the problem under consideration as a problem of legal theory and philosophy. One of the specific theoretical and legal manifestations of this problem is the search for reasonable limits of interpretation and, as a consequence, the application of law to relations involving the simulation, imitation or mimesis in question. In our case, the “generally shared provisions” which Fuller referred to, predetermine implicit rules of common sense, through which we can avoid absurd interpretations of legal norms related — specifically in the case of the problem in question — to the virtual context. If we were to restate Fuller’s examples in the realities of today, we could come to an example where a court charges a videogame player who “killed” another character with a

crime under Article 105 of the Criminal Code of the Russian Federation (“Murder”). This would rather be absurd. However, what could be the way to define such implicit rules?

3. Criticism of the Existing Approaches to Magic Circle

Returning to the initial example, the question can be rephrased as a question of finding that exact element (or elements) in the facts the constitute and (or) surround certain media phenomenon that should be assessed from the standpoint of law with the effect that such assessment would tell us whether law can be applied to the corresponding social relationships.

As we have noted, J. Huizinga suggested considering qualities of sp ace as something that would allow differentiating between several contexts that are regulated by different sets of rules. It is tempting to stop constructing a bridge to legal philosophy here by saying that the space of a game is exactly the factor that could serve as the criterion for separating situations[5] where one set of rules (e.g. rules of game) shall be applied instead of other (e.g. rules of law). It may be tempting to use this approach in discussion of virtual property though, but even in that case, it would not be clear enough. The fact that virtual goods are subject to sale and purchase for real money breaks the logic of the criterion of space, since real money do not belong to virtual space of a game. This deficiency is the same as M. Consalvo speaks of — modern games are not similar to games of the past that required certain detached space to exist.

Besides space, there can be two more potential alternatives based on the previously mentioned discussion of magic circle. The first idea of the recent magic circle supporter, J. Stenros, related to “psychological bubble” (“protective frame”) is not applicable in this context because it refers to individual state of mind, and not to any intersubjective communicative phenomenon. This idea, however, correlates with the “magic circle test” suggested by B. Du- ranske, and shares the same criticism. If some user acted being protected by such a “psychological bubble”, but it could be reasonably expected from her to do so, this can be used in legal argumentation on whether or not there has been intent e.g. to inflict harm, or negligence. Apparently, the second idea of J. Stenros related to social

5. A common language word “situation” is used here with intent. In the course of present discussion we do not yet know which specific term exactly to use. It would be too early to say “space”, “relationship” or anything else.

contract that constitutes a game activity, sounds more relevant and correlates with the magic circle adaptation by J. Fairfield. Applicability of this theory is also limited for the following reasons. First, not every case of interaction “inside” a virtual world that is significant for real law, is based on consent of the parties. Even if we extend the scope of the parties in such a way, that it would include videogame provider and state (so that we can say that by means of certain law, as a legislative act of representative authority, the parties expressed their consent), this would not eliminate the problem at its core. It would not tell us what to do in a situation, where the legal texts that constitute the expression of such consent are not particularly clear and still require some common sense principle to interpret it.

Just as a kind reminder, we are trying to answer the question of what is that exact element (or elements) in the facts the constitute and (or) surround certain media phenomenon that should be assessed from the standpoint of law with the effect that such assessment would tell us whether law can be applied to the corresponding social relationships. So far, we have dismissed space, state of mind and a kind of social contract (consent). Identifying something as a special space for game or other similar "non-serious" activity will be of partial help, because if things go wrong, law can be applied even to a football game. For instance, if a player intentionally inflicts harm to health to other player. In a similar way, state of mind may be relevant to resolve the matter of real legal liability, but not of the absurdity of applying law in a given situation in principle. Finally, social contract (e.g. in a form of a consent that is potentially binding from the standpoint of law) is also quite situational.

Let us consider the social contract criticism in more detail. Imagine a realistic videogame that contains actual explosive recipes. Players and the videogame company express their “consent” and “say” that it is acceptable. Apparently, if we consider the example of the Russian law related to government control over the Internet, or any other similar approach, the state is in position to request that this information is removed from the videogame. Based on J. Fairfield’s theory, we can say that the state is also a party to this complex social relationship, and there is no state’s consent to this. However, this works only in case when we are sure that there is an expression of state’s consent or dissent. If there is doubt, since in our case the state makes such an expression by means of normative legal acts that usually contain general concept-words, we need to

base our conclusion on consent or dissent on something, and here we actually come back to the initial question that still remains open. Furthermore, there can be different details that will make things more complicated in one sense, and simpler in other. For instance, the explosives’ recipe may pertain to ancient times, and no one can create it now because it is not possible to find proper materials. In this modification of the case, it may be natural to exclude this case from the scope of the state’s “consent”. What we are trying to find is the underlying general principle, if we follow the assumption that there is one.

4. Virtual Property, Money and Generalized Symbolic Media

There can be a hint as to how to solve this riddle. It may lie in the area pertaining to virtual worlds that already received detail account in legal research. For some special reason, there is little doubt that real law, in principle, can interfere with any kind of relationship that seemingly takes place in a virtual world as long as real money is involved. For long period already the idea to consider virtual property, initially existing as a part of an imaginary, albeit shared, virtual world, as some kind of object of civil rights or even property [Saveliev A.I., 2014] causes no surprise. As it was mentioned more than 15 years ago, introducing real money trading into virtual world practices “breaks the illusion that it is all a game”, the illusion that characterized most games of the past and some games of the present that do not allow infusion of real money into the process [Castronova E., 2004:195]. Hence, the connection of game practices to real money, and those relationships where such money is an immediate object of interaction, are a clear case where intervention of real law into virtual interaction is justified. The task implied in this paper is to find a general principle of such an intervention. Therefore, general understanding of what money is, and what the objects similar to money are, allows finding the answer.

According to modern theoretical sociology, money is a kind of gen eralized symbolic media. Conventionally, Talcott Parsons was the first to suggest this concept, as we know it by now, even though its premises could be related to prior authors [Abrutyn S., 2015]. This concept can be compared with Pierre Bourdieu’s ideas of the symbolic economy [Bourdieu P., 2019]. However, while the French sociologist was more concerned with studying symbolic “macroeconomics”, the concept of generalized symbolic media

focuses on the nature of “social currency” and the mechanisms of its conversion. According to Parsons, the social system consists of four subsystems: political, economic, legal and cultural. Each of these social systems has its own “symbolic medium”, which can be considered as some kind of convertible “social currency”. For example, power, understood as a right (and monopoly) to coercion, is the “symbolic medium” for the political system. Power, directly or indirectly, legitimately or not, can be acquired through money, while money is the “symbolic medium” of the economic system. This, according to Parsons, is an example of the conversion of “social currency”. It is important to note that what has such an “exchange value”, and not just a certain significance within the social system, has value within a social system.

S. Abrutyn emphasizes that the concept of generalized symbolic media is not just alive but also has significant methodological potential. Although this concept was popularized by Talcott Parsons and Niklas Luhmann, and later by Jurgen Habermas, its origins can be seen in Karl Marx’s “Capital” and Max Weber’s economic sociology and, moreover, in G. Simmel’s phenomenology. Parsons proceeded from the fact that the exchange takes place between systems, while S. Abrutyn stresses that the exchange mediated by generalized symbolic media takes place between people and groups, and hence they are more relevant for micro-level of analysis [Abrutyn S., 2015: 446, 450]. S. Abrutyn suggests complementing the concept with the notion of an “external referent of value” — a specific object that is used to communicate the value of a generalized symbolic medium. A banknote, an attribute of power, a symbol of religious affiliation could all serve as examples. In total, he identifies ten institutional areas, each of which corresponds to a generalized symbolic medium and external referent of value, between which institutional and individual exchange is possible. In addition to economics and politics, he singles out, for example, the institutional area of kinship, to which the medium of “loyalty” corresponds with genuine external referents of value [Abrutyn S., 2015:454]. In the context of digital economy, it should be noted popular word “token”, which denotes, among other things, a unit of economic value in cryptocurrencies, is an obvious example of an external referent of value.

It is likely now that the following would be true, if we apply this theory to law. In general, if the object of social relationships, interpreted as an external referent of value, has a convertible “social-currency value” — and we are talking about such generalized

symbolic media as money, political power, influence and others that are constitutive to social reality — then the application of law to social relationships with such object is within the framework of common sense. If not, then the application of law to such relationships will be absurd and, as a result, unacceptable. The distinction between “virtual” and “real” is based on the idea that the object of social relationships has a convertible social and currency value that determines the very possibility of interpreting and applying the law in a given case. In other words, magic circle is possible as a strong and illustrative metaphor, but such a circle surrounds not individuals, their relationships, spaces where they act or anything else, but specific objects implied in the interaction. Virtual property that is traded for real money, as opposed to genuine in-game money, such as gold a player can obtain through questing in a single-player role-playing game, is within the scope of law. It is an external referent of value of real money, and hence property laws that naturally relate to money worth themselves can be applied to it. However, money is not a single generalized symbolic medium. Other good example is power that can be found, for instance, in those communities of virtual worlds that are able to drive people to do something outside the game. Furthermore, these and other generalized symbolic media could be “converted” into each other, and such “convertibility” by itself is a test that allows to recognize something significant enough for legal regulation.

5. The Criteria of “Reality” and “Seriousness”

Let us summarize the previous reasoning and refine the criteria implied in it. In the case of each legal collision emerging due to architectural peculiarities of mediareality (such as in the examples of Minecraft and Eve Online provided in this paper), it is necessary to verify two criteria that will make it possible to determine the applicability of the relevant legal norm to social relationships in discussion. (Since both criteria and the subsequent generalization have already been formulated by the author in his dissertation submitted for defence in the form that the author considers satisfactory, but have not yet been published, it would be most appropriate to provide them in the form of direct citations.)

The first criterion is “the lack of functional relevance (adequacy) of the object of social relationships to the central meaning of the concept-word used in the legal text (the “criterion of reality”).

Interpretation of a legal text that implies the need to determine whether an object of social relationships that is mediated by the mediareality is within the scope of the possible meanings of the concept-word used in such text, as well as the subsequent application of law, requires correspondence between such object and the concept-word. In current socio-cultural conditions, the facts of the mediareality are on the “periphery” of the meaning of legal texts. The definition of functional relevance is the establishment, in late Wittgenstein’s language, of a “family resemblance” between meanings relating to easy cases of core meaning and peripheral facts of the media reality. That said, the functionality is the legally relevant criterion for such “family resemblance”. Based on common sense, functionality itself is defined by how the object of social relationships can be used by actors (subjects of law) in a sense signi ficant for the intersubjective social reality. With this approach, if, for example, a social institution for trading of virtual objects — the artifacts of the media reality — has emerged, then “family resemblance” between them and the core meaning of the legal concept-word “property” can be established. It should also be taken into account that new media are defined by such qualities as fractality, automation, variability, and transcoding [Manovich L., 2001], and this, in most cases, predetermines the impossibility of structural adequacy of the artifacts of new media and the core meaning of the concept-words of those legal texts which are oriented towards establishing of technologically neutral rules of behavior. In the context of this research, the notion of functional relevance is opposed to the “fantasy nature” of social relationships object in relation to the legal reality. It is necessary to emphasize that here we are not talking about the fantasy nature of an object as such (in virtual reality, all objects are to some extent of fantasy nature), but about the fantasy nature of representing the key functional properties of the object in virtual reality (i.e., what the objects “do” rather than “how they look”)[6].

6. Furthermore, in fact, the criterion under consideration is designated as the “criterion of reality” because objective law is by definition not possible as a simulacrum. If there is something that has certain external features of law in a society, but it is a simulacrum, there is no law in such a society. The existence of generally accepted and obligatory rules of conduct (one of the main features of law), even if they are implicit or different from those formally declared, is an empirical social fact of the intersubjective social reality. A separate legal text or other legal phenomenon can exist as a simulacrum, but law as a whole cannot. Thus, law is not a simulacrum, and simulacra cannot be included in the legal reality, except for the cases where the simulacrum itself acts as a socially significant object of the relationship. In view of this circumstance, there is a need to define the second criterion of common sense in the application of law and the interpretation of legal texts in relation to the mediareality”.

The lack of functional relevance, even though it is necessary criterion, is not sufficient to make proper conclusion in each particular case. Therefore, “the criterion of functional adequacy should be supplemented by the criterion of convertible socio-currency value, which can be justified on the basis of the concept of generalized symbolic media, developed in theoretical sociology (the “criterion of seriousness). Hence, if the object of social relationships, interpreted as an external referent of value, has convertible “socio-currency value” — and we are talking about such generalized symbolic media as money, political power, influence and other carriers of inter-subjective values, which are constitutive of social reality, — then the application of law to the relationship with such an object is within the limits of common sense. If not, then applying law to such relationships would be potentially absurd (depending on whether or not the “criterion of reality” is also met). Possible criticism of the name of the criterion on the basis that the word “seriousness” implies a subjective attitude rather than an intersubjective quality, whereas the term “significance” would be more appropriate, does not seem convincing. “Significance” can also be subjective. Importantly, the way in which the game is played, and seriousness in the context of simulation is recognized in game studies, which are an essential part of the methodology of the approach discussed in this paper.

To summarize, “the proposed approach can be conceptualized in the term “semantic limits of law”, which implies the specified criteria of reality and seriousness, and expresses the philosophical and dogmatic-legal concept of the relation of real law to the simulation, updated in the conditions of the medial turn. The use of this term can be legitimized in academic discourse by analogy with the effect of legal norms in “ordinary” space and through the concept of the mediaspace as a symbolic space in which both socially significant meanings and simulacra can be found, setting the direction of the problem of relations between the sign and the signified in jurisprudence. The philosophical legal significance of the concept of the semantic limits of law is expressed in the understanding and explanation of the problems of law in the conditions of the medial turn. The dogmatic significance of the concept of the semantic limits of law is expressed in the fact that it allows to apply the criteria of reality and seriousness for the definition and justification of the absurd, not corresponding to the common sense, cases of interpretation of legal texts and application of law, and therefore can be used in the academic-grounded analysis of legal texts and law

enforcement decisions, as well as in the applied legal argumentation. In total, this approach can be considered as a kind of reinvented magic circle test.

6. Practical Application of the Reinvented Magic Circle Test

Let us consider how this works in relation to the initial example with Minecraft blocking. The intellectual operations that reflect application of the concept of semantic limits of law can be summarized and illustrated as the following sequence that is custom-tailored to a legal collision that already happened and has to be assessed (depending on the task at hand, some steps may change their position).

In the case of restricted information on blocking a website containing a description of a recipe of “explosive” in a videogame, there are intuitive notions about the absurdity of the result of the interpretation of the relevant legal text. Hence, the first step is to make a hypothesis about the absurdity of the result of interpretation of certain legal text or application of certain law.

By means of abstraction, a functional feature of the central meaning of the norms on counteraction to terrorist activity that relate to “explosives” is singled out. From the point of view of common sense, they are oriented to what can really explode. This is the process of analytical determination of the core meaning of the concept-words used in the legal text for further use as a “reference point” for checking the functional adequacy (“the criterion of reality”) of the identified object of social relationships.

Then, it is necessary to single out the scope of those objects that generally can be subject to law, and determine from what angle they may be subject to law. Within any complex social relationships, from the legal point of view, there is a complex factual composition, including several objects, which may be in any combination of connections with generalized symbolic media. In the present case, this would be recipe of “dynamite”.

Verification of the functional adequacy of the identified object of social relationships to the core meaning of the relevant concept-words of the legal text. If something in reality (or mediareality, but so that the effect takes place in reality) “behaves” as an object modeled in the results of the analysis of the core meaning of the legal norm, then this is “it”.[7] However, this is not the case. Still, even if the recipe of dynamite is fictitious, common sense

suggests that game content could potentially be evaluated from another normative point of view — for example, if the game has become a tool for broadcasting terrorist “values” in social reality.

Assessment of the convertible socio-currency value of the object of social relationships from the point of view of theoretical and empirical sociology. The key method is mental experiment that ideally is performed on the basis of empirical data, on the convertibility of the value component of the object under study, based on the idea of external referents of value of generalized symbolic media.[8] For the purposes of this discussion, let us refrain from sociological studies now, but assume that this criterion is not satisfied.

Structuring of the legal argumentation by “translating” the key arguments of the analysis into the language of legal dogmatism. This is necessary so that the semantic content of an argument can be incorporated into a system of rational legal reasoning, which itself serves as an external referent of value ensuring the functioning of the legal system as a subsystem of general social system based on generalized symbolic media such as value commitments and, especially, influence.

The last stage is of particular importance from the standpoint of legal dogma. For example, following the tradition of legal reasoning and the well- established practice of using the word “absurd” in law enforcement acts, the conclusion that the result of a legal interpretation implies the extension of the legal norm to social relationships whose subject matter does not possess the qualities of “reality” and “seriousness” at the same time may be expressed in the phrase “absurd interpretation of the [legal text]”. The notion of a legal relation, the subject of which has “socio-currency value”, can be correlated with the dogmatic notion of “the most important social relationships” (commonly used to describe what normative legal acts are intended to regulate), the notion of “external referent of value”

7. By the way, this principle is perhaps even more obvious for the problems of virtual property: if something can be sold for real money, it is not absurd to consider, a priori, the possibility of applying property rules to this object. Here it becomes obvious that the meaning of building a special concept of the semantic limits of the law (i.e. reinvent the magic circle) could be questioned if functional adequacy was an objectively exhaustive criterion.

8. Leaving aside the main example from Minecraft, another good example clarifying this thesis is videogame Americas Army that has become the subject of more than one academic study. This videogame was specially created by the US Army to promote military service and direct recruitment [Robertson A., 2017]. Besides this feature, it is an ordinary videogame. In other words, being a videogame normally used for entertainment, it simultaneously and apparently is an external referent of the value of such a generalized symbolic media as [political] power.

— with the notion of “special object of legal relation” etc. and vice versa.

Conclusion

In the conditions of medial turn, legal conflicts related to the question of the limits of possible “interference” of law into the field of virtual in the broad sense of the word become quite relevant. This no longer concerns special legal collisions related to virtual property, but presupposes much broader context of the question how law should relate to mediareality that quite often contains various simulacra that should not be subject to law.

Interpretation of this problem for the purposes jurisprudence, from the technical (legal-dogmatic) point of view, involves the analysis of issues of legal interpretation and, specifically, the relationship between absurdity and common sense in the interpretation and application of law. At the same time, we are, first of all, interested in that very kind of absurdity, which is determined by going beyond the boundaries of the “area of meanings” of legal texts as a phenomenon aimed at the social reality of everyday life. The limits of law that define the boundaries between common sense and this kind of absurdity cannot be found in classical concepts of dogmatic jurisprudence or in currently familiar interdisciplinary research, nor the existing concepts of magic circle can be applied to formulate the relevant universal principle.

This paper suggests to reconstruct such boundaries using the concept of generalized symbolic media, where the external referents of value are the objects of social relationships, in connection with which the question of the fundamental possibility of applying law arises. Thus, the kind of magic circle necessary for law realize its functions as a conventional and formally defined model of social reality is determined by the constitutive elements of such social reality — the external referents of value of generalized symbolic media.

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