

# The application of risk-oriented approach in construction of a system of legal counteraction to the negative information impact on the psyche of minors

## Aplicación del Enfoque Orientado al Riesgo, en la construcción de un sistema de respuesta legal al impacto negativo de la información electrónica en la personalidad de menores rusos

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#### ABSTRACT:

Currently, the world community has faced serious problem of increasing the negative impact on the minds of minors through information and telecommunication networks. In this study, the authors attempted on the basis of a risk-based approach to identify the degree of danger of information impact, depending on the age categories of children. This study should serve as a basis for the development of a set of normative acts in various sectors of Russian law that will prevent criminal information impact.

**Keywords:** risk-based approach, information, negative impact, children

#### RESUMEN:

Actualmente, la comunidad mundial se ha enfrentado a un grave problema, el aumento del impacto negativo en las personalidad de menores a través de redes de información y las telecomunicaciones. En este estudio, los autores intentaron sobre la base de un enfoque basado en el riesgo, identificar el grado de peligro del impacto de la información, dependiendo de las categorías de edad de los niños. Este estudio debería servir como base para el desarrollo de un conjunto de actos normativos en varios sectores de la legislación rusa que evitarán el impacto de este tipo de información.

**Palabras clave:** enfoque basado en el riesgo, información, impacto negativo, niños

## 1. Introduction

Currently, the Internet plays an essential role in the process of socializing the personality of

minors. However, due to the lack of proper legal regulation of the information space, the criminal impact on the mentality of adolescents is increasingly taking place with the help of social engineering techniques and Internet resources

As a result, the number of suicides is increasing; adolescents are involving in the process of drug use, a cult of criminal behavior among minors is being promoted, and so on. The sociological survey conducted during this study showed that the society is waiting for decisive actions to modernize the legislation, which could put an obstacle on the way to influence the mentality of adolescents. Analysis of law enforcement practice has shown that more and more often completely new, unknown to the legal science methods of circumvention of legislative regulations in cyberspace were used, and Russia was not ready to counteract them.

This problem has acquired a global character, as evidenced by the fact that psychological impact on minors through the telecommunications systems is registered not only in Russia. Such phenomena have already become a problem for the law enforcement bodies of India, Bulgaria, Poland, Romania and several others (Zykov, 2016).

Russian lawyers faced a difficult task of qualify actions on the Internet, which have their aim to negatively impact adolescents.

However, a comprehensive study of the possibility and admissibility of legal counteraction to the influence on the psychology of adolescents through the Internet was not carried out, except for the study of certain aspects (Krylova, 2016; Dreßing et al., 2014). This allows to draw a conclusion about the weak theoretical elaboration of legal aspects of the problem.

However, the high social danger of information impact on minors required an operative reaction from the Russian legislator and led to the fact that, in the absence of theoretical elaboration of the problem, some normative legal acts were adopted to ensure the information security of minors. Analyzing these normative acts, we came to the conclusion that the main direction of the development of legislation was the construction of a system of prohibitions and punishments. The relevant administrative or criminal liability has been imposed for violation of these prohibitions.

The information outlined above necessitates a more qualitative construction of legal norms aimed at protecting information security of minors. It is possible to coordinate the work of legislative and law enforcement bodies, as well as the educational system, public organizations and parents to counteract any impact on the psyche of minors through the already available information and telecommunication networks and other means of communication, and through any potentially renewed aggressive resources, only through the adoption of a special normative act in the format of a legal Concept.

The concept is intended to ensure technical and legal consistency of the norms of the Russian legislation, aimed at ensuring the information security of minors in telecommunications networks. The implementation of the Concept allows us to consider the information security of minors as an integral system. With such an approach, separate norms of different branches of law are considered in close relationship with each other. It also allows to highlight the inconsistency of certain norms and to develop recommendations for their elimination.

This Concept should be based on a model of a system of potential threats to the information security of minors in telecommunications networks and adequate responses from the state and society, built on the basis of a risk-oriented approach, which will form in Russia a reliable barrier to any information and psychological impact.

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## **2. Methodology**

In the course of the research, the authors selected, studied, summarized and analyzed scientific publications, normative legal acts, law enforcement practice and official statistics on the subject of the study. The analysis of international experience was conducted on the basis of comparative analysis in order to identify the level of development of the mechanism of legal protection of children in states where there is an experience of legal protection of minors from information encroachments with the aim of assessing the prospects for the

implementation of positive legal technologies in the legislation of the Russian Federation.

The development of a risk-oriented approach to assess the negative information's impact on the children's psyche was carried out by the method of an analogy of law when the existing experience in other areas of Russian law was transferred to the researched social relations taking into account their specifics.

To determine the potential negative impact of the effects of information impact on the children's psyche, and also to assess the level of their danger, we conducted a sociological study, where respondents were asked to answer questions of a specially developed questionnaire. questionnaires and interviews were conducted by practicing specialists in the field of jurisprudence, information security, pedagogues and psychologists, and parents whose activities are not related to these areas. The results of the surveys were systematized and summarized in the corresponding tables.

Obtained results allow to assess the adequacy of the reaction on the part of the state on the society's needs for protection from a particular threat.

To achieve representativeness of the research, the authors of the article used the repeatedly tested framework model for risk assessment based on the responses to the questionnaire (Al-Talhi et al., 2014; Jee, 2015).

The constituent components of the negative information's influence were integrated into a single whole and subjected to a complex analysis according to the scheme: type of negative information, the source of negative information, potential risks for assessing the level of danger of possible consequences and their minimization.

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### **3. Results**

In the Russian legal science, the potential negative consequences of any activity are usually designated by the term "risk". Risks can manifest themselves with varying degrees of intensity and produce more or less serious consequences. The use of risk assessment techniques for building effective models of counteraction is one of the innovations of Russian law. In the Russian legal doctrine, the understanding of risk formed by Y.A. Tikhomirov as "a probable illegal deviation from legal models and laws". The issues of counteracting the information impact in Russia are attributed to the competence of branches of public law. It is proved that risks in the public legal sphere are characterized by a high degree of threat to the basic foundations of society and by significant violations of the rule of law (Tikhomirov, 2014b). M.A. Lapina and D.V. Karpukhin noted that the interpretation of risks as a potential danger, the likelihood of occurrence of events with negative consequences is well established among all Russian researchers who study the problems of public and legal branches (Lapina& Karpukhin, 2014b). A.V. Ostroushko proposes to consider the risks in the course of legal regulation of information relations as a variety of risks in public law (Ostroushko, 2014a).

Having analyzed the different points of view, the authors proposed to understand the risks related to the regulation of information and legal relations, as "the potential danger of the unfavorable development of socially significant, public-legal relations due to the adoption, implementation and interpretation of legal regulations" (Lapina& Karpukhin, 2014a).

The essence of the risk lies in the deviation of valid data from the assessment of the current state and forecasts of the future development of the situation. In case of a positive deviation from the calculations, it is possible to obtain an additional benefit to the expected one; a negative deviation means a chance of adverse consequences" (Tikhomirov, 2014a). To determine the level of severity of potentially negative consequences, a risk-oriented approach is used, the essence of which is to determine the risk categories or the hazard class of impact on a certain object with the purpose of developing a set of measures to prevent and minimize them.

The risk-oriented approach was applied by the authors of this study in the course of constructing a system of legal measures to ensure the protection of children from harmful information impact. In the course of their research, the authors adhered to the hypothesis that it is impossible to completely exclude the risk in one or another activity, therefore, the

goal of developing the proposed Concept was to minimize risks from negative information impact on children. Work on minimizing information and legal risks involves the development of a set of measures aimed at reducing the likelihood of adverse consequences, reducing the size of potential losses and the development of a plan in case of negative development of the situation (Ostroushko, 2014b).

The definition of a risk-based approach is structured in a number of normative acts of the Russian Federation. So, for example, this definition is formulated in Part 2 of Article 8.1 of the Federal Law of 26.12.2008 N 294-FZ "On Protection of Rights of Legal Entities and Individual Entrepreneurs in the Implementation of State Control (Supervision) and Municipal Control". Based on the legal definition applied to the purpose of this study, the authors formulate the concept of a risk-oriented approach as a method of organizing and implementing state control (supervision), in which the choice of intensity and severity of state legal impact on information relations in order to protect children from negative information impact, causing harm to their health and development, is carried out depending on the reference of certain types and sources of information to the certain category of risk or a certain hazard class (category), depending on the age category of the children.

The risk category is described as the degree of danger, for convenience we introduce the concept of a risk class, i.e. the conditional digital signage depending on the severity of the consequences. This took into account the findings of Li Qianmu and Zhang Hong who examined cyberspace for security threats that suggested a methodology for assessing the risk coming from the Internet (Qianmu&Hong, 2012). Based on data from the sociological survey, the authors conduct the following correspondence between the categories and risk classes shown in Table 1.

**Table 1**  
Risk categories and classes

<b>Risk category</b>	<b>Extremely high risk</b>	<b>High risk</b>	<b>Significant risk</b>	<b>Average risk</b>	<b>Moderate risk</b>	<b>Low risk</b>
<b>Risk class</b>	I	II	III	IV	V	VI

To build a risk-oriented approach to the construction of the concept of legal protection of children from harmful effects on the psyche in information and telecommunications networks, it is necessary to introduce the concept of damaging information for children. In this paper, the authors rely on the concepts which are already established in legislation, research of forecasts and expert assessments of the detection of potentially harmful information for children is the next stage of scientific research. Types of information that are harmful to the health and/or development of children are stated in Federal Law No. 436-FZ of December 29, 2010, "On protecting children from information that is harmful to their health and development" (starting now referred to as Law No. 436).

The term risk is used in Law No. 436 in the context of the specification of the definition of information security of children, which refers to the state of protection of children, in which there is no risk associated with inflicting damage to their health and (or) physical, mental, spiritual, moral development (Article 2 para. 4). Based on the existing understanding of the essence of the term risk, it is necessary to understand as the risk concerning the problem under consideration the negative consequences associated with infliction of harm to health and (or) physical, mental, spiritual, moral development of children. The definition of "risk" proposed by the authors correlates with the current understanding of the term in legal science.

Building the development of a risk-based approach, it is essential that the law identifies two categories of information that is harmful to the health and (or) development of children: information prohibited for distribution among children and, accordingly, information that is limited for children of specific age categories.

The use of a risk-oriented approach requires a certain degree of formalization, so for convenience, we will put together all types of information to the Table 2.

**Table 2**  
Types of information that is harmful to the health and (or) development of children

<b>Type of information</b>	<b>Information No.</b>
<b>Information prohibited for distribution among children</b>	
material encouraging children to commit actions that threaten their lives or health, including suicide	1
any type of information that might cause in children a desire to consume narcotic, psychotropic or intoxicating substances, use tobacco or alcohol products, or take part in gambling, prostitution, vagrancy, or begging	2
any type of information that justifies or justifies the admissibility of violence and (or) cruelty, or encourages violent acts towards people or animals, except in cases provided for by law	3
information denying family values, propagandizing non-traditional sexual relations and forming disrespect to parents and (or) other members of the family	4
information that promotes wrongful conduct	5
information that includes obscene language	6
information that contains pornographic material	7
information in case a minor was a victim as a result of illegal act and failure to act	8
<b>Information, the distribution of which among children of certain age categories is limited</b>	
represented in the form of an image or description of cruelty, physical and (or) mental violence, crime or other antisocial action	9
causing fear, horror or panic in children, including those presented as images or descriptions of degrading and non-violent deaths, illnesses, suicides, accidents, accidents or disasters and / or their consequences	10
represented in the form of an image or description of sexual relations between a man and a woman	11
containing abusive words and expressions not related to obscene language	12

In addition, Law No. 436 (articles 7-10) establishes four age categories of minors (from 0 to 6 years, 6 to 12 years, 12 to 16 years, 16 to 18 years), with a correlation for each of them with specific information products, which, in accordance with the Law, means products of mass media intended for circulation on the territory of the Russian Federation, printed products, audiovisual products on any kinds of storage, programs for electronic computers (computer programs) and databases, as well as information distributed through entertainment events, through information and telecommunication networks, including the Internet, and mobile radiotelephone networks.

A significant shortcoming of Law No. 436 is the lack of correlation of age categories of children with certain types of information prohibited or restricted among children to determine the level of potential risk that every kind of information can bear for children. The stated correlation of age categories of adolescents with specific information products for children does not allow to establish what sort of information prohibited or restricted for children is the most potentially dangerous for particular age categories specified in the law.

It should be noted that the Law No. 436 does not state the concept of a source of information that is harmful to the health and development of children. Structuring of this concept is necessary for understanding the problem, where the damaging information that causes harm to the health and development of children comes from. The source of information is a collective notion that covers the mass media; The resources of the Internet, which can be attributed to its open part and the dark web, unresponsive to locking procedures (Tor, botnets and other resources using anonymous network connection), we separately emphasize social networks, instant messengers (WhatsApp and the like), Email. Based on the questionnaire conducted, it was found that the popularity of various sources of information among children differs in the intensity of use of each type of source. Correlation of them with risk classes is given in Table 3. The risk-oriented approach allows to correlate a specific source of damaging information with the risk category and risk class, which, in turn, will later help to formulate proposals for the development of provisions of the Concept and further adoption of normative legal acts, regulating a specific relationship.

**Table 3**  
Risk-based approach to the source of harmful information

<b>Risk class</b>	<b>The source of information</b>
<b>I</b>	Resources in the dark web
<b>II</b>	Sites on the Internet, social networks
<b>III</b>	Messengers
<b>IV</b>	Television
<b>V</b>	Email
<b>VI</b>	Other media (print media, radio)

Tables Nos. 4-7 present a risk-oriented approach model that relates the age categories of children to species, sources of damaging information, as well as the proposed set of measures of state-compulsory nature and parental control aimed at preventing and minimizing the negative consequences of harmful effects on children.

**Table 4**  
Risk-oriented approach to the age category of children from 0-6 years.

<b>Risk class</b>	<b>Type of information in terms of Tabl. 2</b>	<b>The source of information</b>
<b>I</b>	9,10	Television
<b>II</b>	6	Television
<b>III</b>	12	Television

<b>IV</b>	-	Television
<b>V</b>	7,8	Television
<b>VI</b>	1,2,3,4,7	Television

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**Table 5**  
Risk-oriented approach concerning the  
age category of children from 6 to 12 years.

<b>Класс риска</b>	<b>Type of information in terms of Tabl. 2</b>	<b>The source of information</b>
<b>I</b>	7,9,10,12	Sites on the Internet (publicly available sources and the dark web), social networks, messengers
<b>II</b>	4,6,8	Sites on the Internet (publicly available sources and the dark web), social networks, messengers
<b>III</b>	1,2,3	Sites on the Internet (publicly available sources and the dark web), social networks, messengers
<b>IV</b>	5	Sites on the Internet (publicly available sources and the dark web), social networks, messengers
<b>V</b>	-	-
<b>VI</b>	-	-

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**Table 6**  
Risk-oriented approach concerning the age  
category of children from 12-16 years.

<b>Risk class</b>	<b>Type of information in terms of Tabl. 2</b>	<b>The source of information</b>
<b>I</b>	1,2,4	Sites on the Internet (publicly available sources and the dark web), social networks, messengers
<b>II</b>	3,8,12	Sites on the Internet (publicly available sources and the dark web), social networks, messengers
<b>III</b>	5,6,7,9,10	Sites on the Internet (publicly available sources and the dark web), social networks, messengers, Email
<b>IV</b>	11	Sites on the Internet (publicly available sources and the dark web), social networks, messengers, Television
<b>V</b>	-	-

<b>VI</b>	-	-
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**Table 7**

Risk-oriented approach concerning the age category of children from 16 to 18 years

<b>Risk class</b>	<b>Type of information in terms of Tabl. 2</b>	<b>The source of information</b>
<b>I</b>	1,2	Sites on the Internet (publicly available sources and the dark web), social networks, messengers
<b>II</b>	4,8	Sites on the Internet (publicly available sources and the dark web), social networks, messengers
<b>III</b>	3,5,9	Sites on the Internet (publicly available sources and the dark web), social networks, messengers, Television, Email
<b>IV</b>	6	Sites on the Internet (publicly available sources and the dark web), social networks, messengers, Television, Email
<b>V</b>	7,10,11	Sites on the Internet (publicly available sources and the dark web), social networks, messengers, Television, Email
<b>VI</b>	12	Sites on the Internet (publicly available sources and the dark web), social networks, messengers

## 4. Conclusions

Currently, legislation related to protecting children from harmful information impact is actively developing in Russia. Over the past two years, Russia has adopted some new laws in this area, but they were drafted to solve operational problems, so their system and quality are far from ideal. It was revealed that these acts lack a single conceptual orientation that would structure the goals, methods and means of counteracting the negative information impact on children's psyche, and it is proposed to develop a single legal act. In the Russian law, these acts were called documents of strategic planning. The principles laid down in this paper are fundamental for all normative acts adopted in the implementation of this concept. This research was carried out during the development of the draft of such a document.

To ensure the effectiveness of the developed legislation of the work concept, it is proposed to use a risk-oriented approach. Currently, the Russian law is actively developing a risk-based approach associated with the definition of risk categories or a particular hazard class (category) in the process of a specific type of activity. The universalism and acceptability of this method lie in the fact that it allows correlating the age group of children, a particular type of negative information, the source of damaging information with a potential level of danger and the degree of negative consequences. The degree of risk from low to extremely high will help develop protective countermeasures both at the state level and at the level of public institutions - families, schools and others.

The analysis showed that the main act - Law No. 436, which defines legal mechanisms for protecting children from information that is harmful to their health and development, does not take this approach into account.

The authors of the article substantiated the need to apply a risk-oriented approach to predict



and evaluate the potentially harmful consequences to different age categories of children, depending on the type and source of information. The definition of "risk-oriented approach" was structured and categories and classes of the danger of specific types of adverse information were proposed depending on the age category of children. Besides, categories and hazard classes of sources of damaging information were proposed that will serve as the basis for the development of a set of measures of state-compulsory nature and public control. The work done will allow to more effectively prevent and minimize the risks associated with adverse information impact on the children's psyche.

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