

## DIGITAL RIGHTS - A NEW GENERATION OF HUMAN RIGHTS AND LAW POLICY

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### Summary

Digitalization significantly affects almost all social relations, which requires a rethinking of many basic legal concepts. One of them is human rights. Today, it is increasingly argued that technological innovation is giving rise to new digital human rights that are fundamentally different from traditional rights and form a new generation of human rights.

**Key words:** human rights, generations of human rights, digitalization, digital rights, freedom of expression, freedom of information, right to communication, right to access the Internet

Modern processes of informatization and digitalization affect all social relations and largely change the very nature of social interaction, transferring significant components of it to the virtual plane. And this, in turn, requires a theoretical rethinking of traditional legal concepts with the help of which various social interactions are described. One of these concepts is human rights, which fixes his basic claims addressed to other individuals, the state and society. Today it is argued that technological innovation not only requires the reinterpretation of traditional human rights, but also determines the emergence of new categories of them, which can be defined as the sui generis generation of digital rights<sup>1</sup>. However, significant problems arise even with the very name of these new rights. In domestic literature they are usually called information, digital, virtual, in English-language literature they write about digital rights, Internet rights<sup>4</sup>, right to communicate, freedom of connection with any person, at any time, anywhere, for any purpose (freedom to connect - to anyone, anytime, anywhere, for anything). Sometimes these terms are used as synonyms, sometimes a certain specificity of the rights they designate is emphasized<sup>1</sup>. None of these terms can be considered flawless. Information or communication rights, which imply freedom to receive and disseminate information, participate in communication processes and protect personal data, are not necessarily associated with the use of modern technologies; they are implemented both offline and online; it is no coincidence that the struggle for their international recognition began even before the Internet era<sup>2</sup>.

The basic list of human rights, which is generally recognized today, was formed during the second wave of globalization [Globalization, www], under the influence of the consequences

<sup>1</sup> Д.Тажимуратова. Давлат тилига эътибор-мустақилликка эътибор. <https://www.yangibazar.uz/site/view?code=Davlat-tiliga-etibor-mustakillikka-etibor>

<sup>2</sup> Хакимова Д. Она тили миллатимиз фахридир. Демократлаштириш ва инсон ҳуқуқлари// 2020. №3.

of the Second World War and based on the technologies of that time. The generational classification of human rights, proposed in 1979 by Karel Vasak, took into account the characteristics of previous eras and focused on: – liberation of a person as an individual from social and political restrictions and discrimination (generation of personal (civil) and political human rights); – ensuring human inclusion in the economic, social and cultural environment (generation of economic, social and cultural human rights); – formation of the protection of humanity on a global scale (generation of collective human rights)<sup>3</sup>. This is how the necessary political and legal basis of human existence in society was formed, which has become an integral component of modern realities. In the 1990s. under the influence of the digitalization of politics and law, new types of political and legal relations related to the Internet began to emerge. However, they were limited by the level of technological development, so it was too early to talk about the formation of any human rights in this area. Digitalization has contributed to the development of the Internet and the digital information space of legal relations, which today are incomparable with real (non-digital) legal relations. The digital world has become an integral part of the physical, modern world, forming completely new objects of legal relations for the classical legal understanding [Polyakova, 2020, 100]. The study of this area of social relations is one of the most pressing topics in scientific political and legal discourse, because there is no consensus as to whether generally recognized human rights take into account the new trends in society and the state that have been actively formed in recent years under the influence of digitalization. The most pressing and debatable question is what should the category of digital human rights be classified as – generally recognized generations of human rights or a new (separate) generation of “digital” human rights<sup>4</sup>.

The term “virtual rights” has an additional connotation indicating their seemingly unreal nature, which is hardly useful for ensuring the corresponding rights. Internet rights, or network rights, express claims to access the Internet and carry out various types of activities on it. But modern digital technologies today are not limited to the Internet. Researchers justify a more general right to access modern scientific and technological achievements and enjoy the benefits arising from them (right to benefit from advanced in science and technology)<sup>7</sup>. Thus, the term “digital rights” seems most appropriate. However, the Civil Code of the Republic of Uzbekistan understands digital rights as obligations and other rights, the content and conditions for the implementation of which are determined in accordance with the rules of the information system that meets the criteria established by law.

Generations of human rights A classification of human rights into so-called generations, proposed in the 1970s. K. Wasakom<sup>9</sup>, despite its serious criticism as historically erroneous, analytically useless and conceptually incorrect<sup>10</sup>, remains perhaps the most popular today. It is notable for the fact that it is based on the specific content of various human rights. The

<sup>3</sup> Kadirova T.R. Digitalization and development. Human rights. №2 2023

<sup>4</sup> Zuxriddinov.R.T. Internet and society. Human rights. №1. 2021.



Czech scientist linked it with the three ideals of the French Revolution - freedom, equality and fraternity<sup>11</sup>. Accordingly, the rights of the first generation (natural inalienable human rights) express claims to personal freedom both in its negative manifestation (non-obstruction of certain actions), and in terms of the requirement for the state to provide judicial and police protection of freedom and access to participation in the exercise of state power as guarantees of political and personal freedom. Second generation rights are claims to social services and assistance from the state and society in order to smooth out social inequality and provide everyone with a “decent standard of living.” The distinction between these groups of human rights is also made by the nature of the obligations to ensure them. First generation rights are directly effective subjective rights subject to judicial protection. So, paragraph 1 of Art. 2 of the International Covenant on Civil and Political Rights<sup>12</sup> imposes on each state the obligation to respect them and ensure them for everyone under its jurisdiction. And the International Covenant on Economic, Social and Cultural Rights requires States only to take measures to ensure the progressive full realization of the rights enshrined in it, within the limits of their available resources, including through international assistance and cooperation in the economic and technical fields. The relevant rights are formulated in the Covenant in such a way that, in essence, they represent a program of such measures that must be taken by states and the world community as a whole. Similar approaches are used in European human rights instruments - the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>14</sup>, the European Social Charter of October 18, 1961 and the revised European Social Charter of May 3, 1996<sup>15</sup> Understanding the rights of the third generation associated with K. Vasak the idea of universal solidarity, the most amorphous and contradictory. These usually include the rights to peace, disarmament, a just world order, ownership of the common heritage of humanity, etc. If we consider these moral and political wishes (it is hardly appropriate to call them claims) as human rights, then questions inevitably arise: can they be recognized as inalienable, who is their subject, and what are the legal mechanisms for their implementation and protection. It is obvious that these very vague collective rights cannot be likened to natural and inalienable human rights or even to second-generation rights.