

УДК 340.12

DOI: <https://doi.org/10.31732/2707-9155-2020-38-151-157>

Ethical and legal principles of professional activity of a private detective on the internet

Horielova V.

*Ph.D. in Law, Associate Professor of Department of State Legal disciplines,
“KROK” University, st. Tabirna, 30-32, 03113, Kyiv, Ukraine
tel.: (050) 52-704-40, e-mail: saxara_@bigmir.net
ORCID: 0000-0002-8224-3772*

Етичні та правові принципи професійної діяльності приватного детектива в мережі інтернет

Горелова В.Ю.

*Кандидат юридичних наук,
доцент кафедри державно-правових дисциплін,
ВНЗ Університет економіки та права «КРОК»,
м. Київ, вул. Табірна, 30-32, 03113, Україна
тел.: (050) 52-704-40, e-mail: saxara_@bigmir.net
ORCID: 0000-0002-8224-3772*

Annotation. *The article is devoted to the analysis of such phenomenon as information ethics of a private detective on the Internet. Problems encountered in violation of professional ethics by a private detective in the Internet field have been identified. The article emphasizes that information ethics of a private detective on the Internet is one of the least elaborated issues, and even in the drafts of the special law of Ukraine no article covers the issues of the ethics of a private detective or would be of a different nature to another legal document, that would define the ethical standards of private detective activity. Identified issues related to the issue of morality in the work of a private detective on the Internet and analyzed foreign documents whose provisions relate to morality on the Internet. The article analyzes the two categories as “personal morality” and “professional morality” of a private detective in the Internet field of communication, which makes it possible to argue that the professional morality of a private detective is a combination of personal and public morality, which allows reaching a certain level of (moral) professionalism. The article focuses on fundamentally important ways of solving this problem by not only proclaiming, but also laying down the principles of the moral principles about the work of a private investigator on the Internet and the mandatory control over their observance. It is stated that the basis of these moral prescriptions should be the Moral Code of the private detective, which must necessarily be fully consistent with the existing international principles of detective activity. In the process of investigating this problem, it was concluded that the need for the development of moral postulates*

and the introduction of moral prescriptions in the work of a private detective on the Internet. Also, the article offers a list of requirements for moral (ethical) behavior towards a private detective on the Internet.

Keywords: ethics of a private detective, the Internet, morality.

Formulas: 0, fig.: 0, tabl.: 0, bibl.: 4.

Аномація. Стаття присвячена аналізу такого явища як інформаційна етика приватного детектива в мережі Інтернет. Виявлені проблеми, що виникають при порушенні професійної етики приватним детективом в полі Інтернет. У статті наголошено на тому, що інформаційна етика приватного детектива в мережі Інтернет – одне з найменш розроблених питань, та навіть в проектах спеціального закону України не передбачено статті, яка б висвітлювала питання етики приватного детектива, або мала б відсильний характер до іншого правового документу, який би визначив етичні норми приватної детективної діяльності. Виявлені проблемні питання що пов'язані з питанням моралі в роботі приватного детектива в мережі Інтернет та проаналізовано зарубіжні документи, положення яких стосуються моралі в мережі Інтернет. В статті проводиться аналіз таких двох категорій як «особиста мораль» та «професійна мораль» приватного детектива в інформаційному полі мережі Інтернет, що дає можливість стверджувати, що професійна мораль приватного детектива є поєднанням особистої та суспільної моралі, що дозволяє досягнутий певний рівень (морального) професіоналізму. У статті акцентується увага на принципово – важливих способах вирішення зазначеної проблеми шляхом не лише проголошення а й вкладання в основи права моральних принципів, що стосуються роботи приватного детектива в мережі Інтернет та обов'язкового контролю за їх дотриманням. Зазначено, що зводом цих моральних приписів має бути Моральний кодекс приватного детектива, який неодмінно повинен бути повністю узгоджений з існуючими міжнародними принципами детективної діяльності. В процесі дослідження даної проблеми було зроблено висновок про необхідність розробки моральних постулатів та впровадження моральних приписів в роботі приватного детектива в мережі Інтернет. Окрім того, в статті запропоновано перелік вимог щодо моральної (етичної) поведінки до приватного детектива в мережі Інтернет.

Ключові слова: етика приватного детектива, Інтернет, мораль.

Формул: 0, рис.: 0, табл.: 0, бібл.: 4

Formulation of the problem

Ethical comprehension of various aspects of the life of the Internet began from the moment of its inception. Already then it became clear that a number of the most important features of this Network would inevitably turn into crisis phenomena in the field of public morality. It was the Internet, as a kind of free space, that allowed millions of people to initially see in it the possibility of additional freedom, including from social control and moral requirements. As a result, we get that the Internet inspires a person to the temptation to do

something that in real life he would never have dared.

This obvious conclusion requires the beginning of understanding network processes from how to prevent the growth of a moral crisis. Thus, the problem of ethics and morals of different corners of the Internet is not new, the ethical nature of communication is inherent in every sphere of human activity, and if in one sphere of human being unethical and immorality may not be noticed by society, then in the field of private detective activity such negativity immediately and it will be quite significant.

Analysis of recent research and publications

Since today in Ukraine there is still no law on private detective work, there are too few publications in this environment. The moral code of private detectives of other countries can serve as a positive experience for our country in this direction. For example, you can follow such well-known documents as the moral code of the World Association of Detectives, the Code of Ethics of the Official Association of Private Detectives of the Valencia Community, and so on.

Part of the general problem has not been solved previously

No one has yet raised the question of the ethical and legal principles of the professional activity of a private detective on the Internet. However, it should not be forgotten that this area which dynamically developing, today covered almost all spheres of human activity.

Formulating the goals of the article

The purpose of the article is to justify the need to pay attention to ethical principles in the work of a private detective on the Internet, as well as a proposal to consolidate moral principles at the legislative level.

Presentation of the main research material

Transformation of the high-tech sphere into the field of scientific and technical complex covered the transport, medical, communication, educational, financial sphere, as well as industry, commerce, services, etc. Communication on the Internet is becoming not only convenient but also sometimes necessary, a phenomenon that has influenced fundamental human values, had a serious impact on the morality of society, politics, social theory, psychology. On June 3, 2011, a UN resolution

was adopted recognizing Internet access as a fundamental human right. According to this resolution, disconnecting certain regions from the Internet is a violation of human rights [1]. Thus, in the field of information technology, there are new ethical problems, the importance of which is so great that the study of them began to pay attention to scientists, creating even a new social discipline – “computer ethics”, in the framework of which study the rules of conduct on the Internet. But despite certain achievements, it should be noted that ethical problems in the field of information technology are one of the most poorly developed areas from a theoretical point. The main problem of an ethical understanding of the Internet today is the heterogeneity of this space. Today, research is carried out in the following areas: computer ethics, info ethics, virtual ethics, network ethics, cyber ethics. For example, Western scientists pondered the creation of computer code of ethics. The Association for Computing Machinery adopted a similar code, consisting of some imperatives. The Institute of Computer Ethics, by analogy with the biblical commandments, formulated 10 computer commandments. The policy for Acceptable Use of the Information Technology Resources University of Memphis has its own set of rules.

Unfortunately, in the draft law of Ukraine from 08.02.2019 № 10024 “About private detective (search) activity” [2] does not have a special article that would cover the issue of ethics of a private detective, or would have a referral character to another legal document that would define ethical standards of private detective activity. Also in the Project itself, there is no definition of “private detective” and “detective activity”, which should reflect the ethical aspects of the activity in the framework of improving the social structure of not only certain groups of society but the whole society. Otherwise, we would strengthen the

process of stratification of society and the emergence of complex contradictions between its groups.

In the professional activities of a private detective, the Internet is, first of all, a means of obtaining information from open sources for its storage and dissemination. In the practice of a private detective, the Internet is also used as advertising, the creation of personal information sites, etc. Any private detective in his work must comply with a considerable list of prohibitions and restrictions, as well as rules and certain postulates.

They are contained in the draft law, it is:

- the grounding of the work of a private detective on the principles of the rule of law, legality, dispositiveness, objectivity, and impartiality;
- compliance by private detective's respect for human dignity;
- the observance of the rights, freedoms and legitimate interests of individuals and legal entities by a private detective;
- conscientious performance of their duties by a private detective;
- compliance of confidentiality and professional secrecy (Article 1)
- protection by a private detective of access of third parties to the information which is a professional secret (Article 17);
- obligation in refusal to agree on the provision of private detective (search) services, if the provision of such services by the subject of private detective (search) activity may violate the law or rights of third parties, and if its conclusion will lead to a conflict of interests of the private detective (item 1 of Part 1 of Article 14);
- a ban on the collection of information related to the personal life, political and religious beliefs of persons without the written consent of such persons (item 3, part 2 of Article 14);
- ban on falsification of materials and received information (item 6 of part 2 of article 14);

- the obligation for the private detective to compensate for the damage caused to third parties as a result of the access of third parties to the information constituting professional secrecy (Article 17) [2].

These postulates are an amoral setting of a private detective, in particular, his "labor block", which acts as a prerequisite and condition for the emergence of professional morality, but does not include (cannot include!) Its requirements for two reasons: firstly, moral installation carries the general moral law of society, while the professional morality of a private detective determines the moral relationship between him and the client, other detectives, government agencies, and so on; secondly, the requirements of the moral setting are unconditional, imperative, while professional morality sets guidelines for the private detective, puts forward recommendations that can regulate his behavior as much as the degree of his general morality and the achieved level of professionalism allow. The moral attitude of a private detective in professional activity is realized not only due to the requirements of duty. It includes other motivations necessary in the ethics of a private detective: honesty, responsibility, conscience, dignity, honor. Along with debt, they "work out" whenever a private detective gets into a decision-making situation, i.e. It faces a choice of attitude, deed, line of behavior.

The professional ethics of a private detective on the Internet is primarily aimed at maintaining the consistency of his interests and the interests of the client, as well as society. It regulates the relationship of a private detective to society and to the process of detective activity itself through the prescriptions of moral attitudes. A private detective will achieve the highest degree of professional morality when following the accepted standards of behavior becomes automatic for him and can be violated only

if he discovers the imperfection of these standards.

The appearance of such automatism means that a private detective has developed an additional, professionally-oriented moral attitude, adjacent to his moral attitude, and thereby professional and moral guidelines turn into imperatives for him.

It is well known that the method of such a type of activity as private detective activity is based on communication, on constant interaction with other people, which is determined by the goals of the activity. The goals of the activity involve some visible or invisible interference in the lives of specific people. More often and as a rule, this intervention is informational.

Hence, their implementation is always accompanied by a high degree of risk, which determines the increased responsibility of the professional, and the obvious one. In such a situation, technological Internet moments in the activities of a private detective cease to be perceived as exclusively technological ones, creating the illusion of moral relations, reflect not only the laws of this kind of activity but also the laws of Internet communication as such. Consequently, the function of the professional morality of a private detective on the Internet remains the same, but the scope of the tasks that she has to solve is increasing, which suggests that the Internet – detective of a private detective is the most meaningful and functionally active part of his professional morality.

The ethics of a private detective on the Internet covers all stages related to the lawful collection of information and its transfer to the customer: firstly, this is the ethics of maintaining an informational web page or website, concluding an agreement and discussing all its aspects; secondly, this is the ethics of planning and using information flows; thirdly, it is filtering the information received and transmitting it to the client.

The IAPD Code of Honor of the International Association of Private Detectives states that the activities of a private detective are based on the trust placed in him, and protecting the trust in the dignity of his title is the main duty of a private detective. Following the Code, a private detective under no circumstances has the right to violate the trust placed in him and any action of a private detective aimed at undermining trust is professional misconduct, and abuse of trust is incompatible with the title of a private detective. Also, according to the Code, there can be no trust in a private detective without confidence in saving secrets, which has no statute of limitations. A private detective cannot be rid of her either by his trustee, or by government officials, or by anyone else. The rules for maintaining professional secrecy apply to the content of recommendations given directly to the principal or his representatives; information received by a private detective from the principal; all detective record keeping, including the exchange of correspondence between a private detective and his colleagues; any information received by a private detective in the performance of professional duties; cash payments between a private detective and a principal; names and names of principals. The IAPD Code of Honor of the International Association of Private Detectives also approves the postulate according to which a private detective is the bearer of the idea of law, legality, and respect for other people's rights and in this regard, he should not accept an order to conduct business if it contains any doubts that do not exclude the possibility of reasonably and honestly supporting and leading it to completion. Besides, a private detective should not advise or use dishonest methods and techniques for collecting information but should show competence, diligence, caution, and common sense. A private detective must maintain independence with the principal. Law, duty, and

conscience in the profession of a private detective are beyond the will of the principal. Any wishes, requests, or instructions of the principal, directed to non-observance of the law or violation of the debt, cannot be executed by a private detective.

A private detective must not execute orders on which violate public morality. The Code also states that a private investigator should not allow loose relations with clients [3]. Thus, we can conclude that the world private detective community has another fairly pronounced tendency: for those detectives whose professional and moral maturity reaches the highest mark, following professional ethical standards becomes valuable. Their professional and moral motives begin to dominate the structure of activity motivation, “outweighing” material interest, so that in situations of moral choice, ethical behavior is preferable, even if it does not lead to economic success.

The moral code of the World Association of Detectives also indicates the requirement for participants to “not distort or exaggerate the activities and services offered by the profession” and also always protect the good reputation of members, their clients, the Association and the profession as a whole [4]. Thus, the world community of private detectives requires its members to work not only professionally, but also in all matters with caution, courtesy, and confidentiality within the framework of ethical restrictions. But, unfortunately, ethics on the Internet is not even visible in such well-known Associations, which were mentioned here above, but it seems to be invisibly in the field of moral codes of private detectives. As a result of a social survey in which 58 students of the University of Economics and Law “KROK” participated, the following results were obtained: to the question “Do you follow the rules of ethics on the Internet?” The students answered as follows: “yes, I comply – 35%”; “No, I don’t

comply – 55%”; “Did not pay attention – 10%.” To the question is ethics needed for the private detective on the Internet, the following answers were received: “Yes, definitely – 44%”; “No – 51%”;

“I don’t know – 5%.” As a result, the survey showed how students, future lawyers are indifferent to their detective and professional behavior on the network, as a result of which we can conclude that this problem undoubtedly needs further research to analyze and recognize the dynamics change in attitudes to ethics on the internet in the process of studying this problem, the following conclusion was made: ethical requirements for a private detective on the Internet can be supplemented with the following characteristic rules, namely, a private detective is not entitled:

- use the Internet to harm others;
- create interference and not interfere with the personal life of other users of computer networks;
- use the Internet to steal any information and also to spread false information;
- use software and devices for the extraction of information, permission for the use of which is given exclusively to law enforcement agencies;
- Assign someone else’s intellectual property while maintaining their sites, web pages, and so on;
- use offensive language, profanity, slang and so on;
- disrespect the distinctive features, values, and dignity of each national culture, identify its political, social, economic, racial, or cultural affiliation or express a preference for signs of gender, race, language, and so on.

The need for legislative adoption of the Code of Professional Ethics of a private detective is unambiguous. Also, ethical rules for working on the Internet must be included in this document, which will indicate the inclusion of detective agencies and private detectives in the globalization

process. Such a Code should have a formulated code of moral precepts, should be fully consistent with, and echo the international principles of detective work.

Conclusions

For several decades, humanity has been using a brilliant creation – the Internet. Now the Internet is becoming a total planetary source of all kinds of information and an interactive communication environment. It has long become clear that the results of their activities, private detectives determine the lives of people in the information community and the Internet cannot exist outside of ethical standards.

Almost all ethical codes of private detectives around the world have four basic ethical principles: (privacy secret); (accuracy) – Compliance with the rules related to the exact implementation of instructions for operating systems and information processing; (private property) – the inviolability of private property is the basis of the property order in the economy.

Following this principle means compliance with the ownership of information and copyright laws; (accessibility) – The right to information from open sources.

Ukraine is not yet fully prepared for technology, it becomes obvious that technological progress is moving so fast that morality and ethics do not keep pace with it. The Internet is an integral organism, it is a part of social relations and ethics is present in it, as in any other branch of these re-

lations. Despite the chaotic orientation of information on the Web, ethics are given considerable importance. Every day the question of ethical standards and rules for using the information on the Web is becoming increasingly relevant. Indeed, for a private detective to use the Internet in his work, he undoubtedly needs to adhere to certain ethical standards and values.

From the moment of the possible adoption of the Law of Ukraine “On private detective (search) activity”, the ethics of a private detective will have to focus on the description and systematization of professional standards (“norms of professional morality”), give them serious theoretical and practical justification. Thus, research in the ethics of private detective work can serve as a basis for the development of new codes, and a set of criteria for assessing the level of professional and moral maturity of private detectives, and a tool in resolving conflicts of a moral nature that inevitably arise in the practice of private detectives. The above circumstances are enough for the selection of standards of professional behavior of private detectives to the modern stage could bring consciousness to a single comprehensive system of professional and moral orientation.

Possible solutions to this problem:

- 1) To proclaim and translate into the language of law ethical principles relating to the Internet.
- 2) Track and control their effective implementation.

References

1. La Rue, Frank (2011), “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, available at: https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf (Accessed 20 January 2020)
2. Draft Law of Ukraine dated 08.02.2019 № 10024”About private detective (search) activity” available at: http://search.ligazakon.ua/l_doc2.nsf/link1/JH7QG00A.html (Accessed 20 January 2020)
3. International Association of Private Detectives (2019), IAPD Honor Code (Official Document) available at: <http://iapd.info/o-iapd/kodeks-chesti-iapd.html> (Accessed 20 December 2019)
4. World Association of Detectives (2019), “CODE OF ETHICS AS MEMBERS” available at : <http://www.wad.net/code-of-ethics> (Accessed 20 December 2019)

Стаття надійшла до редакції 27.01.2020 року