

SLCMC 2021

International conference «State and law in the context of modern challenges»

INHERITANCE OF SOCIAL-MEDIA AND EMAIL ACCOUNTS

Vladimir N. Gavrilov (a), Olga N. Ermolova (b)*, Lyubov V. Ladochkina (c)

*Corresponding author

(a) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia, vladimirgavrilov@rambler.ru

(b) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia, olga_ermolova@bk.ru

(c) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia, lladochkina@yandex.ru

Abstract

The legal regime for digital objects of civil rights in Russia and abroad is still being formed. Scholars actively study turnover capacity of digital rights, including such common ones as social-media and e-mail accounts. One of relevant issues is the analysis of feasible inheritance of social network and e-mail accounts. In this regard, the authors examine the concept of an account, its essence and content, types, properties, the order of account registration, and the ways of identifying the user the account belongs to. The article states that both in the Russian Federation and many foreign states, there is no legal regulation concerning accounts being civilian use and succession objects. This results in legal uncertainty that concerns accounts being legal objects, in particular, those of inheritance, and leads to casework challenges. It is necessary to note that at the moment these issues are controlled by social-media administrators themselves. Having analyzed some examples of foreign law practice approaches, the authors provide scientific basis for the need to enshrine in law different legal regimes of heirs' access to the accounts of the deceased, depending on the type of the account and the purpose of its use by a previous owner. What concerns the problem of ensuring protection of personal data of the persons the deceased corresponded with, the authors prove the position that inheritance of the account should be analogous with cash claim from bank deposits, while getting private information should be permitted only in exceptional circumstances.

2357-1330 © 2022 Published by European Publisher.

Keywords: Account, digital objects, inheritance, legal regulation, social network

1. Introduction

The rapid development of Internet technologies has led to the creation of entirely new negotiable objects – digital assets, i.e. civilian objects with conventional tangibility, which makes only some types of them potentially inheritable. These include, in particular, cryptocurrency, tokens, big data, and accounts. In turn, Internet accounts can be subdivided into social-media, email, gaming, payment and online service accounts.

The issue of digital property inheritance is relevant today, as people tend to spend most time in various social networks, where they now store their personal data and other information, which necessitates regulation and protection of encountering relationships, not only during life, but also after the death of some person. Uncertainty in this area neglects protection of the testator's rights and prevents heirs from exercising their rights. In this connection, a theoretical basis shall be formed in order to improve the conditions regulating digital rights in general and individual accounts in social networks, in particular.

2. Problem Statement

Despite legislative framework development in digital field, inheritance issue of social media and email accounts is not regulated, causes problems for law enforcement bodies, both in Russia and abroad (Grochowsk, 2019; Harbinja, 2019; Kirillova, 2020).

The existing practice shows that websites and email services independently eliminate law gaps in this area. Some social networks allow the possibility of user's heirs acquire the right for account access, while others prohibit it. Such actions' validity and legality shall be estimated from current law perspective.

The next set of issues is related to necessary protection of personal data and correspondence privacy when the rights to the account are bequeathed through inheritance. By virtue of Article 7 of the Federal Law 152-FZ, dated July 27, 2006, "On Personal Data" operators and other persons who obtain access to personal data shall not disclose or disseminate any personal data to any third parties without the consent of the personal data subject unless otherwise provided by the federal law. Under Article 23 of the Russian Constitution, everyone has the right to privacy of correspondence, postal, telegraph and other communications. This raises a number of questions. First of all, how does this fit in with the rights of account heirs if such an account may contain personal information?

Moreover, accounts could have personal status (they are used by consumers for personal needs) and commercial (they are used for business activities, and promotion of products, employment options, services, etc.), which makes indispensable revealing if legal regimes of such objects shall be similar or different and to what extent.

3. Research Questions

For a long time, social-media and email accounts have been an integral part of human life, which makes the study of their inheritance capacity necessary. Accordingly, the research object is user social-

media and email accounts, their properties, types, indissociable connection with the user, and property value.

4. Purpose of the Study

The purpose of the study is to analyze characteristics and types of social-media and email accounts, to work out scientific basis on inheritance likelihood, and to make recommendations on law elaboration in this area.

5. Research Methods

The main methods used are comparative legal, dialectical, formal-legal as well as the method of theoretical analysis and synthesis.

6. Findings

A social network is an interactive multi-user online platform designed to organize social relationships which content is provided by the users themselves. Through the social network as a virtual platform, communication, data exchange and sharing other objects take place, and various commercial projects can be launched.

An account is a login record created for the user upon registration in an electronic system, to store various user-related information, including personal data, personal website settings, the services consumed, etc. In order to use the account, it is necessary to type in the login and password and any other user-related data stored in the system and necessary to identify (authenticate) the user and allow access to the content published on the account. Here is an excerpt from the rules of using the site "VKontakte": During registration users are obliged to provide to the site administration the necessary authentic and relevant information to form their personal page, including the unique login and password as well as the name and surname. The user has the right to register not more than one personal page on this site. Not surprisingly, social network users consider their account to be a personal page, profile, office, an online storage resource for personal and other information.

An alternative definition of an account, as proposed in law books, is the category of rights and obligations arising from an agreement with a social media host, which allows to characterize a legal relationship between a user and a virtual platform host through their interaction: the host sets certain rules for registration, use and termination of the user's account, while the user determines his or her own behaviour in accordance with the law.

An e-mail account is a special online service that allows an Internet user to share text messages and various files with other clients using a network connection.

It should be emphasized that having an account implies that a user shall upload certain information that would have a virtual form in a data system. In particular, a social-media account can contain photographs, literary, musical, or audiovisual works, graphic and design objects, databases and other "virtual property".

Digital objects can be conventionally divided into two types: assets having material value and digital assets that do not have such a value, and may include social-media accounts, if they were not aimed to be a trading platform (Kirillova, 2020).

Depending on the purpose these accounts are used for, they can be divided into the following types:

- personal (user-generated) accounts, which are purely informational in nature and contain information about the user;
- commercial accounts, which are used for business purposes.

Accounts' turnover being estimated, two categories shall be distinguished:

- Accounts that have no independent use value and are used, for example, to access a product/service (e.g. online buyer's personal account, a public services portal account, etc.);
- Accounts that are valuable commercial property because of special parameters (the number of subscribers, special content, a long period of use, etc.) and can act as an independent turnover object (e.g. Instagram business account, etc.).

A commercial social-media account and virtual property it is linked to give rise to certain civil rights and obligations of the user, and imply material savings that become transferrable virtual property objects in civil turnover. Undoubtedly, the fact a commercial virtual site could be submitted by universal succession makes legal interest arise and is important in terms of its recognition as a negotiable digital object.

At the same time, given the deep penetration of social media in our everyday life, the issue of personal (consumer) account inheritance also requires careful analysis. According to some authors, in case account access is denied the likelihood of losing photo, video and other memories about the loved person deceased is an additional stress that could be avoided if such accounts could be inherited (Okhotnikova, 2020).

The question should therefore be resolved as to whether it is possible and lawful to get an account by succession. There is no legislative regulation or judicial practice concerning digital assets' inheritance in the Russian Federation. In fact, there have been cases when people faced the problem to access the accounts and electronic mailboxes of deceased relatives.

The researchers point out that, in general, there is no legislative prohibition on the transfer of rights to an account; the account management restricted solely by the rules of the website administrator, i.e. there is no formal prohibition on civil turnover of an account as an object.

Some foreign countries, mainly North American states, have recently admitted inheritance of accounts legitimate. In 2014, the state of Delaware was the first to recognize officially that ownership of an internet account that belonged to a deceased citizen could be transferred. By equating the deceased person's virtual accounts with regular ones, the Governor thereby extended ownership to them. The law is based on the Uniform Law Commission project, which aims to unify laws in all US states. In Germany, the Berlin Court of Appeal ruling of 2017 upheld Facebook's argument that online privacy was guaranteed by the German Constitution, but in the same year the Supreme Court deemed it possible to transfer an account by inheritance (Gavrilov, 2019).

For the most part, however, this area is regulated by email and social-media servers themselves by including the provisions on inheritance or other termination consequences into user agreement.

Obviously, for the citizens to exercise their rights, legal state regulation is essential. Succession relations are governed by the provisions of Part III of the Civil Code of the Russian Federation. In accordance with Article 1112 of the Civil Code of the Russian Federation, inheritance includes the items and other property, in particular, rights in rem and liabilities. Thus, in accordance with the Russian law, the likelihood to inherit a social network account is determined by its material value.

We support Gapanovich's (2020) position that user accounts are of non-material nature, which excludes their inheritance, while virtual property linked to some commercial account is of some material value and can be an object of inheritance law as "other property". In this case, a commercial account can be considered inheritance estate and, accordingly, can be passed on to heirs.

It is necessary to support the proponents of the idea that having no legislative regulation for account use and prohibition of unauthorized dissemination of personal information concerning individuals, the testator's express will regarding the account's further life must be present in order to prevent subsequent ambiguous court work. Such a desire may be expressed in his or her will or recorded by the social network itself.

In the Russian Federation, notaries advise all those who have such digital assets and are already thinking about preserving their value and profitability for descendants, to make sure that a will is prepared in advance. This document will clearly state what property the citizen wants to transfer to his or her heirs, and if necessary, it will impose certain obligations related to social media account, for example, to blogging, or deleting it.

Wills and probate specialists recommend stipulating the right of executors to access online accounts, e-wallets and other Internet assets. Passwords themselves should not be written into the will so that they are not disclosed to a wide range of potential heirs. Passwords can be specified in additional documents to the will, which are prepared simultaneously with the will or separately from it.

German notaries recommend a slightly different approach. In their opinion, all passwords should be saved as a list on a USB drive. The USB-memory stick is locked with a master password and is kept by the citizen, while the master password and information about where the USB-stick is kept is contained in a handwritten document deposited with the notary (Kulikov, 2021).

Another challenge in accounts' inheritance area is necessary protection of personal data of those people the deceased corresponded with. Obviously, it is necessary to differentiate the approach to claim online assets and obtain personal information about the deceased user (his or her social media entries, or emails) by the heirs. While the recovery of online assets should take place in any case, the will by analogy with money recovery from bank deposits included, the receipt of personal information, should take place only in exceptional circumstances. Personal accounts are quite closely connected with the user identity, which was demonstrated in the definition of account concept and meaning. In this regard, the account should not be inherited and the relationship between the social network (email service) and the user should terminate in accordance with Article 418 of the Civil Code: Obligatory relationships terminate with the death of a citizen, whether debtor or creditor, if they are indissolubly linked to the personality of the citizen.

Thus, from a legal perspective, the category of personal accounts is of interest only in terms of data protection as well as compensation for damage caused as a result of unlawful acts (Kirsanova, 2020). The legal regime for heirs' access to information on such an account should include only the rights to receive digital objects uploaded by the user. Access to correspondence and active actions should be banned. The obligation for social network administrators to take appropriate actions when they get information about a user's death should be enshrined for the user's account not to be deleted.

7. Conclusion

The given analysis of social-media accounts' essence and types leads to the conclusion about necessity to regulate different types of accounts: personal (user accounts) and commercial (business accounts) applying different legal regimes, at least as far as their inheritance is concerned.

In our opinion, inheritance of personal accounts and e-mail boxes shall not be allowed. However, if there are some items uploaded on the account, e.g., photos, literary, musical, or audiovisual works, graphic and design objects, databases and other "virtual property", heirs should be provided with access to them, as they have material value. To this respect, it seems necessary to set a special mode for the account so that correspondence becomes inaccessible and active actions that create a false impression about the deceased are impossible. Exceptions shall be issued by court only.

Business accounts and groups (communities), and business pages used to attract target consumers' attention to goods, services, employment options and the individual who provides them shall be treated as intangible assets and included into the legacy estate of the user-grantor.

References

- Gapanovich, A. V. (2020). On inheritance of virtual property in social media. *Inheritance law*, 2, 40–43.
- Gavrilov, V. N. (2019). Inheritance of social-media accounts. *Law. Economy. Psychology*, 2, 11–14.
- Grochowski, M. (2019). Inheritance of the Social Media Accounts in Poland. *European Review of Private Law*, 5, 1195–1206.
- Harbinja, E. (2019). Inheritance of digital media. *University of Hertfordshire Research Archive*. <https://uhra.herts.ac.uk/handle/2299/22014>
- Kirillova, E. A. (2020). The main digital asset inheritance issues. *Inheritance Law*, 2, 37–39.
- Kirsanova, E. E. (2020). Account as an object of civil rights. *Arbitrary Practice Bulletin*, 2, 44–48.
- Kulikov, V. (2021). Notaries recommended to include passwords to social network pages in their wills. *Rossiyskaya Gazeta*. <https://rg.ru/2021/05/21/reg-szfo/notariusy-rekomendovali-vkliuchat-v-zaveshchanie-paroli-k-stranicam-v-socsetiah.html>
- Okhotnikova, V. (2020). Inheritance of social-media accounts. *Law Planet*. <https://www.planeta-zakona.ru/blog/nasledovanie-akkauntov-v-sotsialnykh-setyakh.html/>