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# Inheritance of digital assets

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# Introduction

**Relevance of the research topic**.

Since humanity became isolated from the natural environment, the development of the means of production and the closely related method of organizing production relations has become the main engine of its development. The constant improvement and creation of fundamentally new tools of production, means of communication and exchange of property goods, culminating in the creation of the Internet, has led to a real revolution in both technology and social relations. The ability to receive correspondence almost instantly, exchange large amounts of information, and analyze such volumes of data in a short time, the processing of which not so long ago required entire institutes with hundreds of workers, has qualitatively changed the access to information and the possibilities of its use. In literature This phenomenon has been called the "fourth industrial revolution" [1]and The economic structure of such a society is the “digital economy ”.[2]

The scientific and technological revolution has allowed humanity to create fundamentally new objects of civil rights, the recording of which occurs in the form of electronic-digital mathematical symbols. In legislation and scientific literature, there are various names for this phenomenon, for example: digital rights, digital assets, digital objects, objects existing in digital form. The legislator and the authors of scientific works and practice-oriented commentaries may put different meanings into the content of the concepts they use.

Due to the lack of a unified conceptual framework in relation to objects existing in the electronic digital environment, in our work we will mainly (other cases will be specifically stipulated) use the term “digital assets” as a general generic concept, which will be discussed in more detail below.

The main property of digital assets as objects of civil law is their ability to satisfy the needs of participants in civil transactions, and not only of an economic nature, as some

[1]Schwab K., Davis N. Technologies of the Fourth Industrial Revolution. Moscow, 2022. P. 18-20; Tarasov I. V. Industry 4.0: concept, concepts, development trends // Business strategies. Analysis. Forecast. Management. Electronic scientific - economic journal. 2018. No. 6 (50). P. 57-63.

[2]Kozyrev A. N. Digital economy and digitalization in historical retrospect // Digital economy. 2018. No. 1 (1). P. 6-7.

authors mistakenly believe,[3] but also the spiritual needs of people. From this point of view, the possibility of inheriting certain types of digital assets should be studied.

The main, constitutive feature of all digital assets is their existence in an artificially created electronic information system, which, from a technical point of view, represents electronic digital algorithms generated by technical devices (computers in the broad sense of the word) and linked together into open (accessible to everyone) or closed systems (with limited access).[4]

It is quite acceptable to consider that in the part of the modern economic system called the "digital economy" there is a turnover of both purely digital (virtual) assets that cannot exist in a material form, and real-world objects clothed in digital form.[5] Here it would be more accurate to say - rights to these objects or their digital copies (tokens). In any case, digital assets can exist and satisfy the needs of participants in civil circulation only on the Internet.6

Let us emphasize once again that the main feature of digital assets is that they exist in electronic form in the form of cryptographic signs, which are a digital code that determines their content. Since they can only exist in virtual space, their circulation is possible only between participants of the Internet network. The environment in which digital assets are located is an imaginary space, artificially created with the help of certain electronic devices.

Due to the unusual and new nature of digital assets as objects of civil law, difficulties arise with their classification and attribution to a certain type of civil law. This is explained by the fact that just a few decades ago, digital assets were considered only as a set of digital data and represented only a mathematical algorithm assembled in a certain way. Now digital assets are recognized as independent objects of civil circulation, including investments (for example, cryptocurrency), consumption of goods and services

[3]Volos A. A. Digitalization of society and objects of hereditary succession // Law. Journal of the Higher School of Economics. 2022. No. 3. P. 58.
[4]Ibid.
[5]Kharitonova Yu. S. A lawyer cannot do without knowledge of basic technologies // Law. No. 9. September. 2023. P. 9.
[6]Laptev V. A. Digital assets as objects of civil rights // Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia. 2018. No. 2 (42). P. 201; Sannikova L. V., Kharitonova Yu. S. Digital assets as objects of entrepreneurial turnover // Law and Economics. 2018. No. 4. Access from the reference and legal system "ConsultantPlus" (date of access: 09/10/2023).

(electronic musical works or works of art), or are used to record rights to objects of the material world, etc.[7]

The emergence of digital assets is closely related to the technical capabilities of participation in communication via electronic systems and the development of the global Internet system. The reduction in cost and, consequently, the availability of the computer as a technical device that allows the creation of digital assets and their use, the emergence of portable computers, the minimization of their size, have enabled billions of people to be involved in the process of creating digital assets.[8] It is necessary to pay attention to the availability of such communication systems and digital assets created on their basis. After all, one of the reasons why the ideas of creation and centralization of automated control systems (ACS) in all production of the USSR (in fact, the Internet network) proposed by A. I. Kitov and Academician V. M. Glushkov were rejected by the country's leadership was their very high cost, and economic reforms, proposed by E. G. Liberman, according to their creators, cost no more paper on which they were printed. [9]As historical experience subsequently showed, the choice of reforms instead of introducing a complex technical ACS into production turned out to be a mistake. The reforms did not produce the expected results and turned out to be much more expensive than "the cost of the paper on which they were printed", and in the area of development and implementation of progressive electronic technologies, the USSR was thrown far back.

The low cost of the tools with which a virtually infinite number of digital assets can be created is a sine qua non condition for them to acquire socio-economic significance in a technologically advanced society.

Digital assets acquired the property of full-fledged objects of civil law only when their circulation became possible. The property of circulation of objects of the material world is a necessary condition for them to begin to satisfy the needs of participants in civil circulation. But the same applies to digital assets, especially since there is no

[7]Laptev V. A. Digital assets as objects of civil. P. 201, Sannikova L. V., Kharitonova Yu. S. Digital assets as objects of entrepreneurial turnover. P. 28-32.
[8]2023, there are over 4 billion active email users alone. See 25+ Email Marketing Statistics and Trends. // Website Rating : [site ]. URL: https://www.websiterating.com/ru/research/email-marketing-statistics-facts/ (Accessed : 12.01.2024).
[9] Malinovsky B. N. History of computer technology in persons. Kiev: Firma KIT, PTOO "A.S.K.", 1995. P. 160.

insurmountable wall between them. For example, digital assets can have a value in monetary terms and when used in civil circulation, one can obtain quite tangible material benefits. Thus, participants in bonus programs buy clothes, food, use airline services with accumulated bonuses, and cryptocurrency can be sold for national currency, etc.

All the above-mentioned properties of digital assets allow us to assert that participants in civil transactions have a legitimate interest in their transfer by inheritance.

The relevance of our work is also confirmed by the fact that even fairly authoritative lawyers have, in our opinion, unfounded questions doubts related to the use of new technologies and methods of digital asset circulation.[10]

Currently, both Russian and foreign scientific literature considers digital assets as the basis of the digital economy and proposes to include them in the inheritance.[11]

The notary community of Russia and the CIS countries notes that today the tasks of ensuring the stability of civil turnover and the legality of legal relations related to digital assets, protecting property rights and providing guarantees to participants in digital transactions come to the fore. [12]Notaries from different CIS countries are unanimous in the fact that citizens should inherit digital assets and the wording contained in the legislation allows them to be interpreted for the benefit of the heirs.[13]

The main questions that notaries would like to have answered are:

- What exactly are digital assets?
- What documents can be used to confirm existing digital assets?
- How to properly describe digital assets in a will?

Internet platforms in their rules did not take into account the simple fact that a person's life is finite, and did not regulate the fate of the user's digital assets in the event of his death. This problem is not specifically Russian or Kazakh, but is international in nature.

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[10]Ivanov A. A. Stop the Hermitage! // zakon.ru: [website]. September 09, 2021. URL: https://zakon.ru/blog/2021/09/09/ostanovite_ermitazh (date of access: 08/25/2023).
[11]Mkhitaryan L. Yu. Development of the Institute of Inheritance in Russia: on the Issue of the Need to Include Digital Assets in the Estate // Perm Legal Almanac. 2019. No. 2. P. 283–289.
[12]Klyuchevskaya N. Inheritance of digital assets: Russian and foreign experience // G arant.ru: [site]. May 20, 2021. URL: https://www.garant.ru/article/1464108/(date accessed: 09/10/2023).
[13]Tsvetkova E. S. Features of registration of inheritance rights to digital assets // Inheritance law. 2023. No. 3. P. 34-35.

For non-specialists in the field of inheritance law and notaries, the solution to inheriting digital assets seems very simple - write the password and login on a piece of paper and indicate the heir. The platform will not have any questions - where did this person get the information about the password and login and in general, who personally gets access to digital assets. [14]

But it is necessary to distinguish between providing a purely technical possibility of access to digital assets to third parties and the inheritance of digital assets. When inheriting digital assets, the rules on the form of a will, on the obligatory share in the inheritance must be observed, the rights of the deceased's creditors must be taken into account, etc. Let's imagine a situation where the heir has access to the testator's safe. Is he obliged to include its contents in the general estate? The answer to this question should be positive. Otherwise, his behavior should be recognized as illegal, and it will not matter whether he gained access to the safe by the will of the testator or independently.

**The degree of scientific development of the topic**.

Digital assets have attracted the attention of Russian and Kazakhstani scientists since the early 2000s. With the adoption of the law on digital financial assets, etc. in Russia, and the corresponding laws in the Republic of Kazakhstan, the intensity of discussion of the problem has increased sharply.[15] Russian scientists are already summarizing the experience of using digital technologies and legal regulation of digital asset turnover at the monographic level.[16]

In scientific literature, digital assets are mainly considered as an electronic digital form of already known entities, or, if these objects can only exist in virtual space and cannot be reproduced in material form, then they are classified as new objects to which,

[14]Kharitonova Yu. S. A lawyer cannot do without knowledge of basic technologies now. p. 12.

[15]Suleimenov M. K. Digitalization and improvement of civil legislation (article three, corrected and adjusted in connection with the adoption of the Law on Digital Technologies) // Information system "Paragraph". URL: https://online.zakon.kz/Document/?doc_id=35012332 (date of circulation: 03.08.2023); Vaipan V. A. Fundamentals of legal regulation of digital economy // Law and Economy. 2017. №11. C. 5 - 18; Legal regulation of economic relations in modern conditions of digital economy: a monograph, a team of authors / ed. by V. A. Vaipan, M. A. Vaipan, M. A. Vaipan. A. Vaipan, M. A. Egorova. M. : Justitsinform, 2019. 376 p

[16] Sannikova L. V. Digital assets: legal analysis: a monograph / L. V. Sannikova, Y. S. Kharitonova. M.: 4 Print, 2020. 303 p.; Vasilevskaya L. Yu. Y., Poduzova E. B., Tasalov F. A. Digitalization of civil turnover: problems and trends of development (civilistic research): monograph: In 5 vol. T. 1 / ed. by L. Yu. Vasilevskaya. M. Prospect, 2021. 288 p

by analogy with law or law, the rules on traditional civil law objects can be applied (for example, things, securities, results of intellectual activity, etc.).[17]

According to the prevailing view, giving a new form to already known rights cannot lead to the emergence of new entities. [18]In this regard, some authors generally question the need to introduce such a category of rights as "digital rights". [19]In essence, "digital rights" are "... a way of recording subjective civil rights in an information system" and this is "... an ordinary obligatory or other right, named in the law as digital".[20]

The logical conclusion from all of the above is the refusal to single out “digital law” as a new branch of law.[21]

In other works, digital assets are considered as a fundamentally new object of civil rights. [22]For example, non-cash money and other non-cash means of payment are proposed to be considered a new object - "intangible "digital" property". [23]This understanding of digital assets is based on the fact that their creation and existence is determined by the technical features of digital platforms. From this point of view, it is entirely justified to talk about digital law as a de facto formed branch of law.[24]

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[17]Dzhumagulov D. D. Conclusion of an agreement by performing conclusive actions on the Internet // Law. 2023. No. 5. P. 167-176; Karpov E. A. Ownership rights in the context of digitalization: problems and prospects // Civil law. 2023. No. 6. P. 14-17.

[18]Sukhanov E. A. On the civil-law nature of "digital property" // Bulletin of civil law. 2021. No. 6. P. 15; Mikheeva I. E. Certain legal features of the pledge of digital rights // Law and Economics. 2022. No. 10. P. 18; Churilov A. Yu. Prospects for the digitalization of documents of title // Jurist. 2021. No. 2. Pp. 10-11; Rozhkova M. A. Digital rights: public law concept and concept in Russian civil law // Business and Law. 2020. No. 10. Pp. 3-13; Varlamova N. V. Digital rights - a new generation of human rights? // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2019. Vol. 14. No. 4. Pp. 35-37; Khabrieva T. Ya. Law facing the challenges of digital reality // Journal of Russian Law. 2018. No. 19. P. 14-15.

[19]Rozhkova M. A. Digital rights - what are they and are they needed in the Civil Code? // Zakon.ru: [website]. August 17, 2020. URL: https :// zakon. ru / blog / 2020/08/17/ cifrovye _ prava _ digital _ rights __ chto _ eto _ takoe _ i _ (date of access: 09/17/2023).

[20]Kartskhia A. A. Civil-law model of regulation of digital technologies: dis. Dr. of Law. 12.00.03. M., 2019. S. 344; Rudenko E. Yu. On the issue of the concept of digital rights as objects of civil legal relations // Civil Law. 2021. No. 4. S. 7 - 10; Sadkov V. A. Digitized rights as an electronic-virtual fiction for legal support of the circulation of subjective claims // Legal paradigm. 2021. Vol. 20. No. 2. S. 159 - 163.

[21]Rozhkova M.A. Is digital law a branch of law and should we expect the emergence of a digital code? // Business and Law. 2020. No. 4. P. 3 - 12.

[22]Abramova E. N. On the concept of digital law as an object of civil rights // Jurist. 2023. No. 1. P. 54-60; Braginets A. Yu. Information objects as property: the experience of common law jurisdictions and the prospects for its implementation in Russia // Law. 2023. No. 9. P. 111-123. Access from the reference and legal system "ConsultantPlus" (date of access 05/31/2024).

[23]Efimova L. G. On the legal nature of non-cash money, digital currency and the digital ruble // Civilist. 2022. No. 4. P. 42-45.

[24]Digital law: textbook / edited by V. V. Blazheev, M. A. Egorova. Moscow, 2020. P. 36.

I would especially like to note the discussion about the legal nature of digital assets and the specifics of their circulation, which unfolded on the pages of the journal "Law", where the prevailing point of view was the classification of digital assets, taking into account their specificity, as objects of civil law with corresponding legal regulation, although at the same time, gaps in the legislation were noted, the vagueness of the wording, allowing for different interpretations of the same norms.[25]

A type of digital asset known as cryptocurrency has attracted much attention from scientists and legal practitioners.[26]

The idea of issuing a digital currency was first expressed in 1983 by American scientist David Chaum. He then founded the DigiCash company in the Netherlands to develop a digital currency in the form of e-Cash. And only in 2008 did real private digital money appear with a description of the protocol and the operating principle of the payment system in the form of a peer-to-peer network called "Bitcoin: A Peer-to-Peer Electronic Cash System", and on January 3, 2009, the first 50 bitcoins were issued. The first bitcoin transaction dates back to January 12, 2009. The emergence of bitcoin is closely linked to the global financial crisis of 2007-2009 and, as a consequence, the growing distrust of traditional financial institutions. Private money at first showed greater stability and the ability to replace legal national means of payment, greater efficiency in making cross-border payments, a significant reduction in transaction costs, since banks dropped out of the payment system.[27]

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[25]Digital assets in the system of civil rights objects / A. Guznov, [et al.] // Law. 2018. No. 5. pp. 16–30; Digital rights as a new object of civil law / L. Novoselova, [et al.] // Law. 2019. No. 5. pp. 31–54; Turnover of digital assets in Russia / K. A. Bormasheva [et al.] // Law. 2020. No. 12. pp. 17–28.

[26]Novoselova L. O. On the legal nature of bitcoin // Business and Law. 2017. No. 9. pp. 3-16; Maksurov A. A. Cryptocurrency as an economic and legal category // Modern Law. 2018. No. 9. pp. 68-71; Perov V. A. Cryptocurrency as an object of civil law // Civil Law. 2017. No. 5. pp. 7–9; Tolkachev A. Yu., Zhuzhalov M. B. Cryptocurrency as property - analysis of the current legal status // Bulletin of Economic Justice of the Russian Federation. 2018. No. 9. pp. 120–121; Savelyev A. I. Cryptocurrencies in the system of civil law objects // Law. 2017. No. 8. P. 136–153; Frolov I. V. Cryptocurrency as a Digital Financial Asset in Russian Jurisdiction: On the Issue of its Real or Obligatory Nature // Law and Economics. 2019. No. 6 (376). P. 5–17; Egorova M. A. The Place of Cryptocurrency in the System of Civil Rights Objects // Actual Problems of Russian Law. 2020. No. 1. P. 81–91; Cryptocurrency as a Means of Payment: Private Law and Tax Aspects: Monograph / M. A. Egorova, K. S. Yuchinson, L. G. Efimova [et al.]; edited by M. A. Egorova. Moscow: Prospect, 2021. 352 p.

[27]Central Bank Digital Currency (CBDC): Russia in the Context of World Practice. Analytical Report of the Association of Russian Banks // Association of Russian Banks: [website]. June 2021. - URL: https://asros.ru/upload/iblock/802/k62gq038s5c32w83twgzks0qwk26rlm6/2022_01_31_doklad_TSVTSB_iyun_2021_goda.pdf (accessed: 15.05.2024).

The popularity and prevalence of cryptocurrency have raised the question of its legal nature before scientists and practitioners. Cryptocurrency is classified as both an obligatory right of claim [28]and a “material substance” that is closest to a movable thing, [29]and is proposed to be considered “other property”, [30]and even extend the property-law regime at least in part to its circulation. [31]In one of the latest studies, cryptocurrency is treated as a separate type of property right and more general conclusions are reached, proposing to apply in general to the circulation of digital assets "...by analogy with the rules applicable to the circulation of movable things."[32]

It should be noted that the Russian legislator is currently at the stage of legalizing mining and circulation of cryptocurrency.[33]

Numerous studies are devoted to individual types of digital assets: digital financial assets, [34]to the circulation of which it is proposed to apply the general rules on uncertificated securities; [35]various types of accounts; [36]domain names;[37] NFT objects considered as digital property that has independent value, or as an image of objects of the

[28]Novoselova L. A. On the legal nature of bitcoin. P. 14-16.
[29]Sklovsky K. I., Kostko V. S. On the concept of a thing. Money. Real estate // Bulletin of Economic Justice of the Russian Federation. 2018. No. 7. P. 132.
[30]Saveliev A. I. Cryptocurrencies in the System of Civil Rights Objects. P. 136-153.
[31]Tolkachev A. Yu., Zhuzhalov M. B. Cryptocurrency as property - analysis of the current legal status. P. 117.
[32]Budylin S. L. The Case of the Unknown Villains, or Is Cryptocurrency Property? // Bulletin of Economic Justice of the Russian Federation. 2022. No. 1. Pp. 63–82; Ditto. Cryptoassets: Role in Civil Circulation and Legal Nature // Bulletin of Economic Justice of the Russian Federation. 2023. No. 5. Pp. 74–115.
[33]Bill No. 237585-8 "On Amendments to Certain Legislative Acts of the Russian Federation (in terms of regulating digital currency)" URL: https://sozd.duma.gov.ru/bill/237585-8 (date accessed: 03.08.2024).
[34]Sadkov V. A. Digital financial assets as objects of civil rights and their circulation: dis.... candidate of legal sciences: 12.00.03. Volgograd, 2022. 211 p.
[35]Melnikova T.V., Nikitashina N.A., Shalyaeva Yu.V. Digital financial assets as objects of civil rights // Jurist. 2023. No. 11. 37-42 p.
[36]Kirsanova E.E. Account as an object of civil rights // Bulletin of arbitration practice. 2020. No. 2. . 44-48 p.
[37]Sergo A. G. Legal regime of domain names and its development in civil law: author's abstract. diss….. doctor of legal sciences: 12.00.03. M., 2011. 58 p.

material world, [38]or as other property, [39]or as a digital analogue of known rights; [40]utilitarian digital rights; [41]game accounts and game rights.[42]

Following the introduction of digital assets into the legal field, the question of succession in the event of the death of their owners arose, which led to the emergence of works that consider various aspects of the inheritance of digital assets.[43]

Scientific articles and practice-oriented commentaries examine individual issues of digital asset inheritance: inheritance of accounts [44]and business accounts (for example, it is proposed to inherit a business account using a hereditary trust); [45]inheritance of cryptocurrency; [46]inheritance of virtual property in social networks; [47]the possibility of disposing of digital assets using a will.[48]

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[38]Churilov A. Yu. Legal regulation of the circulation of non-fungible tokens: problems and prospects // Business and Law. 2021. No. 1. Pp. 62-68; Dolganin A. A. The relationship between non-fungible tokens (NFT) and intellectual property: the triumph of the proprietary approach? // Digital Law. 2021. No. 3. 46-54 p.

[39]Sitnik A. A. NFT as an object of legal regulation // Actual problems of Russian law. 2022. No. 12. 84-93 p; Emelianov D. S., Emelianov I. S. Non-fungible tokens (NFT ) as an independent object of legal regulation // Property relations in the Russian Federation. 2021. No. 10. Pp. 71-76; Vavilin E. V. NFT tokens: civil law and procedural regime // Bulletin of civil procedure. 2023. No. 1. Pp. 44-48.

[40]Vasilevskaya L. Yu. Token as a new object of civil rights: problems of legal qualification of digital law // Actual problems of Russian law. 2019. No. 5. 111-119 p.

[41]Gorodov O. A. Acquisition of utilitarian digital rights as a new way of investing under Russian legislation // Law and digital economy. 2020. No. 1. Pp. 5–10; Vakulina G. A. On types of digital rights // Business and law. 2023. No. 6. 3–12 p.

[42]Arkhipov V. V. Virtual Property: Systemic Legal Problems in the Context of the Development of the Computer Games Industry // Law. 2014. No. 9. Pp. 69–90; Savelyev A. I. Legal Nature of Virtual Objects Acquired for Real Money in Multiplayer Games // Civil Law Bulletin. 2014. No. 1. Pp. 143–145; Arkhipov V. V. Semantic Limits of Law in the Context of the Medial Turn: Theoretical and Legal Interpretation: Diss. …. Doctor of Law: 12.00.01. St. Petersburg. 2019. 354 p.

[43]Mikhailova I. A., Romanova I. N. Problems of inheritance of digital assets and possible directions of their solution// Notary. 2022. No. 2. Pp. 20-25; De Rosa R. E. What will happen to my "digital legacy" when I die // Law and digital economy. 2022. No. 1 (15). Pp. 30-40; Yatsenko T. S. Inheritance of digital rights // Inheritance law. 2019. No. 2. Pp. 11-14; Kirillova E. A. Main problems of inheritance of digital assets // Inheritance law. 2020. No. 2. Pp. 37-39; Baidaeva V. O. Digital assets as objects of hereditary succession in the modern world: issues and ways of resolution // Inheritance law. 2022. No. 1. 2-4 p.

[44]Panarina M. M. Inheritance of an account in social networks and issues of digital inheritance: a legal study // Inheritance law. 2018. No. 3. pp. 27-28; Grin' E. S. Inheritance of accounts in social networks: Russian and foreign experience // Actual problems of Russian law. 2022. Vol. 17. No. 2 (135). pp. 128-134; Kiselev G. V. Legal problems of inheritance of gaming accounts in multiplayer online games // Law and business. 2021. No. 3. pp. 44-47; Lazarenkova O. G. On the issue of digital rights, as well as a digital account in inheritance legal relations // Inheritance law. 2019. No. 3. pp. 24-27.

[45]Kovaleva M. I. Criteria for the inheritance of business accounts by the inheritance fund // Inheritance Law. 2023. No. 2. 25-27 p.

[46]Tsindeliani I. A. Cryptocurrency as an object of civil and financial regulation // Financial Law. 2018. No. 7. Pp. 18–25; Kirillova E. A. The role of a notary in the inheritance of digital currency in the Russian Federation // Notary. 2021. No. 7. Pp. 27–29; Begichev A. V., Risovskaya S. S. Problems of legal regulation of cryptocurrency inheritance // Inheritance law. 2023. No. 3. 15-18 p.

[47]Gapanovich A. V. On the issue of inheritance of virtual property in social networks // Inheritance law. 2020. No. 2. 40-43 p.

[48]Yatsenko T.S. Problems of execution of a will in relation to the digital assets of the testator // Inheritance law. 2021. No. 1. 31–34 p.

There are also monographic studies devoted to the inheritance of digital assets in general.[49]

We believe that the above-mentioned works do not allow us to find a practical solution to the problem of inheritance of digital assets within the framework of the current legislation of Kazakhstan and Russia and to theoretically justify the protection of the rights of the testator and heir, adhering to the currently existing paradigm of their inheritance.

**The object of** the study are social relations that develop regarding various types of digital assets in the event of the death of their owner.

For the purposes of this work and taking into account established practice, by digital assets we mean and will continue to study objects that exist in the form of electronic digital mathematical symbols.

We use the term "digital assets" as a generic term for all individual types of digital assets. Currently, these include: accounts or records in social networks and services (they, for example, may contain photos and videos of a certain value), accounts in monetization services with accumulated funds on deposits, domain names, cryptocurrency, websites, digital wallets, NFT objects, and others. The emergence of new types of digital assets and, accordingly, further development of legal regulation of their turnover cannot be ruled out.

Today, there is no generally accepted classification of digital assets. In different legal systems, the same phenomena objectified in electronic information systems may have different names, for example: in Kazakhstan - "digital assets", in Russia - "digital rights". Even the concept of the environment in which these rights exist may be called differently: "digital space", "electronic-digital environment", "information system", in a narrower sense - "virtual world", "virtual reality", "cyberspace", "metaverse", etc.[50]

For the convenience of designating digital objects, we will mainly use the terms "digital assets" as more general and recognized in various legal systems. When we talk

[49]Volos A. A., Volos E. P., Papylev D. A. Digital challenges of modern inheritance law: monograph / edited by A. A. Volos. Moscow: Prospect. 2023. 168 p.
[50]Teleshina N. N. Virtual space as a new legal construct: towards the formulation of the problem // Legal technique. 2013. No. 7 (part 2). 740-747 p.

about digital objects in individual legal systems, we will use the terminology of national legislation.

In relation to other elements of the electronic digital environment, given the lack of established terminology, we will use the following concepts:

- an account (personal record, profile) contains data for identifying the user, with its help one can gain access to the content;

- Internet platform (platform) – a tool for creating websites and other digital objects, which is software in the form of electronic digital algorithms; on its basis, interaction between the platform operator and users is carried out;

- the content of the account includes any information that the user considers necessary to place under this account;

- the Internet platform provider provides access to the Internet platform.

**Subject of** the research are the legal regulation in the Russian and Kazakhstani legal order of the circulation of digital assets, law enforcement practice, including contracts of the testator with third parties determining the fate of digital assets in the event of the death of their owner, various theoretical and legal approaches to the issue of the possibility of inheriting digital assets.

**Objectives and tasks of the study.**

*The purpose of the study* is to substantiate and develop a scientific concept of the possibility of inheriting digital assets in the event of the death of their owner, to identify general trends in the development of legal regulation of the inheritance of digital assets and the specifics of the inheritance of their individual types, to determine the limits of freedom of disposal of digital assets, to identify digital assets that cannot be transferred to heirs.

*The objectives of the study* are determined by the purpose of the study and include:

- identification and description of the main characteristics of digital assets from the point of view of their marketability;

- selection and justification of theoretical and legal approaches to digital assets and their applicability to solving the problem of inheritance of these objects;

- study of the regulatory framework for digital assets and the relevant law enforcement practice of the Republic of Kazakhstan and the Russian Federation in order to identify the common and specific features in this issue when comparing the closest legal systems;

- analysis of user agreements of various digital platforms and services to determine whether their terms comply with current legislation;

- generalization of the relevant regulatory framework, judicial and notarial practice, and legal dogma with the aim of developing the most acceptable approaches to solving the problem of inheritance of digital assets.

**Scientific novelty of the dissertation**. The transition to a digital society has occurred relatively recently, within the last 20 years, so the topic itself is quite new and little studied, if only for the reason that the accumulation of empirical material is still taking place. However, the problem has already arisen before law enforcement officers and requires understanding and development of scientifically based approaches.

Our work is the first comprehensive study that combines the study of the dogmatics of law, all legislation of the Republic of Kazakhstan and the Russian Federation related to the topic of the dissertation, law enforcement practice, including attempts at contractual regulation of the inheritance of digital assets. The author of the dissertation did not limit himself to a selective study of individual legal provisions or terms of user agreements, but conducted a comprehensive analysis of them, on the basis of which he came to the appropriate conclusions.

The novelty of the work also lies in the proposals for eliminating theoretical gaps related to the justification of the possibility of inheritance of digital objects, and putting forward practical proposals for the application of existing legal norms on digital rights to inheritance legal relations.

The study yielded the following results, which are scientifically novel:

1) To justify the possibility of inheriting digital assets, one can quite successfully use classical legal theories - the labor theory of J. Locke, the utilitarian theory of I. Bentham, the theory of personality of G. Hegel, taking into account its modern interpretation given by M. Radin.

2) There is no need to “multiply entities” and invent a special “theory of digital rights”.

3) Despite the emergence of new digital assets and the geometric increase in their number, they all have one thing in common – to satisfy human needs, both material and non-material.

4) A significant number of digital assets are of value to the testator and his heirs, regardless of their value as an object of civil circulation and the ability to satisfy the needs of third parties.

5) The testator may, at his own discretion, destroy or actually destroy (deprive the heirs of access to them) all digital assets belonging to him, or some part of them. While the Internet platform does not have the right to perform such actions without the user's consent in the event of the user's death.

6) Terms of the user agreement that violate the law are invalid and not applicable.

7) The technical conditions for providing the use of the Internet platform services in themselves have no legal significance. If the platform can technically provide the heirs with access to the digital assets of the deceased, then it is obliged to do so.

8) General rules on inheritance apply to the inheritance of digital assets, taking into account the specifics of the application of special rules enshrined in individual regulatory legal acts.

9) The electronic form of a will on the Internet is contrary to the law and does not entail the consequences that the user’s will was intended to achieve.

10) Standard user agreements for providing users with technical capabilities to create digital assets can protect citizens from Internet platforms abusing their dominant position.

**Methodology and research methods.** The following main methods are used in the dissertation: dialectical method, formal logic method, formal-legal (dogmatic), comparative-legal, historical-legal, legal forecasting method.

1. General philosophical methods:

1.1. The dialectical method, by which phenomena, in this case the technological development of humanity and digital assets, are considered in constant motion and

change, the transition of quantitative changes to qualitative ones, where the change of some technologies leads to the emergence of fundamentally new objects, and as a consequence of this process - the emergence of new social relations regarding these objects;

1.2. The method of formal logic allows us to identify the most significant connections between phenomena, to understand their interrelation and structure, abstracting from a specific type of digital assets. In particular, the dissertation author uses a logical technique - reduction to absurdity (" reductio ad absurdum" ), in order to clearly demonstrate the incorrectness of individual hypotheses and approaches to the topic of the issue under study. The author used the "Occam's Razor" method, according to which one should not assume the existence of new branches of law ("digital asset law") without necessity.

2. Special methods:

2.1. Using the formal-legal (dogmatic) method, by hypothetical-deductive means of establishing a hypothesis - the possibility of inheriting digital assets, and its empirical verification - based on the study of the dogma of law, positive law and law enforcement practice, find out whether the current legal regulation and interpretation of legal norms by law enforcement officers is sufficient and certain for the inheritance of digital assets, and in the absence of formal certainty or a gap in the law, to what extent these circumstances can be an obstacle to the inheritance of digital assets.

2.2. The comparative legal method or the comparative jurisprudence method is based on comparing homogeneous legal phenomena of different legal orders with each other in order to establish their similarities and differences. The use of the comparative legal method is based on the similarity of the legal systems of Kazakhstan and Russia, which have a common historical origin and belong to the German branch of the Romano-Germanic legal family. Comparison with other legal orders, both of the continental legal family and common law countries, is due to the fact that in these countries, and primarily in the United States, the legislator was the first to face the need for legal regulation of the inheritance of digital assets and for the first time legally enshrined the possibility of succession in the event of the death of the user.

2.3. The historical and legal method was used to understand the origin of digital assets and the development of legal regulation over time, which made it possible to identify the general and specific features of the development of legislation on digital assets and dogmatic approaches in time dynamics.

2.4. The method of legal forecasting allowed the dissertation candidate to identify further trends in the development of digital technologies and their legal regulation.

**Source base.**

The dissertation research is based on regulatory legal acts of the Republic of Kazakhstan and the Russian Federation, materials of judicial practice, notaries, user agreements with Google, Facebook*, Apple and related social networks, rules for using Internet platforms for purchasing goods and services - Ozon, Wildberries, Avito, Yandex Market.

*The theoretical basis of the research* is made up of the following works:

a) of a general scientific nature according to the philosophy of J. Locke, I. Bentham, G. Hegel,

b) according to the theory of civil law by S. S. Alekseev, E. V. Vaskovsky, E. A. Sukhanov, Yu. K. Tolstoy,

c) of a general nature in inheritance law by B. S. Antimonov, K. A. Grave, V. I. Serebrovsky, Yu. K. Tolstoy, B. B. Cherepakhin, E. B. Eidinova, E. Yu. Petrova,

d) digital rights specialists V.V. Arkhipov, S.L. Budylin, V.A. Vainap, L.Yu. Vasilievskaya, L.O. Zhuzhalova, L.A. Novoselova, M.A. Rozhkova, L.V. Sannikova, M.K. Suleimenov,

d) on the inheritance of digital rights of A. A. Volos, E. P. Volos, E. S. Grin, E. A. Kirillova, M. M. Panarina, D. A. Papyleva, T. S. Yatsenko and others.

**The theoretical and practical significance of the work** lies in the fact that the dissertation for the first time conducted a comparative legal study of the law of the Republic of Kazakhstan and the Russian Federation from the point of view of regulating

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* Meta Platforms Inc is recognized as an extremist organization in the Russian Federation and its activities are prohibited (including in relation to the Facebook social network product)

the circulation of digital assets and the possibility of their inheritance; the most complete study to date of user agreements and rules of the main Internet platforms and their services; research of empirical material was carried out in conjunction with the study of traditional political and legal theories, which made it possible to come to reasonable conclusions about the possibility of inheriting digital assets, despite the prohibitions established by private law agreements, and the sufficiency of general norms of positive law to effectively protect the interests of heirs already at the present time. At the same time, the need to create standard agreements between users and Internet platforms was revealed.

The conclusions reached by the dissertation author may have practical significance for the work of Kazakhstani and Russian notaries and other law enforcement officers. Based on the results of the study, the notary receives tools for providing heirs with substantiated answers, consultations to a citizen making a will, and will be able to assist citizens in protecting their interests in the event of disputes regarding the inheritance of digital assets.

**Provisions submitted for defense.** The above aspects of the scientific novelty of the dissertation research are disclosed, among other things, in the following main provisions submitted for defense:

1. Using traditional legal theories, the conclusion is substantiated that the user has a legally significant interest in the transfer of digital assets belonging to him by inheritance.

2. Understanding the legal nature of digital assets does not require the development of a special legal theory and the allocation of a separate branch of law - “digital law”, including “digital inheritance law”.

3. The conducted research shows that all theories explaining the phenomenon of digital assets make it possible to justify the classification of digital assets as negotiable objects of civil rights.

4. The content of the user account is related to objects of civil rights and can be passed on by inheritance - there are no technical or legal obstacles to this.

5. The user agreement concluded regarding digital assets is a public accession agreement in which the user is the weaker party.

6. The terms of the user agreement as an accession agreement that prevent the inheritance of digital assets limit the civil rights of the user without proper legal and economic justification, and therefore should be considered null and void.

7. The content of an account may be transferred to the possession of the Internet platform or destroyed by the platform only with the express consent of the user in the proper form. The right of the Internet platform to appropriate the content of an account or to destroy it after the death of the user is contrary to the basic principles of civil law.

9. The electronic form of a will in Internet networks is contrary to the law and does not entail the consequences to which the user's will was directed. The approach according to which the technical rules of the Internet platform determine the form of the user's expression of will in the event of his death is contrary to the law.

10. The principle of freedom of contract in relation to user agreements regarding digital assets should be significantly limited in order to establish a balance of interests between the parties.

**Degree of reliability and testing of research results.** The reliability of the research is confirmed by the content of the dissertation itself, where, based on research methods generally recognized by the scientific community, the dissertation author comes to the above-mentioned conclusions, as well as by testing the research results. The dissertation research was tested during its discussion at the Notary Department of St. Petersburg State University on July 2, 2024.

The main provisions of the study are reflected in the dissertation author's publications devoted to the problems of inheritance of digital assets in Kazakhstan and Russia, published in Kazakhstani and Russian peer-reviewed publications included in the list of the Higher Attestation Commission (at the time of publication):

1. Zhanabilova A. B. Inheritance of digital assets: theoretical and legal aspect // Inheritance law. 2023. No. 4. P. 29-32;

2. Zhanabilova A. B. Legal regulation of the circulation of digital assets and the possibility of their inheritance in Kazakhstan and Russia // Notary. 2023. No. 4. P. 39-42;

3. Zhanabilova A. B. User agreements and inheritance of accounts // Notary. 2024. No. 2. P. 40-44;

4. Zhanabilova A. B. Legal regulation of the circulation of digital assets in the Republic of Kazakhstan and the possibility of their inheritance // Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan. 2024. No. 3 (78). P. 124-134.

The above-mentioned publications reflect the following results of scientific research:

1. Traditional theories explaining the phenomenon of property rights are also applied to digital assets, providing theoretical justification for the conclusion that the owner of a digital object has both a property and non-property interest in the transfer of digital assets by inheritance.[51]

2. Both the labor and utilitarian theories, as well as the theory of personality, make it possible to justify the classification of digital assets as negotiable objects of civil rights that can be passed on by inheritance. [52]

3. A logical and systematic interpretation of the norms of positive law of the Republic of Kazakhstan and the Russian Federation on digital assets allows us to reasonably speak about the possibility of their inheritance.[53]

4. Most of the account content relates to objects of civil law and can be inherited.[54]

5. The user agreement concluded regarding digital assets is a public contract of accession in which the user is the weaker party. [55]

6. The content of the account cannot be transferred to the platform or destroyed. [56]

7. The electronic form of a will on the Internet is contrary to the law[57].

[51] Zhanabilova A. B. Inheritance of digital assets: theoretical and legal aspect // Inheritance law. 2023. No. 4. 32 p.
[52] Ibid. 31-32 p.
[53] Zhanabilova A. B. Legal regulation of the circulation of digital assets and the possibility of their inheritance in Kazakhstan and Russia // Notary. 2023. No. 4. 42 p.
[54] Zhanabilova A. B. User Agreements and Inheritance of Accounts // Notary. 2024. No. 2. 44 p.
[55] Ibid. 42 p.
[56] Ibid. 44 p.
[57] Ibid.

8. Heirs can protect their rights only by immediately filing a lawsuit with a simultaneous application for interim measures in the form of a ban on the destruction of the account. [58]

9. Based on the principles of balance of interests of the parties, reasonableness and expediency, those terms of the user agreement that prevent the user's successors from gaining access to the content of the account and, even more so, from disposing of the data contained therein should be recognized as invalid. [59]

**The structure of the dissertation**. The dissertation research consists of an introduction, three chapters, which provide a theoretical and legal justification for the author's concept, examine the legal and contractual regulation of the turnover of digital assets, a conclusion, and a list of references.

[58] Ibid.
[59] Ibid. 42 p.

## Chapter 1. Digital assets as objects of civil rights: theoretical and legal aspect

Law, as a regulator of social relations, deals primarily with the material world and its objects. It is also completely natural that with the development of science and technology new objects of the material world appear and the human community develops social relations regarding these objects.

If in constitutional law the legislator can assume and desire that social relations develop in a certain way, and formulates a legal norm in relation to the transformations he desires, then civil law to a greater extent follows the path of regulating already existing social relations regarding material and non-material benefits, traditionally called "objects of civil rights".

In the Russian doctrine, objects of civil rights include goods that have the property of satisfying the needs of subjects of civil law. If a good is publicly available, it will not be an object of civil rights, since it does not require legal protection, therefore another property of objects of civil rights should be called the need for their legal protection.[60]

The named properties are inherent in new "digital" objects, which in legislation and scientific literature are called "digital assets" ("t he digital assets ") or "digital rights" ("the digital rights"). These include cryptocurrency, websites, domain names, accounts in social networks and services (may contain photos and videos of value), accounts in monetization services with accumulated funds on deposits, digital wallets, tokens and some others. There is every reason to classify them as objects of civil rights.

In this chapter, we will consider the main scientific approaches developed by foreign, primarily Anglo-American, doctrine to digital assets as objects of civil rights. Of particular interest to us, as a practicing notary, is the solution to the issue of the possibility of inheriting digital assets. Our choice is due to the fact that it was in the United States and the countries most closely associated with it that the use of the Internet, e-mail,

[60]Civil law: textbook: in 3 volumes / edited by Yu. K. Tolstoy. Moscow: Prospect. 2011. Vol. 1. 246 p.

and then various types of cryptocurrency (Bitcoin was created in 2009, Litecoin in 2011, Primecoin in 2013 , etc.) began to actively develop and become widespread in the 1990s.[61]

For the Kazakh and Russian researchers, this issue is of great interest, since currently in Kazakhstan and Russia the legislator has adopted a number of norms regulating relations related to the introduction and use of digital technologies.[62]

To determine the place of digital assets in the system of civil rights objects and the possibility of their inheritance, we should turn to such traditional theories as labor, utilitarian and personality theory.

## § 1. Labor theory

1.1 The basic principle of the labor theory of property is that people acquire ownership of objects created by their own labor. The labor theory arose from the work of the 17th-century philosopher John Locke, who believed that each person owned his own body, and therefore the labor that his body performed, with his intellect and will. Consequently, a person owns as much land as he is able to cultivate. With his labor, he takes it, as it were, from the common property, appropriates it personally. When a person works to change or produce something for his own benefit from objects or raw materials given by nature, he mixes his labor with this source material. As a result of the fusion of labor and natural material, a person acquires ownership of both the source material and the product obtained from this material through labor. [63]According to labor theory, a producer acquires ownership of what he purposefully creates. Labor theory justifies the origin of property rights when a person's labor adds value to a thing that without this labor has less or no value at all. Thus, the US Supreme Court relied on labor theory,

[61]Kochetkov A. V. Formation and development of digital financial assets in 2009-2019 // Bulletin of Eurasian Science. 2019. No. 4. Vol. 11. URL: https://esj.today/PDF/28ECVN419.pdf (accessed: 18.04.2024).

[62]Law of the Republic of Kazakhstan dated June 25, 2020 No. 347- VI "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Regulation of Digital Technologies". - Accessed from the information and legal system "Adilet" (date of access: 08/20/2023); Federal Law of the Russian Federation dated March 18, 2019 No. 34-FZ "On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation". - Accessed from the reference and legal system "ConsultantPlus" (date of access: 08/20/2023).

[63]Locke J. Two Treatises of Public Administration // Quoted from: Anthology of World Legal Thought. In 5 volumes. Vol. III. Europe. America: XVII - XX centuries. Moscow: Mysl, 1999. P. 87; History of political and legal doctrines: textbook for universities / edited by V. S. Nersesyants. 4th ed. revised and enlarged. Moscow: Norma, 2004. 333 p.

coming to the conclusion that “the concept of “property”... goes beyond land ownership and material wealth and includes the products of human “labor and invention.”[64]

Another important aspect of the labor theory is that the value of a created product is measured by the value of the product's utility to those who created it, and not simply by its exchange value in the market. Thus, regardless of the market value of the product (high or low), if a person's labor has created something useful for him, then he has a property right in that product. However, the producer's property right may be limited by the rights of others to the material that was used to create a new thing. A person may own the right to the result of his labor, but other persons or society may own the original material. Critics of the labor theory believe that labor should allow a person to acquire a right only to the value added by his labor to the original material or thing, but not necessarily to recognize his right of ownership of the entire thing. [65]According to J. Locke's labor theory , a person combines what he owns (his labor) with what he does not own (the original material to be processed) and acquires the right of private ownership of the result of his labor. However, if a worker works on land owned by a landowner, then in cultivating the land he also combines his labor with the land, but does not acquire ownership of the land, because the landowner already has this right.

According to the concept of labor theory, the individual's claim to recognition of property rights is based on the application of his labor to public or ownerless property. [66]Thus, labor theory is most applicable to the initial acquisition of property rights. Moreover, the labor theory assumes an unlimited supply of material resources. The labor theory is less applicable in a society where ownership of most objects in the material world already belongs to someone, and natural resources are becoming increasingly limited.

However, technological progress has allowed humanity to acquire a qualitatively new resource - the virtual Internet space, which is practically infinite and has no value.

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[64]Ruckelshaus v. Monsanto Co., 467 US 986, 1003 (1984) URL: https://supreme.justia.com/cases/federal/us/467/986/ ( date accessed : 10.06.2023). In our work, we use the term "ownership right" and the related categories of property rights with a certain degree of conventionality, following the already established tradition in foreign legal dogma. Otherwise, there is a risk of moving away from the topic of our research into the area controversy about the legal nature of digital objects.

[65]Becker LC Property Rights: Philosophical Foundations. Publisher: Routledge and K. Paul. 1977. R. 36–42.

[66]Locke J. Two Treatises of Public Administration // Quoted from: Anthology of World Legal Thought. Vol. III. Europe. America: XVII - XX centuries. 1999. 87 p.

The very nature of the production of digital assets is more similar to the application of labor to res nullius, i.e. property that does not belong to anyone. Technically, all digital assets are created without the use of a material substance, essentially "out of nothing". Any user, applying their labor and, above all, intellectual efforts, since pressing keys and other manipulations with computer equipment are of an auxiliary nature, can create an unlimited amount of content.

Here we see exactly the case where the main reproach brought against the labor theory - the use of source material belonging to another person - is unfounded. Of course, in relation to the results of intellectual activity created by other persons, the rules established by law for their protection and use must be observed. Otherwise, we are dealing only with the user's labor. Therefore, right now, the labor theory seems to us to be the most relevant for justifying the user's rights in relation to the content he has created (the intangible property rights).

1.2. It seems to us most appropriate to use the labor theory in relation to email and social networks. [67] The user has the right to maintain the account (the contents), since the content of the account was created only by his own labor. [68]Text written on email or social networks is "the labor of [the user's] body and the work [the user's] hands". [69]The labor expended in creating a message on a social networking platform or on an email platform creates the user's right to that message. When a user writes an email or posts an image on a social networking site, he or she creates a new object, possibly of property interest to either the user or the platform owner, or both. The creation of new emails and messages is potentially unlimited. The electronic resource itself, which a person can use to chronicle his or her life and create a personal history through their labor through email and social media, is virtually infinite. The main finite resource is the time, effort, and money of the

[67]Zhanabilova A. B. Inheritance of digital assets: theoretical and legal aspect. 29 p.
[68]Libling DF The Concept of Property in Intangibles // Law Quarterly Review. No. 94. (1978). R. 103, 104 (“Any expenditure of mental or physical effort, as a result of which there is created an entity, whether tangible or intangible, vests in the person who brought the entity into being...”). (“Any expenditure of mental or physical effort which results in the creation of an object, whether tangible or intangible, is borne by the person who created the object…”).
[69]Locke J. Two Treatises of Public Administration // Quoted from: Anthology of World Legal Thought. Vol. III. Europe. America: XVII-XX centuries. 87 p.

users themselves, who spend it on creating social networking profiles and writing emails.[70]

The labor theory is based on the fact that every person has the right to the fruits of his labor, and in this case the fruits of this labor are users' emails and messages on social networks. Copyright law protects a person's posts on social networks and is an example of a modern application of the labor theory. The modern legal order protects original authorial work recorded on any tangible medium. [71]This includes texts on electronic media. The main requirement for such works is the ability to perceive them by third parties, whether on a computer screen or printed on paper. Courts recognize that the text of an email can be protected by copyright law. [72]Copyright does not extend to facts, ideas, systems or methods of work. [73]Titles, slogans and headings are generally not protected by copyright, since they are not usually considered a literary work. [74]Larger works usually have a sign of originality. But if email and other social media messages demonstrate originality, they may be protected by copyright law. Such rights can be inherited, and heirs have the right to access the deceased's digital assets. [75]Although labor theory was originally used by J. Locke to protect private property rights in real estate, scholars have expanded it to justify the protection of intellectual property rights.[76]

Digital technologies allow users to easily create texts, images and documents, instantly publish their work and easily share it with others. But this ease of creation and distribution should not detract from the fact that it is precisely through individual labor

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[70]Mielach D. Americans Spend 23 Hours per Week Online, Texting, URL: http://www.businessnewsdaily.com/4718-weekly-online-social-media-time.html/ (date: 10.06.2023).

[71]Manual of Model Civil Jury Instructions, 17 USC § 102(a). URL: https:// www. law cornell. edu / uscode / text /17/102 (date accessed: 10.06.2023).

[72] Legal Mktg., LLC v. Mkt. Masters-Legal, 852 F. Supp. 2d 688, 698 (E.D. Va. 2012) (“ The Court finds that Innovative owns a copyright in the content of the email”) URL: https://casetext.com/case/innovative-legal-mktg-llc-v-mkt-masterslegal ( date appeals : 10.06.2023); Meridian Project Sys., Inc. v. Hardin Constr. Co., 426 F. Supp. 2 d 1101, 1113 ( E. D. Cal. 2006) (storage of a particular form of expression of text in a “help file” is protected) URL: https://casetext.com/case/meridian-project-systems-inc-v-hardin-constr-co (date accessed: 10.06.2023).

[73]Manual of Model Civil Jury Instructions, 17 USC § 102(b) (2012) URL: https://www.law.cornell.edu/uscode/text/17/102 ( date accessed : 10.06.2023).

[74] Materials not protected by copyright, 37 Electronic Code of Federal Regulations. § 202.1(a) URL: https://www. law cornell. edu / cfr / text /37/202.1 (date accessed: 10.06.2023).

[75] Manual of Model Civil Jury Instructions , 17 U.S.C. § 201( d )( 1 ) ( “Ownership in a copyright may be transferred, in whole or in part, by any permissible conveyance or by operation of law, and may be transferred by will or as personal property under the applicable laws of intestate succession - The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law , and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession " ) URL : https://www.law.cornell.edu/uscode/text/17/201 ( accessed : 10.06.2023).

[76]Banta N. V. Property Interests in Digital Assets: The Rise of a Digital Feudalism // Cardoso Law Review. Vol 38. R. 1137.

and creative process that a new work has been created. [77]Letters sent by e-mail and posts on social networks almost always have a sign of originality, since they reflect the life of a specific person. Each person has his own unique and inimitable verbal and other form of expression of thoughts, which he conveys to other users of the "Internet" in written or other form on social networks. To the extent that people create something original, i.e. through their creative work (clause 1 of Article 1228 of the Civil Code of the Russian Federation), in emails and posts on social networks, copyright and the theory that justifies the existence of copyright - labor theory - are aimed at protecting this originality.

Labor theory also applies to digital assets because it justifies ownership of the product of a person's labor, even if it has value only to that person, while for everyone else in the civil sphere, his messages and emails may have no economic value. Works created in an email or social media account acquire value that did not previously exist. The account records the life of an individual user, creating value both for that user and, potentially, for other users. Some emails and messages may be valuable only to the creator or to those with a personal interest or emotional connection to the account owner. However, the personal value of an object for its owner must receive legal protection, since the labor theory does not only mean the market value of the created object for recognizing the existence of a person's property interest.[78]

One criticism of the labor theory is that it goes too far in justifying property rights claims based on minimal labor input. [79]After all, the labor theory does not grant users property rights in an email or social media platform simply because they have contributed labor to the objects that exist on that platform. No account holder can claim ownership of the Google system itself simply because they open an account with Google and begin using the system's services. The opposite result would be illogical and would clearly violate the principles of labor theory, since users did not contribute their labor to the creation of the platform itself. However, users do not claim a share in the rights to the Google platform, but are interested in recognition of their rights to the actual content they

[77] Zhanabilova A. B. Inheritance of digital assets: theoretical and legal. 29 p.
[78] Banta N. V. Op. cit. 1138 p.
[79] Ibid. (It is the idea of 'mixing labor' as the mechanism for creating property that has proven to be the Achilles heel exposed to contemporary commentators....)

created and saved on the platform. Here it cannot even be said that users "mixed" their labor with the elements of the platform, thanks to which they were able to create their content. The platform services are technical tools with which content creation is possible, and are an infinite resource. Any number of users can use the platform services, and for the platform it does not matter whether one person or one billion people use its services.[80]

Of course, working in the virtual space provided by the platform administration has its own peculiarities. The platform owner may deny access to the account owner if he/she has used the platform services incorrectly, if the platform has stopped functioning, or if the account owner has died. But since the account owner has a legally protected interest in the content of his record, if access to it is denied, the platform must provide the user with the opportunity to obtain the content of the account created by his work. Access may be denied after the death of the user because the account password was lost with the death of the user, but this should not deprive the heirs of the right to the testator's content.[81]

1.3. The labor theory is more difficult to apply to bonus programs offered by an Internet platform because there is no source material that the bonus holder turns into a new product through his or her labor. Bonus programs are established by the company as a marketing tool to attract customers. However, the labor theory can be applied to these relationships as well. Members of a rewards program perform certain actions to earn points in the rewards system, perhaps even paying a large sum to stay at a certain hotel or fly a certain airline. To the extent that people purchase goods or services based on a company's promise of rewards and points, their property interest can be justified by the rewards earned. The work of a bonus program participant results in the accumulation of points and miles, which can be transferred to other persons and inherited.[82]

1.4. Of all digital assets, digital media (books, music, video materials, etc.) purchased by consumers are most similar to materialized objects belonging to a specific person. Digital books are replacing paper books, digital music and movie files are replacing physical films, vinyl records, compact discs, video cassettes and DVDs. These

[80] Zhanabilova A. B. Inheritance of digital assets: theoretical and legal aspect. 30 p.
[81] Banta N. V. Op. cit. 139 p.
[82]Ruckelshaus v. Monsanto Co., 467 US 986, 1003 (1984) URL: https://supreme.justia.com/cases/federal/us/467/986/ (date accessed: 10.06.2023).

physical copies of electronic media were purchased by consumers in the same way as their digital copies. Although the labor theory can only be applied indirectly here, it still affirms that man's labor in obtaining his livelihood is the basis of his right to the material or immaterial objects which he buys with the money he earns. Since a person worked to buy goods, then, based on the labor theory, these goods should be recognized as the fruit of his labor, as well as the rights to them. Digital media files belong to the buyer, even though they were created by the company selling them. As property, these files can be inherited by others.[83]

Thus, the labor theory justifies the existence of the right to digital assets after the death of a person by the fact that these assets were created, accumulated or acquired through the labor of an individual. In the digital world, only new objects and, so to speak, new types of rights to them appear. In foreign literature, they are often called "property rights", although these rights are very far from what is usually understood as property rights in the continental legal tradition, but the essence of social relations does not change from this.

## § 2. Theory of utilitarianism (utilitarian theory)

2.1. Utilitarian theory recognizes the justification of the existence of private property from the point of view of social benefit, i.e. to the extent that its existence increases the general happiness and well-being of society. According to this theory, property relations should be regulated in such a way as to promote the interests of society, and private property is preferred over public property only when private property provides the greatest public benefit. Currently, the utilitarian theory is used by American courts in considering property rights disputes. [84]The proponent or creator of the utilitarian theory was the eighteenth-century philosopher Jeremy Bentham, who believed that the concepts of property and law were human inventions and did not follow from natural law.

[83]Banta NV Op. cit. 1139-1140 p.

[84] State v. Shack, 277 A.2 d 369, 372 (N.J. 1971 ): "The right of property serves human values. It is recognized for that purpose and is limited only by that purpose." UR: https:// law. justia. com / cases / new - jersey / supreme - court / 1971/58-n - j - 297-0. html (date of access: 10.06.2023).

"Property and law are born together, and die together. While there were no laws, there was no property. Abolish laws, and property will disappear," wrote Bentham. [85]According to utilitarian theory, property is a human institution and a way for people to organize the society in which they live. Bentham argued that legislatures should do this in a way that maximizes social happiness. [86]Utilitarian theory supports the institution of private property because legal certainty in property relations allows people to increase their property and thus contribute to the economy of society. Certainty in property matters also prevents conflicts, which increases the level of social well-being and happiness. The utilitarian theory is based on the assessment of the impact on the common good of decisions made by the owner of the property. [87]The main difference between the utilitarian theory and the labor theory is that it refuses to accept the concept of natural law as its basis.

One of the main criticisms of traditional utilitarianism is the argument that happiness cannot be measured. Without an objective measurement system, it is difficult to use utilitarianism to regulate property relations. It is quite possible that legal regulation of property relations can increase the happiness and well-being of one group of people by decreasing the happiness and well-being of another group. Economic scientists have offered utilitarianism an objective, in their opinion, measure. Instead of using abstract happiness to regulate property relations, they have proposed using a universal equivalent - money. In the economic utilitarian approach, private property is justified to the extent that it increases the wealth of society, measured in monetary terms. Economic utilitarian theory requires a free market for goods and services, with protection of property rights encouraging freedom of contract between individuals. The law of property should stimulate and encourage progress and development. However, the theory of economic utilitarianism has also been criticized for focusing too much on monetary relations and not enough on issues of social utility and other basic human needs.[88]

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[85]Bentham I. Introduction to the Foundations of Morality and Legislation // Quoted from: Anthology of World Legal Thought. Vol. III. Europe. America: XVII - XX centuries. 392 p.
[86]History of political and legal doctrines. 554-555 p.
[87]Russell B. History of Western Philosophy and its Relations with Political and Social Conditions from Antiquity to the Present Day. Moscow: Academic Project. 2009. 923-925 p.
[88] Banta N. V. Op. cit. 1141 p.

From a utilitarian perspective, digital assets may well work for the benefit of society and increase its economic well-being. Utilitarian theory recognizes rights to digital assets to the extent that this is necessary to stimulate people to invent new digital assets. The problem is that large monopolies dictate their terms to users through adhesion contracts, often depriving them of incentives to develop new digital assets. Therefore, society, even at the expense of companies that own Internet platforms, must determine the optimal legal framework for creating conditions and stimulating the creation of new digital assets, overcoming the "tyranny of adhesion contracts". Utilitarian theory assumes that property relations should promote the good of the whole society. If private contracts dictate the content of the right to persons who own digital assets, their terms should not take precedence over the general principles of civil law. For example, in agreements between a landlord and a tenant of residential premises, courts and legislatures establish criteria for the habitability of premises and prohibit parties from entering into lease agreements for housing that does not meet a legally defined standard of habitability.[89]

When determining the content of the right to digital assets, public interests must come first. For example, human organs are certainly things, but current legal systems do not recognize them as property that can be transferred for sale, due to concerns that organs will be taken from poor citizens or that the altruistic market for donation will cease to exist. [90]Digital assets should be recognized in the same way. property intended for the benefit of the whole society. Scientists believe that if measures are not taken to define the range of powers of the owner, which cannot be transferred by contract to large companies, the very right of ownership of digital objects will be destroyed and will fall under the control of a small number of monopolies. Society will no longer have control or vested interests in the creation of new forms of communication, currency or digital media.[91]

2.2 It is human nature to want to know what will happen to your email and social media accounts if you die. The law should give people the right to decide what happens

[89]Landis & Landis Constr., LLC v. Nation, 286 P.3d 979, 984 (Wash. Ct. App. 2012). URL: https :// law. justia. com / cases / washington / court - of - appeals - division - i /2012/67216-9. html (access date: 06/10/2023).
[90]The National Organ Transplant Act § 301, 42 USC § 274e (2012). URL: https://www. law. cornell. edu / uscode / text /42/201 (accessed: 10.06.2023).
[91]Banta NV Op. cit. 1142 p.

to their personal records if they die – whether to destroy them or keep them. Modern accounts contain a huge amount of information about people's personal lives. The ability to make appropriate dispositions in the event of death gives the testator confidence that after his death, the information stored in his email or social media accounts will be handled in accordance with his expressed wishes, which only leads to an increase in the welfare of society.

Thus, from the point of view of current American legislation and legal dogma, there are no obstacles to managing email and social media accounts in the event of death. If a person wishes to have their account destroyed upon their death, they should be able to include this provision in their will. If the deceased wishes his accounts to be passed on to his heirs, he should be given this opportunity. Following social media users' wills allows others to consciously plan for the future of their digital accounts and prevents conflicts and litigation between heirs after the account owner's death.[92]

When creating an email account, posting information, images or videos on a social networking site, the user will be aware that their control over these accounts, as well as their physical objects, is possible even after death. Allowing people to protect their accounts after death increases their social well-being and happiness.

From an economic point of view, email and social network accounts as objects of civil circulation do not have significant market value. The financial burden of transferring the contents of an account to the beneficiaries of a deceased owner falls on the owners of the digital platform. These costs, however, can be easily reduced by allowing the platform to charge a nominal fee for access to content. If the law allows email and social media accounts to be disposed of in the event of the owner's death, then the law can also allow the data to be shared with anyone searching for the account's content. From an economic perspective, there is no undue burden on platforms to carry out this transfer. In some situations, the contents of an email or social media account can be very valuable. For example, the email account of a public figure may have significant monetary value. It is the relatives and other close people of the public figure who should be able to profit from

[92]Sitkoff RH Trust and Estate: Implementing Freedom of Disposition // Saint Louis University School of Law. 2014. Vol. 58. 654-655 p.

the use of the email and account contents, not Google Platforms selling the contents of the deceased person's account to strangers. According to utilitarian theory, giving individuals the right to control their email and social media accounts upon death is economically sound and justifiable.[93]

2.3. From the point of view of utilitarian theory, consumers should be given the right to bequeath their bonus points in various types of bonus programs. Heirs should be given the opportunity to use the testator's bonus points. In the future, the heirs could continue to receive and accumulate the points of the testator who participated in the bonus program during his lifetime. The ability to accumulate reward points contributes to social happiness (the social happiness), because citizens would like to pass on the accumulated points to their family or friends.

Once consumers have earned bonus points, they can use them to purchase and acquire various goods and services. But unlike cash, the terms and conditions of service of bonus programs often prohibit the transfer or alienation of accumulated bonus points. However, one incentive for accumulating property is the ability to decide what happens to it after the owner's death. A basic principle of American inheritance law is that a person's will, not a private law contract, determines what happens to his property after his death. Such bonus agreement terms are contrary to the principles of American inheritance law and increase the wealth of the company at the expense of society. Throughout U.S. history, legislators have encouraged the testator's intent to control the posthumous fate of money and other assets. Bonus rewards function much like cash, but the agreements imposed on individuals by companies do not allow their customers to bequeath accumulated points, even if they have not yet expired. In essence, death automatically allows companies to assign unused points, which removes the incentive for consumers to save and plan for the distribution of assets upon death.[94]

But could there be a negative economic impact if the heirs of rewards programs were used after the death of their participants? In 2011, it was estimated that Americans earned about $48 billion in frequent flyer miles, hotel rewards, credit card points, and

[93]Zhanabilova A. B. Inheritance of digital assets: theoretical and legal aspect. 30 p.
[94] Banta N. V. Op. cit. 1144 p.

other loyalty programs, and companies estimated that nearly a third of those rewards were not used. Each year, the bonus rewards Americans earned during their lifetime go largely unused. It is unlikely that allowing these points to be inherited after the death of their owner would make much of a difference. Companies have already set expiration dates for accrued rewards, and those dates will continue to apply even if the points are inherited by beneficiaries. Any costs associated with transferring the testator's bonus points to the heir's new account may be passed on to the beneficiary. Companies have already distributed the reward points and are receiving unexpected profits (the windfall), when these points are not used in time. Allowing heirs to use reward points also promotes economic development and growth as companies target new potential customers. There is no evidence that inheriting reward points will hinder economic growth.[95]

On the contrary, as practice shows, the awareness of the participant in the bonus program of the possibility of transferring accumulated points by inheritance is of much greater importance. This fact alone will stimulate more active participation of citizens in such programs, including elderly people. From the point of view of utilitarian theory, inheritance in bonus programs is justified, since it increases both the social and economic well-being of society.

2.4. The use of utilitarian theory allows us to justify the inheritance rights of citizens to digital media resources, since the ability to dispose of them after death contributes to the social and economic well-being of society. Social well-being is manifested in the fact that consumers have an incentive to create their digital media collections in the same way as they have been creating their media collections on tangible media for many years. Consumers invest large amounts of money in digital media collections and are interested in ensuring that this property is passed on to their heirs and other beneficiaries after their death. The law should provide consumers with the conditions for creating a collection of media in digital files and disposing of them as physical assets, which will stimulate the acquisition of digital media.

[95] Ibid. 1145 p.

Large digital media companies oppose allowing purchasers to bequeath digital media assets. Their main argument is that without appropriate restrictions, consumers will transfer media files to their beneficiaries for free. Under normal circumstances, the beneficiaries would have purchased these digital assets directly from the company. By bequeathing digital media, the company and the creators of the media files are deprived of the revenues they would otherwise have received. However, allowing the bequest of digital media cannot cause economic harm to its sellers, since their economic rights will be protected by the very development of technological progress. Society continues to evolve, and digital files developed in previous years will become obsolete in the future, as happened with video tapes. Thus, allowing the bequest of digital media files will not cause disproportionate harm to the revenues of companies from their sale. Over time, when a new and better format for listening to music, watching videos, or reading books comes along, consumers will adapt to the new format and will again purchase the media they need.

If citizens know that they have the ability to bequeath their digital media, they will be more free and confident in investing in the purchase and accumulation of digital media, because both the purchasers and their heirs will be able to benefit from such investments for a long time to come.

Citizens will have an incentive to plan for the afterlife of their digital media, under threat of losing it. Consumers will also be willing to pay a premium for a digital file, knowing that it will not only belong to them, but will then be passed on to their heirs.

## § 3. Theory personality (The Personhood Theory)

3.1 The basic premise of personality theory is that people define themselves and their identity through property. Georg Hegel pointed out that a person makes a thing his own by investing his will or personality into it. [96]Margaret Radin, who supplemented and

[96] "A person has the right to place his will in every thing, which thereby becomes mine, receives my will as its substantial goal, insofar as it does not have it in itself, as its definition and soul; this is the absolute right of man to appropriate all things." - Hegel G.V.F. Philosophy of Law // Quoted from: Anthology of World Legal Thought. Vol. III. Europe. America: XVII-XX centuries. 330 p.

expanded personality theory, argues that this theory works only when people feel that their property is “almost a part of themselves.” According to personality theory, property should be understood as part of our personal identification in the world. M. Radin believes that for a person’s full development he “…needs some control over resources in the external environment. The necessary guarantees of control take the form of property rights. A person justifies the existence of property rights to those things that occupy a central place in his character and emotional or psychological well-being. M. Radin divides property into "personal property", which is associated with personal development and cannot be replaced, and "fungible property", which is not associated with personal development and can be easily replaced. Personal property can be more important to a person than similar objects of the material world that are not associated with his personality. As an example, M. Radin cites a wedding ring, a portrait of a loved one, family heirlooms or a family home. Due to the special significance of such objects of law for the individual, they should enjoy a significantly higher degree of protection. And in practice, objects closely associated with the individual have greater legal protection than the protection of property rights in general, For example, residential buildings are more protected than fungible monetary claims. In the modern Russian legal order, such circumstances are taken into account when dividing inherited property that includes residential premises. Thus, an heir who lived in it on the day the inheritance was opened and does not have other residential premises has a preferential right over other heirs to receive this residential premises as part of his inheritance share (clause 3 of Article 1168 of the Civil Code of the Russian Federation). Or, for example, when donating an item that is of great non-material value to the donor, if there is a threat of its irretrievable loss, the donor has the right to cancel the donation (clause 2 of Article 578 of the Civil Code of the Russian Federation).

The theory of personality justifies the existence of property rights to objects that promote self-development and encourages the legislator to provide them with greater legal protection than interchangeable things. The theory of personality also justifies the existence of a property interest in digital assets and contributes to the development of their legal regulation. If property that is not related to the development of personality is

in most cases freely inherited, then digital assets that are closely related to personality should also be inherited.[97]

3.2. Personality theory is most applicable to justifying the inheritance of rights to email and social network accounts. Like family heirlooms, jewelry, or homes, people personally identify with their email and social media accounts. In the common consciousness, users perceive email and social media accounts as part of themselves. Email and social media accounts show how the individual gradually becomes established in the world around them. [98]In many ways, our email and social media accounts are how the world sees us and how we see ourselves. Social media sites have come to serve as a virtual memorial when a person dies, allowing family and friends to mourn together publicly. [99]Email and social media posts can be seen as an extension of the self in the digital realm. [100]

Email is the correspondence of more than 4 billion users worldwide. [101]The scale of email usage is enormous and demonstrates its dominance in Everyday life over letters on paper. Email accounts contain a huge amount of personal and business information, and this information accumulates at an accelerated rate. Emails represent a new form of correspondence in the digital age, but they reflect the same individuality as private paper letters that can be passed down through generations.

Social media accounts also store a lot of personal information. Sociologists can create a fairly accurate portrait based on information from social media posts.

A recent study tracked Facebook* users' "likes" and found that using this information, researchers could accurately predict a user's sexual orientation, religion,

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[97]Radin MJ Property and Personhood / MJ Radin // Stanford Law Review. 1982. Vol. 34.P. 957 (1982). URL : https :// cyber. harvard. edu / IPCoop / 82radi. html (access date: 06/10/2023).

[98] Ibid.

[99]See: How to Memorialize or Remove a Deceased Family Member's Facebook Account // MakeUseOf: [website]. October 21, 2022. URL: https :// www. makeuseof. com / how - to - memorialize - facebook - account - or - remove / (accessed: June 10, 2023). * Meta Platforms Inc is recognized as an extremist organization in the Russian Federation and its activities are prohibited (including in relation to the Facebook social network product)

[100]Zhanabilova A. B. Inheritance of digital assets: theoretical and legal aspect. 31 p.

[101]See: 25+ Email Marketing Statistics and Trends // Website Rating. : [site]. URL: https :// www. websiterating. com / ru / research / email - marketing - statistics - facts / (date of access: 12.01.2024 ).

* Meta Platforms Inc is recognized as an extremist organization in the Russian Federation and its activities are prohibited (including in relation to the Facebook social network product)

political views, and even the marital status of their parents. [102]Social media accounts allow users to share information about their personalities with both close friends and the general public. Self-development occurs when people write, post photos, and upload documents to their account. Twitter adheres to the identity theory in its customer terms of service agreement, stating "what you say on the Twitter Services can be instantly viewed around the world. You are what you tweet![103]

If the contents of email and social media accounts cannot be passed on after the owner's death, then the family members will lose irreplaceable assets that belonged to the deceased. No other piece of physical property contains more information about the life and personality of the deceased than lost email and account data. Personality theory successfully justifies the inheritance of email and social network accounts by arguing that these objects are closely linked to the personal development and identity of the deceased. [104]

3.3 Bonus accounts are less personally related and function more as a means of payment used to make various types of purchases.

The personality theory does not directly classify bonus account rights as rights associated with the consumer's personality and does not advocate for their enhanced protection. However, it should be kept in mind that reward points indicate a person's level of consumption. A frequent flyer may identify with a particular airline more than another airline, and this preference may be seen as a form of personal attachment. People may prefer brands that reflect their personality or character traits. However, these arguments in favor of using personality theory have certain weaknesses. Bonus points function like money and other forms of payment, so their legal regulation should be developed on the basis of similarity to more closely related institutions, rather than on the basis of their ability to help a person in his self-development.

3.4 Personality theory can also be applied to digital media to strengthen the argument for their hereditary transmission. Digital media functions as personal property

[102]Blanke JM Protection for “Inferences Drawn”: A Comparison Between the General Data Protection Regulation and the California Consumer Privacy Act // Global Privacy Law Review, 2020, Volume 1, Issue 2. 84 p.
[103] Banta N. V. Op. cit. 1148 p.
[104] Zhanabilova A. B. Inheritance of digital assets: theoretical and legal aspect. 31 p.

and reveals much about a person's personal preferences for movies, books, and music. Just as it would be desirable for a traditional library of books, films and music to pass to the heirs of a deceased person, the same should be said about the inheritance of digital files with such content. The above-mentioned objects , with the help of which people satisfy their spiritual needs, help them to find themselves in the thick of world events and contribute to the personal development of a person. There is a direct link between the media a person acquires and its reflection in his personality and character traits. Since these media reveal so much about who we are as people, there is a strong argument for these virtual world objects, like their physical counterparts, to be passed down through generations. [105]

**General conclusion.**

In general, modern science believes that traditional theories explaining the phenomenon of property are also applicable to digital assets. They allow us to substantiate the conclusion that the owner of a digital asset has a legally protected interest in the transfer of digital assets by inheritance.

The labor theory, utilitarian theory, and personality theory that we analyzed explain the phenomenon of digital assets as objects of civil rights from different angles. Both the investment of labor to create digital assets, and the property of usefulness for the person who created them and the whole society, and the connection with the personality of the person who created them allow us to classify digital assets as objects of civil rights that can be inherited.

Attempts to invent a new branch of law – “digital law” – have met with justified criticism from scientists. At the very beginning of the emergence of digital assets and the Internet space itself, the famous American scientist and judge Frank Easterbrook gave a very vivid criticism of the “multiplication of legal entities” and the creation of new branches of law in connection with the emergence of new cyber-objects of civil rights. He compared this approach with the allocation of such a separate branch of law as “horse law”, where all legal norms concerning horses will be concentrated, and quite rightly

[105] Zhanabilova A. B. Inheritance of digital assets: theoretical and legal aspect. 31-32 p.

noted that it would be much more useful for a lawyer to study the general provisions of a purchase and sale agreement than to discuss a horse in all its legal diversity.[106]

[106]Frank H. Easterbrook. Cyberspace and the Law of the Horse // 1996 University of Chicago Legal Forum 207 (1996). 207-216 p.

# Chapter 2. Inheritance of digital assets: legislation and practice

## §1. Legal regulation of digital asset turnover in the Republic of Kazakhstan

### §1.1. General state of legal regulation

The Republic of Kazakhstan takes an active part in the international division of labor, has close economic and cultural ties with various countries of Asia and Europe, which has become an important prerequisite for the rapid accession of residents of our country to the global Internet and the use of various electronic and digital technologies in an ever-increasing amount.

These technologies include: big data; artificial intelligence (AI); autonomous transport and unmanned aerial vehicles (UAVs); cloud computing; quantum computing; the Internet of Things (IoT); augmented and virtual reality (virtual & augmented reality); 3D printing; nanotechnology and neurotechnology; blockchain; information security; autonomous robots in logistics and manufacturing; precision farming using drones and sensors; 5G and 6G communication standards.[107]

From the point of view of the country's development strategy, the creation of digital assets and their further circulation are inextricably linked with the automation of Kazakhstan's society and state institutions, based on the process of using information and communication technologies to optimize the creation, search, collection, accumulation, storage, processing, receipt, use, transformation, display, distribution and provision of information.

In this regard, in 2017, the State Program “Digital Kazakhstan” was approved, which provides for the introduction of digital technologies in all sectors of the economy and the activities of government agencies, the development of digital technology infrastructure, the development of human capital and innovation.[108]

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[107]Schwab K., Davis N. Technologies of the Fourth Industrial Revolution. 93-119 p.

[108] Resolution of the Government of the Republic of Kazakhstan dated December 12, 2017 No. 827 "On approval of the State Program "Digital Kazakhstan". - Access from the information and legal system "Adilet" (date of access: 18.05.2023).

Currently, the State Program "Digital Kazakhstan" has lost its legal force, and now in Kazakhstan there are no similar comprehensive state programs in the field of implementation and development of digital technologies, including blockchain and digital assets. But this did not prevent the development of regulatory regulation of relations developing regarding digital assets.

In the Republic of Kazakhstan, legal relations related to digital assets are regulated by the Constitution of the Republic of Kazakhstan (adopted at the republican referendum on August 30, 1995) (with amendments and additions as of September 19, 2022), the Constitutional Law of the Republic of Kazakhstan dated December 7, 2015 No. 438-V "On the Astana International Financial Center" (with amendments and additions as of April 1, 2023), the Law of the Republic of Kazakhstan dated February 6, 2023 No. 193-VII "On Digital Assets in the Republic of Kazakhstan" (with amendments and additions as of January 1, 2024), the Law of the Republic of Kazakhstan dated November 24, 2015 No. 418-V "On Informatization" (with amendments and additions as of February 11, 2024 g.) and other regulatory legal acts.

One of the main innovations in the legislation of Kazakhstan on digital technologies is the normative consolidation of the concept of "digital assets", their legal regime and classification. Thus, according to the Civil Code of the Republic of Kazakhstan (hereinafter - the Civil Code of the Republic of Kazakhstan), digital assets are objects of civil rights, along with other property benefits and rights (property):

“Property assets and rights (property) include: things, money, including foreign currency, financial instruments, works, services, objectified results of creative intellectual activity , trade names, trademarks and other means of individualization of products, property rights, digital assets and other property ” (clause 2, Article 115 of the Civil Code of the Republic of Kazakhstan).

“The concept and types of digital assets, as well as the specifics of the circulation of digital assets are determined by the legislation of the Republic of Kazakhstan, acts of the Astana International Financial Center (clause 3-1, Article 116 of the Civil Code of the Republic of Kazakhstan).

More detailed provisions on digital assets are contained in separate laws. Initially, most of the relevant provisions were introduced into the Law of the Republic of Kazakhstan dated November 24, 2015 No. 418-V "On Informatization" (hereinafter referred to as the Law "On Informatization"), but literally 2-3 years later, most of the legal provisions on digital assets lost their force and were reproduced in a slightly different form in the Law of the Republic of Kazakhstan dated February 6, 2023 No. 193-VII ZRK "On Digital Assets in the Republic of Kazakhstan" (hereinafter referred to as the Law "On Digital Assets"). At the same time, a number of new formulations literally coincide with the formulations excluded from the Law "On Informatization" (cf.: Art. 5, 7 of the Law "On Digital Assets" and Art. 33-1 of the Law "On Informatization").

Before the above rules were put into effect, the concept of "digital asset" was unknown to the civil law of Kazakhstan. In paragraph 2 of Article 115 of the Civil Code of the Republic of Kazakhstan, digital assets are described as a separate object, distinct from other objects of civil rights, such as things and property rights. This approach has been criticized by civil lawyers of Kazakhstan. They recognize the term "digital assets" itself as unsuccessful, since such a term as "assets" is not used in civil law. This term is borrowed from financial and accounting legislation.[109]

The most consistent critic of the rules on digital assets in Kazakhstan is Academician of the National Academy of Sciences of the Republic of Kazakhstan M.K. Suleimenov. His works concentrate the main comments and proposals shared by the majority of civilists in Kazakhstan, so we will refer to his criticism as communis Opinion doctorum.

First of all, the general wording of the law was criticized, according to which digital assets simultaneously act as property and as an electronic digital form of certification of already existing property rights. The logical inconsistency of such a structure does not allow us to answer the question: is a digital asset property or a form of certification of rights to property? M.K. Suleimenov rightly notes that one excludes the other, therefore it is practically "... impossible (based on the concept on which the Civil Code of the

[109]Suleimenov M.K. Digitalization and improvement of civil legislation...

Republic of Kazakhstan is based) to distinguish digital assets from property rights. Digital assets, if recognized, can only be property rights, and they must be distinguished, first of all, from things." [110]

In general, it should be recognized, M.K. Suleimenov believes, that "…the inclusion of the term "digital assets" in the Civil Code of the Republic of Kazakhstan is erroneous. The inclusion of the term "digital rights" is also highly questionable, since in the Civil Code of the Russian Federation it boils down to the fact that these are obligatory rights (claims) in digital form. That is, this is not an independent right, but a form of existence of claims... Since a token is a type of digital asset and at the same time it acts as a means of certifying property rights, then a digital asset is not property, but a means of certifying property rights. That is, amending Article 115 of the Civil Code of the Republic of Kazakhstan in terms of including a digital asset in the property is unfounded." The optimal version of the wording would be to simply indicate in Article 115 of the Civil Code of the Republic of Kazakhstan that property rights can be in electronic digital form. [111]

The developers of the law should have clarified the legal terminology, for example, what meaning they put into the concepts of "owner", "proprietor", "user". After all, in the legal tradition of Kazakhstan, the right of ownership is a property right and therefore applies only to things. Digital assets cannot be things, and the concept of "ownership" does not apply to them. The term "owner" can be applied to them to a greater extent, but this would also be inaccurate. Possession is only one of the powers of a person who holds a property right. The term "user" also raises doubts. There are no obstacles to using the expression "owner". "In general, the developers should have studied at least the basics of civil law theory before proposing fundamental concepts of civil law," concludes M. K. Suleimenov in his critical review. [112]

The criticism to which the wording of Article 115 of the Civil Code of the Republic of Kazakhstan and the Law "On Informatization" was subjected by the scientific

[110]Ibid.
[111]Suleimenov M.K. Digitalization and improvement of civil legislation...
[112]Ibid.

community and practicing lawyers, to a large extent fair, remains relevant for the currently existing legal provisions.

It is significant that Article 33-1 of the Law "On Informatization" existed for less than three years and was actually replaced by a special regulatory legal act - the Law "On Digital Assets". The instability of the legislation on digital assets indicates that the Kazakhstani legislator is in the process of searching for optimal legal regulation of relations related to the digitalization of society, entering a new digital reality. [113]

From the point of view of practical law enforcement and disclosure of the content of the concept of “digital assets”, including from the point of view of the possibility of their inheritance, one should refer to the Law “On Digital Assets” and the Law “On Informatization”, which contain a sufficiently detailed description of the technical processes and rules for the creation of digital objects and the regulation of their circulation.

Let's start with how the law defines the objects in relation to which subjects of civil law enter into legal relations with each other.

These include information technology objects - electronic information resources, software, Internet resources and information and communication infrastructure. (clause 5 of Article 1 of the Law “On Informatization”).

Based on the legal definition and properties inherent in digital assets, it can be seen that the Law "On Informatization" names both these objects (electronic information resources, Internet resources) and the necessary technical (equipment) and technological (ordered sequence of their use) prerequisites for their creation and further existence. The latter are things or software, to which the general provisions on things (Article 115 of the Civil Code of the Republic of Kazakhstan) or objects of intellectual property rights (Articles 972, 1013 of the Civil Code of the Republic of Kazakhstan) apply accordingly.[114]

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[113]Schwab K., Davis N. Technologies of the Fourth Industrial Revolution. 254-255 p.

[114]The courts of Kazakhstan began to provide legal protection to computer software developers very early. See: Amangeldy A. A., Kharifbaeva H. S. Peculiarities of the Protection of Intellectual Property Rights under the Legislation of the Republic of Kazakhstan // Journal of the Intellectual Property Court. 2013. No. 1. October. No. 2. Pp. 54-65; No. 2. December. Pp. 42-56. URL : http :// ipcmagazine. ru / procedural - matter / peculiarities - of - intellectual - property - protection - under - the - laws - of - the - republic - of - kazakhstan (date of access: 03.03.2024).

The first group, or digital assets, includes electronic information resources and Internet resources, while the second, auxiliary group includes information and communication infrastructure and software.

Let's start with the first group of objects, which in Article 115 of the Civil Code of the Republic of Kazakhstan are called "digital assets". These include:

- electronic information resources, i.e. data "…in electronic digital form, contained on electronic media and in information technology objects " (clause 57 of Article 1 of the Law "On Informatization");

- Internet resources - information (in text, graphic, audiovisual or other form) located on a hardware and software complex that has a unique network address and (or) domain name and operates on the Internet" (subparagraph 46 of Article 1 of the Law "On Informatization"). In accordance with paragraph 1 of Article 1 of the Law of the Republic of Kazakhstan "On Access to Information" (with amendments and additions as of 19.06.2024), information should be understood as - information about persons, objects, facts, events, phenomena and processes recorded in any form.

The qualifying feature of all digital assets of this group is that the process of their creation and further functioning is possible only with the use of information and communication technologies - a set of methods of working with electronic information resources and methods of information interaction carried out using a hardware and software complex and a telecommunications network (clause 28 of Article 1 of the Law "On Informatization").

The legislator has defined a digital asset as property created in electronic digital form with the assignment of a digital code, including with the use of cryptography and computer calculations, registered and provided with immutability of information based on distributed data platform technology (clause 4 of Article 1 of the Law "On Digital Assets"), i.e. any digital asset is classified as property.

The second group includes objects intended to ensure the functioning of the technological environment for the purpose of forming electronic information resources and providing access to them (subparagraph 23 of Article 1 of the Law "On Informatization"). Such objects include: information systems, technological platforms,

hardware and software complexes, server rooms (data processing centers), telecommunications networks, as well as systems for ensuring information security and uninterrupted functioning of technical equipment (subparagraph 23 of Article 1 of the Law "On Informatization"). For the functioning of the information and communication infrastructure, software is required, which is a set of programs, program codes, as well as software products with technical documentation necessary for their operation (subparagraph 37 of Article 1 of the Law "On Informatization").

In Kazakhstan, a legal definition has been given to the most important element of such a system - blockchain, which is understood as an information and communication technology that ensures the immutability of information in a distributed data platform based on a chain of interconnected data blocks, specified integrity confirmation algorithms and encryption tools" (clause 38-2 of Article 1 of the Law "On Informatization").

And although M.K. Suleimenov criticizes the inclusion in the law of a detailed description of technical processes that could find a place in the relevant technical regulations, [115]it seems to us that the legislator's approach, at least at this stage of legal regulation of the circulation of digital assets, is entirely justified. Law enforcement officers, including notaries, have the opportunity to rely on the law to perform various actions with digital assets, for example: include them in the estate, give them an assessment when it is necessary to determine the value of the property of a particular person, etc.

Thus, there are no obstacles to the transfer of certain rights to digital assets and objects of information and communication infrastructure, including software, in the event of the death of their owner. As a general rule, the rights and obligations that belonged to the testator during his lifetime can be inherited (clause 1 of Article 1040 of the Civil Code of the Republic of Kazakhstan). The exceptions to this rule specified in the law (the right to compensation for damage, the rights and obligations to pay alimony, etc.) are closed. The list of these exceptions is closed and all of them are inextricably linked with the

[115]Suleimenov M.K. Digitalization and improvement of civil legislation...

personality of the testator (clause 2 of Article 1040 of the Civil Code of the Republic of Kazakhstan). Digital assets do not apply to them. In addition, the exception rule is not subject to broad interpretation, [116]therefore, without a direct indication of the law, it is impossible to extend the exception to the general rule to other rights and obligations of the testator that belonged to him during his lifetime.[117]

## §1.2. Features of inheritance of certain types of digital assets

Now let us analyze the legislation of the Republic of Kazakhstan for the possibility of inheriting certain of the most common types of digital assets, such as: accounts or records in social networks and services and their contents (correspondence, photo and video materials, sound recordings, etc.), accounts in monetization services with accumulated funds on deposits and bonus points, information about rights in digital form, which were previously certified by records on a tangible medium (for example, obligatory and other rights), digital wallets, digital financial assets, digital currency, cryptocurrency, domain names, websites, NFT objects.

Of all the above-mentioned digital assets, the following are directly or indirectly named in legislation:

- information about rights, which was previously certified by records on a tangible medium, in digital form,
- digital wallets,
- cryptocurrency,
- domain names.

1. The legislator has classified digitally encoded information on rights that were previously certified by records on a tangible medium as a secured digital asset. Such a digital asset must be registered via a digital platform for storing and exchanging secured

[116]Pigolkin A.S. Interpretation of normative acts in the USSR. Moscow: Gosyurizdat. 1962. 113 p.
[117] Zhanabilova A. B. Legal regulation of digital assets turnover and the possibility of their inheritance in Kazakhstan and Russia. 40 p.

digital assets. It certifies rights to tangible, intellectual services and assets, with the exception of money and securities (clause 1 of Article 1 of the Law "On Digital Assets").

The most significant aspect of this rule is that secured digital assets are inextricably linked to tangible and intangible assets, such as property rights, intellectual services or other assets.[118]

A secured digital asset must meet the following requirements (clause 1 of Article 5 of the Law “On Digital Assets”):

1) certifies the right to material, intellectual services and assets, with the exception of money and securities;

2) has a decision to issue a secured digital asset;

3) is not a unit of account or legal tender;

4) is not recognized as a financial instrument or financial asset;

5) contains information about the person who issued the secured digital asset;

6) has confirmation of property and/or intellectual rights to the asset prior to its formation as a secured digital asset;

7) has a record in the blockchain network of the movement of an asset and/or property rights.

The person initiating the issue of secured digital assets is the owner of the property or the person who owns the rights certified by the secured digital asset (clause 5, article 6 of the Law "On Digital Assets"). As we can see, the secured digital asset is inextricably linked with objects already familiar to the law and the person who owns the digital asset is always known.

In this case, the issue of a secured digital asset is carried out by placing a record on a digital platform for storing and exchanging secured digital assets by the person issuing and circulating digital assets, only after checking the availability of its security. (clause 8 of Article 6 of the Law "On Digital Assets"), i.e. there are always some property benefits or intellectual rights behind a secured digital asset. Such an asset does not exist as a purely

[118]In the Russian Federation, the term "intellectual services" is not strictly legal in nature; it can be understood as a variety of activities in the provision of legal services, marketing services, services in the field of culture and recreation, etc. It is usually used by economists and other persons who are not lawyers. See: Didenko D. V. Russian intellectual services and their competitiveness according to foreign trade statistics // Bulletin of international organizations. 2014. Vol. 9. No. 1. 88-106 p.

virtual object without real property content or intellectual rights existing in objective reality.

2. Cryptocurrency, [119] as a type of unsecured digital asset, is mentioned in special rules governing the operation of crypto exchanges on the territory of the Astana International Financial Center (AIFC).

The essence of an unsecured digital asset is that it is not associated with any property that exists independently of electronic digital technologies, and "…does not express anyone's monetary obligations that can be traded in digital form on a digital asset exchange" (clause 3 of Article 1 of the Law "On Digital Assets").

To create unsecured digital assets, digital mining is required – the process of performing computational operations using computer power according to specified encryption and data processing algorithms, ensuring confirmation of the integrity of data blocks through the blockchain (clause 8, Article 1 of the Law "On Digital Assets").

The subject of the activity on creation of unsecured digital assets is a digital miner - an individual entrepreneur or a legal entity of the Republic of Kazakhstan, carrying out activities on digital mining (clause 7 of Article 1 of the Law "On Digital Assets"). Mining activity is subject to mandatory licensing and is classified as entrepreneurial (clauses 2, 5 of Article 8, Article 9 of the Law "On Digital Assets"),

Mining activity is carried out by a digital miner through a digital mining pool (an association of miners) using a digital mining data processing center (clause 2, Article 8 of the Law "On Digital Assets").

A digital miner may own or have other legal grounds for owning a digital mining data processing center or only a hardware and software complex for digital mining located in a digital mining data processing center (clause 1, Article 9 of the Law "On Digital Assets"). The law directly states that a miner must have a hardware and software complex of a digital mining pool on the territory of the Republic of Kazakhstan (clause 2, clause 2, Article 10 of the Law "On Digital Assets").

[119]The digital wallet is only mentioned as a place to store cryptocurrency, so it will be considered in the context of unsecured digital assets.

The law defines the conditions of the mining activity itself, but does not establish any restrictions regarding mining equipment as an object of the material world, as a thing.

The subject of the relations arising in relation to the above-mentioned objects may be not only a miner, but also any "owner of information technology objects" - a person "...to whom the owner of information technology objects has granted the rights of ownership and use of information technology objects within the limits and in the manner determined by law or agreement" (clause 5 of Article 1 of the Law "On Informatization"). It follows from the law that the owners, holders and users of information technology objects carry out their activities in the Internet space. More specifically, subjects of information technology are government agencies, individuals and legal entities carrying out activities or entering into legal relations in the field of information technology (clause 11 of Article 1 of the Law "On Informatization").

In the Republic of Kazakhstan, cryptocurrency and other digital assets are not recognized as legal tender, financial instruments or financial assets, and cannot be used for payments. This kind of the restrictions are explained by the need to ensure the security of the financial system of Kazakhstan. [120] In addition, digital assets have become objects of various types of criminal attacks, which required the development of special methods for investigating these crimes to protect the rights of individuals.[121]

It should be noted that in Kazakhstan, the circulation of digital assets is currently limited and is only possible on the territory of the Astana International Financial Center (AIFC).

According to Yakub Zamanov, Director of the Fintech Department of the Astana Financial Services Authority (AFSA), there are currently more than 1,500 participating companies from 65 countries registered with the AIFC. Among them are licensed companies providing banking, insurance, investment, professional and other services.

[120]Romanenko S. V. Issues of regulation of legal relations in the sphere of production and circulation of digital assets, counteraction to commercial fraud // Bulletin of KazNU. Legal Series, 2023. No. 2 (106). P. 47-55. URL : https://bulletin-law.kaznu.kz/index.php/journal/article/view/2864/2356 (date of access: 03.08.2023)

[121]Nochevnaya V. Actual problems of securing evidence and bringing to justice in civil and criminal cases related to digital assets (cryptocurrency) // Zanger - Bulletin of Law of the Republic of Kazakhstan, 2023. No. 11 (268). URL: https://astanahub.com/ru/blog/aktualnye-problemy-obespecheniia-dokazatelstv-i-privlecheniia-k-otvetstvennosti-po-grazhdanskim-i-ugolo (date of access: 03/15/2024).

The Astana Financial Services Authority (AFSA) acts as an independent financial regulator within the AIFC.[122]

To work with digital assets, the AIFC has a FinTech Lab (financial technologies - provision of financial services using modern technologies such as Big Data, artificial intelligence and machine learning, robotics, blockchain, cloud technologies, biometrics, etc.), which was created in 2018.

The AIFC has already licensed several companies that provide financial services for operating a digital asset platform or crypto exchange. Three of them were licensed starting from March 2022. Crypto exchanges are designated as companies holding a license from the Committee for operating a digital asset platform or Operating a Digital Asset Trading Facility. Two of these crypto exchanges have already begun their activities within the framework of additional requirements and conditions established by the "Rules of the pilot project for interaction of AIFC crypto exchanges with second-tier banks of the Republic of Kazakhstan" (hereinafter referred to as the Pilot Rules). For example, this includes establishing relationships with banks to integrate systems, as well as meeting minimum regulatory capital requirements, ensuring individual investor protection requirements and cybersecurity requirements. [123]

To prevent the use of crypto exchanges for illegal purposes, the following control systems have been introduced: the first is the "know your customer" procedure (KYC), and the second is the "know your transaction" procedure. Therefore , crypto exchanges identify and verify each client, check their personal digital wallet and transaction history for signs of violation of anti-money laundering and counter-terrorism financing laws.

In other words, crypto exchanges must not only correctly identify and verify each client, but must also have full information about the client's personal digital wallet and transaction history in order to identify signs of violations of anti-money laundering and counter-terrorism financing laws.

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[122]Zamanov Ya. Digital assets. How they are regulated in Kazakhstan. AIFC position // PLAS Magazine. 2022. No. 8. (294). URL: https://plusworld.ru/journal/2022/plus-8-2022/tsifrovye-aktivy-kak-oni-reguliruyutsya-v-kazakhstane-pozitsiya-mftsa/ (date accessed: 15.03.2024).

[123]Ibid.

During inheritance, these circumstances will play a key role, since the notary can easily establish the fact that the testator has a digital wallet through the “know your client” system and determine the value of the digital assets that were in the crypto wallet at the time of his death.

In this regard, it should be noted that at present, a balanced attempt to build a legislative framework for the issuance and circulation of digital assets is being carried out in the Republic of Kazakhstan. Namely, on the one hand, the legislator recognizes digital assets as an object of civil law in Kazakhstan (does not prohibit its issuance and circulation), but on the other hand, the tokenization of assets and the circulation of tokens are actually carried out only on the territory of the Astana International Financial Center.

Further expansion of the use of digital assets in the Republic of Kazakhstan will lead to the complication of existing and the emergence of new legal and economic relations related to unsecured digital assets. For example, digital custody services are emerging - storage, administration and protection of digital assets or private cryptographic keys used to store or transfer crypto assets as a service.[124]

3. A domain name is a "symbolic (alphanumeric) designation formed in accordance with the rules of Internet addressing, corresponding to a specific network address and intended for named access to an Internet object" (clause 40, Article 1 of the Law "On Informatization"), and is not directly called a digital asset in the law. Nevertheless, the very fact of mentioning a domain name in legislation allows the rules on inheritance to be applied to it. The network address of a domain name in itself can be of significant value to the user and his heirs. [125]The law nowhere limits the right of its owner to alienate a domain name. The practice of transferring domain names to other persons is widespread in the world, including in Kazakhstan, [126]therefore, in the absence of legislative regulation of the transfer of a domain name in the event of the death of its owner, general rules on inheritance should be applied and the domain name should be included in the estate.

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[124]Koishybayuly K., Kopbayev D. Z., Bidayshieva A. B. Legal regulation of blockchain and cryptocurrencies: problems and prospects for issuing tokens and their circulation in the territory of the Republic of Kazakhstan // Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan. 2023. No. 1 (72). 105 p.

[125]Address for a Million: What Are Premium Domains and Why Are They So Expensive // Reg.ru: [website]. August 25, 2020. URL: https://www.reg.ru/blog/adres-na-million-chto-takoe-premium-domeny-i-pochemu-oni-takie-dorogie/ (date accessed: 01.08.2024).

[126]Buy domain KZ. // PS Cloud Services : [site]. URL: https://www.ps.kz/domains/ (date of access: 01.08.2024).

Finally, it should be noted that the legislation of Kazakhstan classifies digital assets as property "...in electronic digital form, with the exception of money and personal non-property rights" (clause 2 of Article 115 of the Civil Code of the Republic of Kazakhstan).

All digital assets, as objects of civil rights, have the following properties: virtuality, the use of authentication using cryptography, the use of a distributed transaction registry, decentralization, and management through consensus of process participants.

Objectified information in digital form is recognized as having a special status that distinguishes it from information in its pure (ideal) form. This status brings it closer to, and in some cases completely identifies it with, digital assets.

The experience of common law countries, which encountered objects of the digital world before the continental legal family (which includes the civil law of Kazakhstan), shows that the recognition of digital objects as a third type of property does not exclude the application to them, mutatis mutandis, of legal mechanisms that are already applied to traditional types of property, for example, the rules on the protection of a bona fide purchaser in a transaction for consideration.[127]

This circumstance substantially eliminates potential negative effects associated with the inapplicability of traditional protection tools inherent in property law to digital assets. In our opinion, it is entirely acceptable, recognizing digital assets as an independent type of objects of rights, to apply property-law protection methods to them in the part that does not contradict the essence of such assets.

The existence of many digital objects does not depend on the active actions of third parties. For example, a digital file can be stored on a hard drive or removable media for a very long time without any active actions from any subject. But at the same time, digital assets that exist in multi-user gaming spaces require constant support from the administrator of the virtual world. The same applies to cryptocurrencies, "... which are objectified by records in a distributed registry. Although the decentralized nature of data

[127] Braginets A. Yu. Information objects as property: experience of common law jurisdictions and prospects for its implementation in Russia.

storage complicates the influence on user balances by each individual infrastructure operator, the very fact of the corresponding dependence remains unchanged."[128]

As we can see, the circulation of secured digital assets is permitted in compliance with the requirements established by law. Licensing of activities is required only for the person issuing secured digital assets. No special restrictions are established for their acquisition by other persons. The issue of unsecured digital assets is also subject to licensing. Their circulation is permitted only on the territory of the Astana International Financial Center. It follows from the above rules that the heirs of both the miner himself and any other owner of an unsecured digital asset can inherit his property, including the unsecured digital assets themselves, in compliance with the rules established by law regarding the circulation of this type of property.

In this regard, the thoughts of the famous Soviet and Kazakhstani civilist M.K. Suleimenov have an important dogmatic significance, since if “digital assets” are merely an electronic-digital form of already known rights, then in this case we should only determine whether the right belonging to the testator during his lifetime, clothed in an electronic-digital form, is capable of being transferred to other persons.

Our analysis makes it clear that in the absence of a direct indication of the possibility of inheriting digital assets, it does not follow from the law that they cannot be inherited. On the contrary, since these objects of civil law can be alienated during the lifetime of their owners, they can also be inherited. [129]

## § 2. Legal regulation of the circulation of digital assets in the Russian Federation

### §2.1. General state of legal regulation

The processes caused by the "fourth industrial revolution" did not bypass Russia. Since the late 90s - early 2000s, electronic digital technologies and related

[128] Ibid.
[129] Zhanabilova A. B. Legal regulation of digital assets turnover and the possibility of their inheritance in Kazakhstan and Russia. 39, 42 p.

communication and then financial instruments have been actively introduced in the Russian Federation, for example: e-mail (since 1998),[130] Blockchain (since 2016), [131]cryptocurrency (approximately 2014-2017), [132]etc.

The first attempts to legally regulate relations developing in the electronic-digital environment were undertaken in 2017 in the Decree of the President of the Russian Federation of May 9, 2017 No. 203 "On the Strategy for the Development of the Information Society in the Russian Federation for 2017-2030", which contains a definition of the digital economy as an economic activity "... in which the key factor of production is digital data, the processing of large volumes and the use of the results of the analysis of which, in comparison with traditional forms of management, can significantly increase the efficiency of various types of production, technologies, equipment, storage, sale, delivery of goods and services."

The Decree of the President of the Russian Federation of May 7, 2018 No. 204 "On national goals and strategic development objectives for the period up to 2024" (hereinafter referred to as Decree No. 204) provided for the development of a system of legal regulation of the digital economy and the use of artificial intelligence. The provisions of Decree No. 204 were further developed in the Decree of the President of the Russian Federation of July 21, 2020 No. 474 "On the national development goals of the Russian Federation for the period up to 2030" (hereinafter referred to as Decree No. 474). In accordance with subparagraph d) of paragraph 1. of Decree No. 474, digital transformation is one of the national development goals of the Russian Federation for the period up to 2030.

As part of the implementation of Decree No. 204 and Decree No. 474 **,** including with the aim of solving the problem of ensuring the accelerated implementation of digital technologies in the economy and social sphere, the Government of the Russian Federation

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[130]Email. // Knowledge.Wiki: [site]. URL: https://znanierussia.ru/articles/%D0%AD%D0%BB%D0%B5%D0%BA%D1%82%D1%80%D0%BE%D0%BD%D0%BD%D0%B0%D1%8F_%D0%BF%D0%BE%D1%87%D1%82%D0%B0 (date of access: 10.03.2024).

[131]Blockchain in Russia // TAdviser: [website]. July 6, 2023. URL: https :// www. tadviser. ru / index. php /% D 0% A 1% D 1%82% D 0 % B 0% D 1%82% D 1%8 C % D 1%8 F :% D 0%91% D 0% BB % D 0 % BE % D 0% BA % D 1%87% D 0% B 5% D 0% B 9% D 0% BD _% D 0% B 2_% D 0% A 0% D 0% BE % D 1%81% D 1%81% D 0% B 8% D 0% B 8 (date of access: 03/10/2024).

[132]Averkieva O. History of cryptocurrency in Russia: from surrogate to the main word. // Futurist : [site]. May 1, 2019. URL: https://futurist.ru/articles/1353-istoriya-kriptovalyuti-v-rossii-ot-surrogata-do-glavnogo-slova (date of access: 10.03.2024).

formed the national program "Digital Economy of the Russian Federation" approved by the minutes of the meeting of the Presidium of the Council under the President of the Russian Federation for Strategic Development and National Projects dated June 4, 2019 No.7. This program includes the project "Regulatory regulation of the digital environment", which clearly shows the general direction of further development of legal regulation in this area.[133]

The “Passport of the national project “National Program “Digital Economy of the Russian Federation” (approved by the Presidium of the Presidential Council for Strategic Development and National Projects, protocol of 04.06.2019 No. 7) lists specific activities (with persons responsible for their implementation) that must be carried out by the end of 2024 to digitalize the Russian economy (“Passport of the national project “National Program “Digital Economy of the Russian Federation” (approved by the Presidium of the Presidential Council for Strategic Development and National Projects, protocol of 04.06.2019 No. 7 (hereinafter referred to as the National Project Passport)).

The following activities have already been implemented:

- creation of a system of legal regulation of the digital economy based on a flexible approach in each area, as well as the introduction of civil circulation based on digital technologies (clause 1, clause 4.1 of the National Project Passport);

- creation of legal conditions for the formation of the sphere of electronic civil circulation in terms of defining transactions concluded in written (electronic) form, automated (“self-executing”) contracts, as well as procedures for storing electronic documents, creating, storing and using electronic duplicates (electronic images) of paper documents (clause 1.2, clause 4.1 of the National Project Passport);

- favorable legal conditions have been ensured for the collection, storage and processing of data using new technologies, in terms of establishing the procedure for depersonalizing personal data, the conditions and procedure for their use, clarifying responsibility for their improper processing, and the procedure for obtaining consent for their processing (clause 1.3, clause 4.1 of the National Project Passport);

[133]Ministry of Digital Development, Communications and Mass Media of the Russian Federation. National projects: Digital Economy of the Russian Federation. URL: https://digital.gov.ru/ru/activity/directions/858/ (date accessed: 10.03.2024)

- legal conditions for the implementation and use of innovative technologies in the financial market have been ensured, in particular, the legal status and procedure for the circulation of digital financial assets have been determined (clause 1.4, clause 4.1 of the National Project Passport).

As we can see, digitalization is large-scale in Russia. But Russian President V.V. Putin has set big goals: the introduction of artificial intelligence in various spheres of the Russian economy and social life.

To implement these tasks, the Decree of the President of the Russian Federation of 10.10.2019 No. 490 (as amended on 15.02.2024) "On the Development of Artificial Intelligence in the Russian Federation" defines the goals and main directions of the development of artificial intelligence in the Russian Federation, as well as measures aimed at its use in order to ensure national interests and implement strategic national priorities, including in the field of scientific and technological development.

The widespread introduction of digital technologies into the life of modern society has raised a number of issues for law enforcement officers related to the legal regulation of relevant social relations. In 2019, the Civil Code of the Russian Federation included digital objects called "digital rights" both in the general provisions on objects of civil rights and in the special article 141.1 "Digital Rights" (Articles 128, 141.1 of the Civil Code of the Russian Federation). [134]Separate regulations specify the list of digital assets and determine the procedure for using and disposing of them. The legislator left the list of these rights open, which allows the relevant standards to be applied to new objects of the virtual world. The content and conditions for the exercise of digital rights are determined in accordance with the rules of the information system, which is determined by the nature of digital objects. However, the definitions of digital rights themselves, given in the law, require more precise substantive content. For example, what do the "rules of the information system" mean, where are these rules enshrined? What is an "information system"?

[134]Federal Law of March 18, 2019 No. 34-FZ "On Amendments to Parts One, Two and Article 1124 of Part Three of the Civil Code of the Russian Federation". - Access from the reference and legal system "ConsultantPlus" (date of access: 08/20/2023).

To answer the questions posed, it is necessary to consider how concepts related to digital rights are defined in other regulatory legal acts and, first of all, in the Federal Law of July 27, 2006 No. 149-FL (as amended on December 12, 2023) “On Information, Information Technologies and the Protection of Information” (hereinafter referred to as the Federal Law “On Information”).

The absence of the terms “digital rights” or “digital assets” in the current version of this law immediately draws attention, but “information” acts as such an object.

Currently, the Civil Code of the Russian Federation does not classify information as an object of civil law (Article 128 of the Civil Code of the Russian Federation). [135]Before January 1, 2008, Articles 128 and 139 of the Civil Code of the Russian Federation directly called information an object of civil rights. Information was classified as one of the types of results of intellectual activity, but it should be understood much more broadly than copyright or other rights to the result of intellectual activity. Information should include any knowledge of a scientific, technical, commercial or other nature. Information can act as a commodity and be the subject of a contract, for example, the collection, storage, processing, distribution, use of information can be an independent subject of a contract and have the property of satisfying the needs of participants in civil turnover, and in most cases information falls under the characteristics of intellectual property. [136]The peculiarity of information as an object of civil rights should be considered that it “… is an ideal component of being, i.e. an intangible good that cannot be reduced to those physical objects that act as its carriers (paper recording, magnetic tape , etc.). tape, etc.)”, as well as “…the possibility of its practically unlimited replication, distribution and transformation of the forms of its recording”. [137]We would like to add that in the time that has passed (almost 25 years) since these lines were written by A.P. Sergeev, the number of material information carriers has increased significantly and continues to grow.

[135]Clause 8 of Article 17 of the Federal Law of December 18, 2006 No. 231-FZ (as amended on December 29, 2022) "On the Entry into Force of Part Four of the Civil Code of the Russian Federation". - Access from the reference and legal system "ConsultantPlus" (date of access: 05/31/2024).
[136]Sergeev A. P. Intellectual Property Law in the Russian Federation. Moscow: Teis. 1996. 620-621 p.
[137]Civil law: textbook: in 3 volumes / edited by Yu.K. Tolstoy. Moscow: Prospect. 2011. Vol. 1. 237-238 p.

And although in the new edition of the Civil Code of the Russian Federation information was excluded from the list of objects of civil rights named in Article 128 of the Civil Code of the Russian Federation, however, the legal provisions governing legal relations arising in relation to certain types of information were included in Part Four of Section VII of the Civil Code of the Russian Federation “Rights to the Results of Intellectual Activity”, for example, such type of information as a production secret ( know how ) (Article 1465 of the Civil Code of the Russian Federation).

If the Civil Code of the Russian Federation excluded information from the objects of civil rights, then the Federal Law "On Information" classifies information as an object of "... public, civil and other legal relations. Information may be freely used by any person and transferred by one person to another person, unless federal laws establish restrictions on access to information or other requirements for the procedure for its provision or distribution" (Part 1 of Article 5 of the Federal Law "On Information"). Thus, in another federal law in the current version, information is directly called an object of civil legal relations. We believe that information can be classified as an object of civil rights.

In the Federal Law "On Information", information is understood to be an electronic message (clause 10, Article 2 of the Federal Law "On Information"), an electronic document is documented information presented in electronic form, that is, in a form suitable for human perception using electronic computers, as well as for transmission over information and telecommunications networks or processing in information systems (clause 11.1, Article 2 of the Federal Law "On Information").

As we can see, there is a confusion of different types of civil law objects and methods of formalizing transactions with them, since information, as defined by the legislator, includes both the form itself in which some content is clothed (an electronic message, for example, a letter sent via e-mail; an electronic document, for example, a contract), and its content, which may be a protected result of intellectual activity or a civil law transaction.

For our study, the provisions of the Federal Law “On Information” are of interest in the part that regulates relations related to the transfer of information using an information and telecommunications network, which is defined as “... a technological

system designed to transfer information via communication lines, access to which is carried out using computer technology" (clause 4, Article 2 of the Federal Law "On Information"). Some regulations define an "Internet communications service" as a type of information system and (or) computer program "... which is intended and (or) used to receive, transmit and (or) process electronic messages from Internet users for the purpose of exchanging electronic messages between Internet users, including for transmitting electronic messages to an indefinite number of persons" (clause 2 of RF Government Resolution No. 1526 of September 23, 2020 (as amended on March 20, 2024) "On the Rules for the Storage by Organizers of Information Dissemination in the Internet Information and Telecommunications Network of the Facts of Reception, Transmission, Delivery and (or) Processing of Voice Information, Written Text, Images, Sounds, Video or Other Electronic Messages from Users of the Internet Information and Telecommunications Network and Information about These Users and its Provision to Authorized Government Bodies Carrying Out Operational Investigative Activities or Ensuring the Security of the Russian Federation").

Legal regulations contain technical and technological concepts, which facilitates the tasks of applying the rules on inheritance, since when determining the possibility and procedure for the transfer of information to successors, protecting their interests, a notary or judge can rely not on their subjective understanding of the processes occurring in the virtual space, but on the definition of the law. In particular, the law determines the place of participants in the process of transferring information, the procedure for providing access to it to interested persons.

## §2.2. Features of inheritance of certain types of digital assets

In this section, we will conduct a study of the legal regulation of the inheritance of certain types of digital assets in the Russian Federation and will adhere to the same procedure as when studying this issue under the law of the Republic of Kazakhstan, i.e. such types of digital assets as: accounts or accounts in social networks and services and their content (correspondence, photo and video materials, sound recordings, etc.),

accounts in monetization services with accumulated funds on deposits and bonus points, information about rights in digital form, which were previously certified by records on a tangible medium (for example, obligatory and other rights), digital wallets, digital financial assets, digital currency, cryptocurrency, domain names, websites, NFT objects.

Russian legislation regulates in sufficient detail the relations connected with the creation and use of websites, website pages, domain names, digital financial assets, digital currency, and cryptocurrency. The law directly regulates the issue of inheritance of the digital ruble (a digital asset that has no analogue in Kazakhstan; the Russian legislator is silent about other digital assets).

1. The website, website page, and domain name have been enshrined in Russian legislation:

- a website on the Internet is a set of specific information and is a collection of programs for electronic computers and other information contained in an information system, access to which is provided through the information and telecommunications network "Internet" by domain names and (or) by network addresses that allow identifying websites on the Internet (clause 13, Article 2 of the Federal Law "On Information").

- a website page on the Internet (web page, Web page ), which is a part of a website on the Internet, "...access to which is carried out by a pointer consisting of a domain name and symbols determined by the owner of the website on the Internet" (clause 14, Article 2 of the Federal Law "On Information"),

is intended for addressing sites on the Internet in order to provide access to information posted on the Internet (clause 15, Article 2 of the Federal Law "On Information"), for example : google.com , example.com , etc.

Using a set of characters, a user creates a unique name to identify themselves, which is attached to a domain name via the "@" sign, such as uuserr@google.com. Such a name (uuserr@google.com) is the name of a specific domain user. The difference between a domain name and a domain user name is that the former is a site identifier, while the latter is a user account within that domain (e.g. google.com).

As we can see, an account has an auxiliary meaning - it provides access to information on the Internet, and in itself, as a rule, has no value. Can an account be an

object of copyright and inherited according to the relevant rules? If the author's work was of a creative nature when grouping symbols (letters, numbers, etc.), then the academic record refers to objects of copyright (Article 1257 of the Civil Code of the Russian Federation), otherwise the account will not be recognized as a work. The law leaves open the list of works of science, literature and art that are objects of copyright ("other works" paragraph 1 of Article 1259 of the Civil Code of the Russian Federation). At the same time, recognition of a work as an object of copyright does not depend on its merits, purpose or method of expression (paragraph 1 of paragraph 1 of Article 1259 of the Civil Code of the Russian Federation). Any account is unique and may be of interest to the heir as such. Although in most cases, an account is only a way to access the content of the site.

The owner of a website and (or) a website page on the Internet, and (or) an information system, and (or) a program for electronic computers is a Russian legal entity or a citizen of the Russian Federation. The owner of the website carries out its activities on the Internet on the territory of the Russian Federation independently and, at its own discretion, determines the procedure for using the website on the Internet, including the procedure for posting information on such a website (clause 17, Article 2, clause 10, Article 8 of the Federal Law "On Information").

A website or a website page is created by its owner-testator and is the product of his labor, which determines its content (various types of information in electronic form).

It is very important for determining the ownership of a website or website page by the testator that the law requires mandatory identification for the owners of these objects, both by the owners of Internet platforms and by the users themselves.

Each website owner has a network address - an identifier in the data transmission network, which determines the subscriber terminal or other means of communication included in the information system when providing telematic communication services (clause 16, Article 2 of the Federal Law "On Information").

The information system provides authorization of users of websites and/or website pages on the Internet (clause 4, part 10, article 8 of the Federal Law “On Information”).

Information distributed without the use of mass media must include reliable data on its owner or on another person distributing the information, in a form and volume

sufficient to identify such person (clause 2, Article 10 of the Federal Law "On Information"). If a site is not registered as a mass media outlet, it is not a mass media outlet (paragraph 2, Article 8 of the Federal Law of the Russian Federation of December 27, 1991 No. 2124-I "On Mass Media"). Information on the owner of a site or domain name is possessed by the organizer of information distribution on the Internet, i.e. the person carrying out activities to ensure the functioning of information systems and (or) programs for electronic computers that are intended and (or) used to receive, transmit, deliver and (or) process electronic messages from Internet users (clause 1, Article 10.1 of the Federal Law "On Information").

The organizer of the dissemination of information on the Internet, by virtue of a direct instruction of the law, is obliged to store (clauses 1-2 of clause 3 of Article 10 of the Federal Law “On Information”):

“1) information on the facts of reception, transmission, delivery and (or) processing of voice information, written text, images, sounds, video or other electronic messages of Internet users and information about these users within one year from the moment of completion of such actions;

2) text messages of Internet users, voice information, images, sounds, video, and other electronic messages of Internet users for up to six months from the end of their receipt, transmission, delivery and (or) processing...".

And although the law only speaks about the obligation of the organizer of the dissemination of information on the Internet to provide information to authorized state bodies carrying out operational-search activities or ensuring the security of the Russian Federation, in cases established by federal laws (clause 3.1 of Article 10.1 of the Federal Law "On Information"), in our opinion, such information should also be provided at the request of the court to determine the composition of the estate.[138]

The law also imposes on the hosting provider (an organization that provides disk space and server capacity for hosting any website on the Internet) the obligation to

[138]"...The court issues a mandatory request to the party to obtain evidence or requests evidence directly. The person who has the evidence requested by the court sends it to the court or hands it over to the person who has the corresponding request for submission to the court" (Part 2 of Article 57 of the Civil Procedure Code of the Russian Federation).

provide persons who have contacted the hosting provider with computing capacity for hosting information in an information system that is permanently connected to the Internet, only after users have undergone identification and/or authentication (clause 5, Article 10.2-1 of the Federal Law “On Information”).

The above-mentioned norms contained in the Federal Law “On Information” make it possible to establish the ownership of a website, website page, or domain name by a specific person and include these objects in the estate.

Federal Law of July 31, 2020 No. 259-FL " On Digital Financial Assets, Digital Currency and Amendments to Certain Legislative Acts of the Russian Federation " (hereinafter - Federal Law No. 259-FL) regulates “… relations arising from the issue, accounting and circulation of digital financial assets, the specific activities of the operator of the information system in which digital financial assets are issued and the operator of the exchange of digital financial assets, as well as relations arising from the circulation of digital currency in the Russian Federation” (Part 1 of Article 1 of Federal Law No. 259-FL).

2. Digital financial assets can only exist in a digital environment and are also the subject of our research.

In accordance with Part 2 of Article 1 of Federal Law No. 259-FL, digital financial assets include:

- digital rights, including monetary claims,
- the possibility of exercising rights under securities,
- rights of participation in the capital of a non-public joint-stock company,
- the right to demand the transfer of issued securities, which are provided for by the decision on the issue of digital financial assets, the issue, accounting and circulation of which are possible only by making (changing) entries in the information system based on the distributed registry, as well as in other information systems.

A distributed registry is understood to be a set of databases, the identity of the information contained in which is ensured on the basis of established algorithms (algorithm) (Part 7 of Article 1 of Federal Law No. 259-FL). Without a distributed registry, digital financial rights cannot exist due to their technical features.

Digital financial assets are issued by individual entrepreneurs (individuals) and legal entities, both commercial and non-commercial organizations (Part 3 of Article 2 of Federal Law No. 259-FL). The rights certified by digital financial assets arise for the first owner from the moment of entry into the information system in which digital financial assets are issued, a record of the transfer of digital financial assets to the specified person (Part 1 of Article 2 of Federal Law No. 259-FL), that is, there are potentially subjects (individual entrepreneurs - individuals), after whose death it is necessary to determine the legal fate of objects that belonged to them during their lifetime and are in civil circulation.

With regard to certain types of digital financial assets, the legislator refers to special laws. For example, the issue, accounting and circulation of issue securities, the possibility of exercising rights to which is certified by digital financial assets, are regulated by Federal Law No. 39-FL of April 22, 1996 "On the Securities Market" (hereinafter - Federal Law No. 39-FL) taking into account the features inherent in digital financial assets (Part 4 of Article 1 of Federal Law No. 259-FL). The law does not establish any special rules for issue securities in the case of universal succession. Issue securities are already known objects of civil law. Their circulation, including the possibility of inheritance, does not cause difficulties for law enforcement officers.[139]

The same applies to the issue, accounting and circulation of digital rights, which include both digital financial assets and other digital rights. All transactions with them "... are carried out in accordance with the requirements of this Federal Law for the issue, accounting and circulation of digital financial assets, and settlements on transactions with such digital rights in accordance with the requirements of this Federal Law and Federal Law No. 161-FL of June 27, 2011 "On the National Payment System" for settlements on transactions with digital financial assets" (Part 6 of Article 1 of Federal Law No. 259-FL). However, the above-mentioned law does not contain any rules limiting the inheritance of digital financial assets and other digital rights.

When studying this issue, it should be borne in mind that digital rights may simultaneously include digital financial assets and other digital rights (Part 6 of Article 1

[139]Dolinskaya V.V. Inheritance of shares // Inheritance law. 2006. No. 1. 48-49 p.

of Federal Law No. 259-FL). Nowhere in the law is it stated what “other digital rights” are. In accordance with paragraph 1 of Article 141.1 of the Civil Code of the Russian Federation, in order to be an object of civil rights, a digital right must be directly named as such in the law. However, Note 1 to Clause 3.3 of Decree of the President of the Russian Federation dated 23.06.2014 No. 460 (as amended on 25.01.2024) “On Approval of the Form of the Certificate of Income, Expenses, Property and Property Liabilities and Amendments to Certain Acts of the President of the Russian Federation” (hereinafter referred to as Decree No. 460) explains that the certificate shall indicate “... the name of the digital financial asset ( *if it cannot be determined* (italics added - A. Zh.), the type and scope of rights certified by the issued digital financial asset shall be indicated) and (or) a digital right that simultaneously includes digital financial assets and other digital rights ( *if it cannot be determined* (italics added - A. Zh.), the type and scope of rights certified by digital financial assets and other digital rights shall be indicated, indicating the types of other digital rights).”

It turns out that in accordance with the federal laws of December 25, 2008 No. 273-FL "On Combating Corruption" and December 3, 2012 No. 230-FL "On Control over the Compliance of Expenses of Persons Holding Government Positions and Other Persons with Their Income", objects of civil rights can be digital financial assets that cannot be determined, and other digital rights that also cannot be determined.

Based on the focus of legal regulation of the federal laws of December 25, 2008 No. 273-FL "On Combating Corruption" and of December 3, 2012 No. 230-FL "On Control over Compliance of Expenses of Persons Holding Government Positions and Other Persons with Their Income", in accordance with the logical interpretation of their provisions, any rights of a property-value nature can be attributed to unnamed digital rights, therefore, they can include, for example: game currency, game accounts, websites, bonuses from organizations credited to electronic cards, etc. All these objects can have value, and sometimes a very high monetary value. [140]This state of affairs has led to the fact that in scientific literature, digital objects that are not considered digital assets

[140]How much is your account worth? // mail: [site]. August 2, 2020. URL: https://hi-tech.mail.ru/news/50123-skolko-stoit-vash-akkaunt/#anchor680450 (accessed: 10.03.2024).

(information about passwords, logins, digital wallets, websites) are contrasted, on the one hand, and objects that are considered as such from the point of view of legal science.[141]

It is significant that in order to protect public interests, the law recognizes the existence of actually existing objects that are property or have a property character (clause 2 of Decree No. 460). Failure to declare these objects, even if they are not named in Russian legislation, will be considered a violation of the law.

The task of legal science is to help practice develop legal positions that correspond to the political and legal goals of the legislator when including unnamed digital assets in the number of objects of civil rights. Therefore, it should be noted that science lags behind the requirements of practical law enforcement and our task is to eliminate this gap at least in the area of inheritance.

For example, the already mentioned utilitarian rights (more details about them will be given below) apparently do not relate to other rights, since the Bank of Russia lists them along with equivalent concepts: utilitarian digital rights, digital financial assets and other digital rights recorded in depository accounts and other accounts of the depository's clients (subsection 4.2 of Bank of Russia Instruction dated 10.04.2023 No. 6406-U (as amended on 08.12.2023) "On the forms, terms, procedure for preparing and submitting reports of credit institutions (banking groups) to the Central Bank of the Russian Federation, as well as on the list of information on the activities of credit institutions (banking groups)", hereinafter referred to as Bank of Russia Instruction No. 6406-U), or utilitarian digital rights, digital financial assets and other digital rights belonging to a credit institution (subsection 4.3 of Bank of Russia Instruction No. 6406-U). Various transactions, for example, those related to their alienation, may be performed with utilitarian digital rights, digital financial assets and other digital rights transferred by a credit institution to counterparties on a returnable basis, accepted by a credit institution on a returnable basis. "Other digital rights" are no different from the named digital rights and have the same negotiability as they, for example, they may be the subject of a pledge (subsection 4.4 of Bank of Russia Instruction No. 6406-U).

[141]Kharitonova Yu. S. A lawyer cannot do without knowledge of basic technologies now. 9 p.

From a systematic interpretation of the provisions concerning the circulation of digital assets, it can be concluded that as soon as digital rights arise, they acquire the properties of objects of civil rights and can be inherited, even if they are not named as such in the law.

The law provides an answer to a question that notaries often see as an insurmountable obstacle to including digital assets in an estate: how to establish the ownership of digital assets by the testator.

When issuing digital financial assets and their subsequent circulation, it is mandatory to indicate information about the person issuing the digital financial assets, including for an individual - the last name, first name, patronymic (unless otherwise provided by law or national custom), place of residence, information about state registration as an individual entrepreneur, for a legal entity - the full name, address, information about state registration, as well as information about the website of the person issuing the digital financial assets on the Internet information and telecommunications network (clause 1, part 1, article 3 of Federal Law No. 259-FL).

The decision on the issue of digital financial assets must contain all other information that makes it possible to determine the type and scope of rights certified by the issued digital financial assets, or an indication that the issued digital financial assets certify several types of rights and the holder of the issued digital financial assets has the right, upon the occurrence of the conditions stipulated by the decision on the issue of digital financial assets, to determine at his own discretion one of several rights that will be exercised by him, as well as the number of issued digital financial assets and (or) an indication of the maximum amount of funds that must be transferred in payment for the issued digital financial assets, and (or) the maximum number of things or the maximum value (maximum number) of property rights, including digital rights, or other rights with a monetary value that must be transferred as consideration for the issued digital financial assets, upon reaching which the issue of digital financial assets is terminated (clauses 3-4, part 1, article 3 of Federal Law No. 259-FL).

In any case, the decision to issue digital financial assets is posted on the Internet information and telecommunications network on the website of the person issuing the

digital financial assets and on the website of the operator of the information system in which the digital financial assets are issued, and is publicly available until the obligations of the person who issued the digital financial assets to all holders of digital financial assets issued on the basis of the relevant decision to issue digital financial assets are fully fulfilled (Part 6 of Article 3 of Federal Law No. 259-FL).

The law allows for the precise determination of the owner of a digital financial asset and its value for inclusion in the estate and the collection of state fees for issuing a certificate of inheritance rights.

The legislator has expressly indicated the possibility of inheriting digital financial assets without any restrictions and has regulated the procedure for their transfer to heirs. The operator of the information system in which digital financial assets are issued shall make entries (changes) to records on digital financial assets on the basis of a certificate of inheritance, which provides for the transfer of digital financial assets of a certain type in the order of universal succession, in the shortest possible time - no later than the working day following the day of receipt of the corresponding one. The operator of the information system in which digital financial assets are issued shall inform the operator of the digital financial asset exchange about the entries (changes) to records on digital financial assets made in accordance with the content of the certificate of inheritance, also no later than the working day following the day of the entries (changes) (Part 2 of Article 6 of Federal Law No. 259-FL).

Thus, in the certificate of inheritance rights, the notary can easily determine the type of digital assets that are transferred to the heir, since there are no fundamental differences in the registration of inheritance rights by a notary in relation to digital financial assets compared to other objects of civil rights. Among the entities to whom the operator of the information system where digital financial assets are issued is obliged to provide information contained in the records of the information system on digital financial assets belonging to their owner, the notary is not indicated (Part 3 of Article 6 of Federal Law No. 259-FL). However, the relevant provision of the law states - "at the request of the court". In any case, the notary should contact the operator for the

information he needs to determine the composition of the inheritance, referring to Part 2 of Article 6 of Federal Law No. 259-FL.

3. The analogue of what the Kazakh legislator calls “secured digital assets” in Russia are utilitarian digital assets (Part 12 of Article 8 of the Federal Law of 02.08.2019 No. 259-FL “On attracting investments using investment platforms and amending certain legislative acts of the Russian Federation”, hereinafter referred to as the Federal Law “On attracting investments”).

These include:

- the right to demand the transfer of a thing (things);

- the right to demand the transfer of exclusive rights to the results of intellectual activity and (or) the rights to use the results of intellectual activity;

- the right to demand the performance of work and (or) the provision of services.

These rights can be acquired, alienated and exercised in the investment platform (Part 1 of Article 8 of the Federal Law “On Attracting Investments”).

Based on the name of the rights that the law classifies as utilitarian digital rights, it follows that they can exist and be implemented both with the help of a digital investment platform and without resorting to it. In order to avoid confusion between utilitarian digital rights and similar non-digital rights, the law establishes that digital utilitarian rights initially arise as a digital right based on an agreement on the acquisition of a utilitarian digital right concluded using an investment platform and according to the rules specified in the law (clause 3, Article 1 of the Federal Law "On Attracting Investments"), i.e. they cannot exist in any form other than digital. For example, an investor can acquire a utilitarian digital right to a subscription for classes at a sports center under construction in order to either use the service himself or alienate this right to another person.[142]

The rule according to which the content and conditions for the exercise of utilitarian digital rights are determined in the investment platform in a manner that ensures their availability for subsequent use, including for reproduction in an unchanged form, allows

[142]Utility digital rights: what are they and why are they needed? // Expobank: [site]. URL: https://expobank.ru/blog/utilitarnye-tsifrovye-prava-chto-takoe-i-zachem-nuzhny/#5 (date of access: 10.03.2024).

not only singular but also universal succession (clause 5 of Article 8.1 of the Federal Law “On Attracting Investments”).

The negotiability of utilitarian digital rights is an integral property of the right. The law provides detailed information on the transfer of utilitarian digital rights from one person to another and the rules for such transfer, which must be established by the investment platform (clause 7, article 8.1 of the Federal Law "On Attracting Investments").

Restrictions on the circulation of utilitarian digital rights are established by law. They are either related to the very nature of digital rights, for example, the exercise, disposal and transfer of these rights are possible only in the investment platform (clause 7 of Article 8.1 of the Federal Law "On Attracting Investments"); or with the intention of distinguishing them from digital means of payment, for example, utilitarian digital rights cannot be a means of payment for goods, works, services or other means that allow for the assumption of payment for goods (works, services) by a utilitarian digital right (clause 15 of Article 8.1 of the Federal Law "On Attracting Investments").

And although the law stipulates that the rules of the investment platform must contain the procedure for entering information on the emergence, transfer and termination of a utilitarian digital right, as well as the procedure for determining the moment from which such information is considered entered into the investment platform, we were unable to find any special rules on the inheritance of utilitarian digital assets (Part 7 of Article 8.1 of the Federal Law “On Attracting Investments”).

In addition, the law specifies that the operator of the investment platform has the right to provide the opportunity to acquire or accept for accounting utilitarian digital rights when they are applied to persons who are not investors and persons attracting investments (Part 9 of Article 8.1 of the Federal Law "On Attracting Investments"). The definition of such persons also includes the heirs of the investor.

The same applies to other digital financial assets, as well as digital assets that include both utilitarian digital rights and digital financial assets that, in accordance with the law, can be freely acquired and alienated (Part 13 of Article 8.1 of the Federal Law “On Attracting Investments”).

Indirectly, tax legislation recognizes the possibility of inheritance of digital assets, which include both a digital financial asset and a utilitarian digital right. They are inherited in the general manner and, in accordance with the tax legislation, the heir "... shall not be liable for tax in accordance with paragraphs 18 and 18.1 of Article 217 of this Code; when taxing income received from the sale (including under an exchange agreement) of such property, property rights and (or) upon the redemption of such property rights, including property, property rights received as a result of the redemption of the digital rights specified in this paragraph, the documented expenses of the testator (donor) for the acquisition of such property, property rights, including digital rights, shall also be taken into account if these expenses were not taken into account by the testator (donor) for tax purposes, with the exception of the cases provided for in subparagraphs 3 and 4 of paragraph 1 of this article" (subparagraph 2 of paragraph 2 of Article 220 of the Tax Code of the Russian Federation (as amended by Federal Law of 31.07.2023 No. 389-FL).

4. In 2023, a new named digital object of civil rights appeared - the digital ruble, which refers to a type of non-cash money (Article 128 of the Civil Code of the Russian Federation as amended by Federal Law of 24.07.2023 No. 339-FL). [143]Its specificity lies in the fact that it can only exist in non-cash form on a special platform of the Bank of Russia (clause 4 of Article 861 of the Civil Code of the Russian Federation, Articles 82.10, 82.11 of Federal Law No. 86-FL No. 340-FL) "On the Central Bank of the Russian Federation (Bank of Russia)". This is how the digital ruble differs from fiat money and non-cash money. [144]Since the platform users may be individuals (clause 40 of Article 3 of the Federal Law of 27.06.2011 No. 161-FL (as amended on 19.12.2023) "On the National Payment System"), the question of succession in the event of death arises.

This time, the Russian legislator responded to it very quickly. Article 3 of the Federal Law of 24.07.2023 No. 339-FL "On Amendments to Articles 128 and 140 of Part

[143]Ismailov I. Sh. Legal regulation of the introduction and use of digital currencies issued by central banks in the Russian Federation and foreign countries // Financial Law. 2023. No. 9. 2-5 p.
[144]Turbanov A. V. Digital ruble as a new form of money // Actual problems of Russian law. 2022. No. 5. P. 82; Sakharov D. M. Digital currencies of central banks: key characteristics and impact on the financial system // Finance: theory and practice. 2021. No. 5. 134-140 p.

One, Part Two and Articles 1128 and 1174 of Part Three of the Civil Code of the Russian Federation" introduced amendments that directly included provisions on the inheritance of the digital ruble into the law.

In the new edition, the legal norms are set out as follows:

1) "The rules of this article shall accordingly apply to other credit institutions that have been granted the right to attract citizens' funds into deposits or other accounts, as well as to the Bank of Russia, which opens and maintains digital ruble accounts. The procedure for making testamentary dispositions in digital rubles shall be determined by the Government of the Russian Federation in agreement with the Bank of Russia" (clause 4 of Article 1128 of the Civil Code of the Russian Federation).

2) “Any monetary funds belonging to the testator, including those in deposits or bank accounts, may be used to cover expenses for a decent funeral for the testator.

Banks in whose deposits or accounts the testator's funds are located, as well as the Bank of Russia, if there are digital rubles recorded in the testator's digital ruble account, are obliged, by order of a notary, to provide them to the person specified in the notary's order to pay the specified expenses.

An heir to whom monetary funds have been bequeathed (deposited in a deposit or located in any other accounts of the testator in banks, as well as digital rubles recorded in the testator’s digital ruble account), including in the event that they have been bequeathed by means of a testamentary disposition (Article 1128) , has the right, at any time before the expiration of six months from the date of opening of the inheritance, to receive the monetary funds necessary for the testator’s funeral from the deposit or from the account, including the digital ruble account, of the testator” (clause 3 of Article 1174 of the Civil Code of the Russian Federation).

The "Album of Orders for the Digital Ruble Platform. Version 2023.1" (developed by the Bank of Russia) (This document shall apply from the effective date of Bank of Russia Regulation No. 820-P dated 03.08.2023 - from 11 August 2023) states that funds may be withdrawn from the platform user's digital ruble account when a person applies with documents on the right to inheritance and (or) payment for a decent funeral and other

documents on inheritance payments on paper to the heir's bank account, and that orders on inheritance payments shall come into force from 01.01.2025.

Another document developed by the Bank of Russia states that the Bank of Russia, being the operator of the digital ruble platform, "…accepts for execution an order drawn up on paper by a representative of the platform user, an heir, a person who has received a decree on reimbursement of expenses for a decent funeral... (hereinafter referred to as an order on paper)" (paragraph 6 of clause 1.1 of Chapter 1, Bank of Russia Regulation dated 03.08.2023 No. 820-P "On the digital ruble platform" (together with the "Procedure for settling disputes and disagreements"). The heir presents the Bank of Russia with a "paper medium", i.e. a legitimizing document - a certificate of inheritance, and has the right, at his own discretion, to dispose of the digital rubles belonging to the testator (platform user).

It follows from the above norms that the digital ruble, digital financial assets and utilitarian financial rights are inherited without any restrictions, and the digital ruble can serve as a regular means of payment, including for the implementation of necessary expenses (for a decent funeral of the testator, etc.).

The qualifying feature of a digital financial asset is that it can only be issued by an operator entered into a special register by the Central Bank. If a digital asset with exactly the same properties is issued by any other entity, the asset will not be recognized as digital financial.

5. Digital currency has been introduced into civil circulation in Russia as an object of civil rights. It is "... a set of electronic data (digital code or designation) contained in an information system that are offered and (or) may be accepted as a means of payment that is not a monetary unit of the Russian Federation, a monetary unit of a foreign state and (or) an international monetary or settlement unit, and (or) as investments...". An important feature of digital currency is the absence of a person obligated to each of its owners. [145]The operator and (or) nodes of the information system are only obligated to ensure compliance with the procedure for issuing digital currencies and implementing

[145]Alekseev N.V. The relationship between the institutions of digital rights, digital financial assets and digital currencies // Artificial Intelligence. Information Technology and Law. 2022. No. 1. 186 p.

actions in relation to them to make (change) entries in such an information system (Part 3 of Article 1 of Federal Law No. 259-FL).

From the explanations of the rules for filling out the income certificate, it follows that income received in digital currency, the value of which is determined in foreign currency, is indicated in rubles by converting the value of the received digital currency, expressed in foreign currency, into rubles at the Bank of Russia exchange rate set on the date of receipt of income. (Note 2 of Section 1 of Decree No. 460). In the case of indicating income from the sale of a digital financial asset, digital rights and digital currency, the date of alienation, information about the operator of the information system (investment platform) and the type of digital currency are additionally indicated (Note 3 of Section 1 of Decree No. 460).

*Cryptocurrency.* Currently, cryptocurrency is actively used in Russia, including to circumvent economic sanctions imposed on Russia and its citizens by other countries. [146]The issue of recognizing the circulation of cryptocurrency in Russia as legal has already been practically resolved.[147]

The main difference between cryptocurrency and digital financial assets is that a digital financial asset certifies an obligation precisely defined by the issuer, who is always known, while the issuer of cryptocurrency does not have any obligation. Digital financial assets are issued and circulated only on platforms recognized by the Bank of Russia, and for the issue and circulation of cryptocurrency, no appeal to any public institution is required.

The private-law nature of cryptocurrency emission and the impossibility of effective control over its circulation by public institutions raise great concerns in Russia. Nevertheless, with certain reservations, the existence of cryptocurrency and the possibility of its use on a very limited scale are recognized as acceptable in the Russian legal field.

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[146]Bure Alexander Christian. Is it possible to bypass sanctions using cryptocurrency. And what opportunities does Russia have in settlements with partner countries in modern geopolitical conditions? // Delovoy Peterburg: [website]. March 02, 2024. URL: https://www.dp.ru/a/2024/03/02/kriptovaljuti-pomogut-rossii (date accessed: 15.05.2024).

[147]Bill No. 237585-8 "On Amendments to Certain Legislative Acts of the Russian Federation (in terms of regulating digital currency)". URL: https://sozd.duma.gov.ru/bill/237585-8 (date accessed: 03.08.2024).

According to the Chairman of the Central Bank of Russia E. S. Nabiullina, the Bank of Russia allows the use of cryptocurrency in external settlements as an experiment. And then she clarified: "We adhere to the same position that cryptocurrency... should not be used within the country, and for external settlements we assume that this is possible as an experiment, this bill is also being prepared as an experimental legal regime." E. S. Nabiullina proposed creating organizations empowered to mine and make settlements with entities engaged in foreign economic activity: "By the way, this applies not only to cryptocurrency, which operates in global systems, but also to normal digital financial assets, which, according to our law, can circulate. It is supposed to work out the use of digital financial assets for international settlements."[148]

E.S. Nabiullina does not answer the question about the possibility of inheriting cryptocurrency in the Russian legal order. However, if the head of the main body that regulates the entire financial system of Russia [149]allows the acquisition of cryptocurrency and its use in foreign economic activity, then the admissibility of inheriting cryptocurrency also seems quite logical. The transfer to the heirs of cryptocurrency legally acquired by the testator, for example, to pay for the purchase of a car outside the Russian Federation, cannot cause any reasonable objections.

In scientific literature, the possibility of inheriting cryptocurrency in Russia is resolved in different ways. Some authors believe that the inheritance of cryptocurrency "... is not possible from a legal point of view, since it is impossible to reliably establish the ownership of this digital asset by the testator", due to the very nature of cryptocurrency, its transfer by inheritance is impossible. And then they immediately deny their thesis with the reservation that if the ownership of the cryptocurrency by the testator is proven, its inheritance is possible. [150] For example, if the heir was given the keys (password, login), with which he can manage the cryptocurrency. [151] The legality of

[148]The Central Bank has allowed the use of cryptocurrency in external settlements as an experiment. / E. Nabiullina. // TASS: [website]. April 17, 2023. URL: https://tass.ru/ekonomika/17542637 (date accessed: 01.04.2024).
[149]Art. 1-3 of the Federal Law of July 10, 2002 No. 86-FZ (as amended on April 23, 2024) "On the Central Bank of the Russian Federation (Bank of Russia)" - Access from the reference and legal system "ConsultantPlus" (date of access: 05/31/2024).
[150]Morozova I. G. Issues of inheritance of digital currency in light of changes in current legislation // Inheritance law. 2023. No. 4. 33-36 p.
[151]Ochirova P. I., Stepanenko A. S. Inheritance of cryptocurrency: features and problems // Humanities, socio-economic and social sciences. 2022. No. 10. 198–199 p.

transferring access to the cryptocurrency to the heir is questioned by those authors who absolutize user agreements and closely link the possibility of bequeathing cryptocurrency to their heirs with its terms. [152] But in any case, cryptocurrency has economic value and is of a monetary nature, which makes it an object of interest to the heirs of its owner. [153]

In our opinion, from a "legal point of view," cryptocurrency can be inherited, otherwise, with the same success, one can deny the possibility of inheritance, for example, of cash, if their ownership by the testator is not proven, that is, there is no question here about the possibility of inheritance of cryptocurrency as such, as an object of civil law, therefore, the issue of including an asset in the inheritance should not be confused with the issue of proof of its ownership by the testator.

**General conclusion.**

The general conditions of the socio-economic development of the Republic of Kazakhstan and the Russian Federation, including in terms of scientific and technological progress, have led to similar problems of legal regulation of the circulation of digital assets in our countries: [154]

- legal regulation is not distinguished by clear wording;
- the norms of laws may contradict each other;
- law enforcement practice has not been formed, and in relation to the inheritance of some digital assets it is practically non-existent;
- digital assets located on social networks and trading platforms have almost completely fallen out of the legislator's attention;
- legal science cannot yet offer well-founded solutions to law enforcement officials, in particular notaries.

In conclusion, it should be noted that in the relatively short period of existence of digital assets (7-8 years) in our countries, the legislator introduced the concept of "digital rights" or "digital assets" into civil law regulation, paying attention primarily to digital

[152]Ibid.
[153]Mkhitaryan L. Yu. Development of the Institute of Inheritance in Russia: on the Issue of the Need to Include Digital Assets in the Inheritance Estate. 283-287 p.
[154] Zhanabilova A. B. Legal regulation of digital assets turnover and the possibility of their inheritance in Kazakhstan and Russia. 42 p.

financial assets as the most promising tool for economic development. Such a policy is justified from the point of view of macroeconomics, but the needs of ordinary citizens who want to pass on digital assets to their heirs should not remain in the shadows.

De lege ferenda taking into account the specifics of notarial activity, which is carried out within the framework of undisputed jurisdiction, it is advisable to include in the law (for example, in the Civil Code) a general rule on the possibility of inheriting digital assets. Although the courts, even without a special indication in the law, based on the general principles of civil law, can include digital assets in the estate of the deceased.

# Chapter 3. Features of account inheritance

Given the obvious gap in the legislation, all interested parties have a need to regulate the relations that develop regarding digital assets with a universal civil law instrument – a contract. We will consider how successful this approach turned out to be in this chapter.

Taking into account the volume of empirical material, this chapter is based on the analysis of the legal regime of accounts (accounts, personal profiles, personal accounts) in the Russian legal field.

## § 1. Accounting records and related legal phenomena: general characteristics

In scientific and practical literature and legal commentaries on the issue of the possibility of inheriting accounts (accounts, personal profiles, personal accounts) and their contents, researchers almost unanimously recognize the priority of user agreements and allow inheritance only on their terms. [155]Authors do not often question the legality of the terms of the user agreement that prevent or completely deprive the user's heirs of the right to the account (profile, account) that belonged to him and its contents, or establish special rules for their receipt by the heirs. [156]At the same time, an analysis of the content of user agreements from the point of view of the current law was not carried out. Such conclusions were usually limited to stating the fact that the agreements either prohibit the transfer of user rights to his heirs, [157]or propose to interpret the lack of mention of the possibility of inheritance as a silent ban, [158]or a reference to the actual impossibility of finding out about the presence of an account on a certain platform or the technical impossibility of logging into it.[159]

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[155]Gapanovich A. V. On the Issue of Inheritance of Virtual Property in Social Networks. P.40-43; Kirillova E. A. Main Problems of Inheritance of Digital Assets. P.37–39; Panarina M. M. Inheritance of an Account in Social Networks and Issues of Digital Inheritance: Legal Research. 27–28 p.

[156]Grin E. S. Inheritance of accounts in social networks: Russian and foreign experience. P. 134; Baidaeva V. O. Digital assets as objects of hereditary succession in the modern world: issues and solutions. 2-3 p.

[157]Yatsenko T.S. Problems of execution of a will in relation to the digital assets of the testator. P.31-34.

[158]Sannikova L. V., Kharitonova Yu. S. Digital assets: legal analysis. monograph. 29-30 p.

[159]Volos A. A. Digitalization of society and objects of hereditary succession. 60-65 p.

But to what extent is it permissible for a user agreement to regulate the inheritance of individual civil rights objects and the succession procedure itself in the event of the user's death? In particular, should the silence about the possibility of inheriting an account be interpreted as a ban on its transfer to the heirs?

To eliminate doubts and contradictions on this issue, it is necessary to analyze the content of user agreements of the most famous social networks, as well as the rules for using the most famous Internet platforms in Russia where goods and services are purchased, such as Ozon, Wildberries, Avito, Yandex Market.[160]

When studying user agreements of social networks and rules for using Internet platforms, you should focus on the following aspects:

1) the type of agreement concluded between the Internet platform and the user;

2) the possibility of user individualization;

3) the rights and obligations of the user and the Internet platform;

4) the ability of the user to create and/or place electronic digital assets belonging to him on the company's Internet platform, including received bonuses;

5) the technical and legal possibility of succession in relations between the Internet platform and the user, including in the event of the death of the latter.

Let's look at the user agreements, sometimes called "license agreements", of the most frequently used social networks in Russia (percentage of the total number of social network users): VKontakte **(**VK) 75.3%, WhatsApp 71.5%, Telegram 64.4%, Odnoklassniki 43.5%, TikTok 42.6%.**[161]**

***VKontakte (VK).***

1) The Site Administration, with which the user enters into a user agreement, directly calls its offer a "public offer" (Article 437 of the Civil Code of the Russian Federation). [162]The terms of the agreement "...may be changed and/or supplemented by the Site Administration unilaterally with notification within 3 (three) business days from

[160] Digital 2023: Internet and social media audience statistics in Russia. // PR.STUDENT: [website]. February 16, 2023. URL: https://www.prstudent.ru/research/digital-2023-statistika-auditorii-interneta-i-socsetej-v-rossii (accessed: 20.05.2024).

[161]Ibid.

[162]Rules for using the VKontakte website. // VKontakte: [website]. April 8, 2024. *URL*: https://vk.com/terms (accessed: 05/20/2024). All user agreements analyzed in this chapter are public contracts.

the date of making the changes and/or additions" (clause 2.4 of the Rules for Using the VKontakte Site). The user agreement is concluded by registering and/or authorizing the user on the site via VK ID (clause 5.1 of the Rules for Using the VKontakte Site).[163]

2) It is possible to identify the user-testator, since when registering on the site, he is obliged to provide its administration with the necessary reliable and up-to-date information to create his personal page, including indicating his last name and first name (clause 5.3 of the Rules for Using the VKontakte Site). The rules directly prohibit misleading other users about his identity by using the login and password of another registered user (clause 6.3.2 of the Rules for Using the VKontakte Site).

In accordance with paragraph 5.9 of the "Rules for Using the VKontakte Site", the user's login and password are "...necessary and sufficient information for the User to access the Site". The User does not have the right to transfer their login and password to third parties, but at the same time bears full responsibility for their safety, independently choosing the method of storing them. No sanctions for transferring the login and password to another person are established in the rules. For the site, such a form of user responsibility as the imposition on him of all negative consequences of using the account belonging to him, both with the consent of the user himself or against his will, is sufficient.

The user can allow the storage of the login and password for subsequent automatic authorization on the Site on the hardware and software used by him (clause 5.9 of the Rules for Using the VKontakte Site). That is, anyone and everyone who knows the login and password or has access to the hardware and software (computer) of the deceased user can access his data, copy them or dispose of them in any technically accessible way. The user is legitimized only with the help of the login and password, without establishing his identity.

Therefore, any actions performed using the correct login and password are considered to be performed by the user. Otherwise, i.e. unauthorized access, must be proven by the user himself (clause 5.10 of the Rules for Using the VKontakte Site).

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[163]VK services. It stores user data: personal data (user profile), maps, subscriptions.

3) The subject of the agreement is the provision by the site administration to the user of access to use the site and its functions (clause 2.2 of the Rules for Using the VKontakte Site).

The rules define the rights of the user: "…the right to independently create, use and determine the content of one's own personal page and the conditions for access of other Users to its content for personal purposes, and also receives the ability to access and post information on the personal pages of other Users…", "…the use of VKontakte social widgets[164] on third-party sites without additional authorization" (clause 5.11 of the Rules for Using the VKontakte Website).

4) The rights to content created independently by the user, i.e. without the direct participation of the site administration, belong to the user. These may be literary, musical, audiovisual works and phonograms, graphic and design works, photographic works, computer programs. At the same time, the rules specifically emphasize that the list of these objects is open and approximate (clause 3.2 of the Rules for Using the VKontakte Site).

The user has the right to make backup copies of the information stored on his personal page (clause 6.1 of the Rules for Using the VKontakte Website). All content referred to in the rules as "information" may be transferred by the user from his VKontakte account to other media and freely alienated, including inherited.

During his lifetime, the User may freely dispose of his personal page and content, for example, delete his personal page, all content or any element thereof. In any case, after deleting the personal page, the User and any other persons lose access to the VKontakte website. Deleting the User's personal page entails "... deleting all information posted on it, as well as all User information entered during registration on the Website" (clause 8.7 of the Rules for Using the VKontakte Website).

5) In the event of a user's death, VKontakte has established special rules that do not provide for the transfer of the deceased user's profile to his legal successors or the ability to gain access to the profile's content.

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[164]Widget – small elements of the interface (visible page of the site): weather icons, exchange rates, calendar, clock, etc., by activating them you can quickly get the necessary information.

Any interested party can either delete the profile of the deceased or restrict access to the profile, leaving it on the platform as a memory. To do this, you must provide the necessary documents, the main one being the death certificate of the account owner. If you decide to leave the profile as a memory, you can only remove access to the profile, or remove access and simultaneously close the profile from external influence (friends will still be able to view the materials). You can also close the profile from external influence at any time later by contacting Support. If the profile remains on the platform as a memory, it will be marked as "Page of a deceased person". The VKontakte administration specifically emphasizes: "... we do not provide access to the accounts of the deceased."[165]

***WhatsApp.***

1) Legal relations with WhatsApp arises as a result of the user accepting all its terms of service and performing the actions prescribed by the rules. The user cannot change the terms of the contract, while WhatsApp can change them at its sole discretion without prior notice. The user either fully accepts all changes or must stop using WhatsApp services.

2) When registering on the WhatsApp platform, the user is required to provide accurate and reliable information, a mobile phone number, which makes the degree of subsequent identification of the testator as a WhatsApp user quite high.

3) The main purpose of the platform is to provide communication between users through written messages, audio and video calls, sending images and videos. Users can use the platform to send and receive money from other users.[166]

WhatsApp Administrator has the right to disconnect a user from its services at any time without giving a reason. If the user's account is inactive for a long time, it can also be deleted by the WhatsApp administrator. An inactive WhatsApp account is deleted if the user has not connected to WhatsApp for more than 120 days. If the account content was saved on the user's device before the account was deleted, it will remain on it until

[165]How to close the profile of a person who is no longer alive? // VKontakte: [site]. URL: https://vk.com/support?act=faqs&c=11&from=all (date accessed: 26.05.2024).
[166]WhatsApp Terms of Service. // WhatsApp: [website]. January 4, 2021. URL: https://www.whatsapp.com/legal/terms-of-service?lang=ru_RU#terms-of-service-our-services (accessed: 26.05.2024).

WhatsApp is deleted from the device by the user. When the user registers for WhatsApp again on the same device, the content saved on it will be displayed again.[167]

WhatsApp may assign all of its rights and obligations under the Agreement to its successors and third parties. While the user may not transfer their rights or obligations to other persons without the prior written consent of WhatsApp. Third parties, except as expressly provided in the terms of the Agreement, have no rights to the user's account and its contents.

4) The account contains information about the user, third parties with whom the user communicated, transactions and payments. But the messages themselves are stored only on the user's device.[168] If WhatsApp is not deleted from the device, the heirs can get the information they need without the platform's participation.

5) Due to the technical features of storing information about the user and the content of his account, the need to access the WhatsApp platform after his death seems unlikely.

***Telegram***

1) The user enters into an agreement with Telegram by registering on its Internet platform. Telegram may unilaterally make changes and additions to the agreement without the consent of users. The user either agrees to the changes and continues to use the Internet platform taking them into account, or refuses the agreement and stops using Telegram services (clause 11 of the Telegram Privacy Policy).[169]

2) When creating an account, a Telegram user provides the service with a phone number and basic account information (for example, name, profile photo, and brief information about the user) (clause 3.1 of the Telegram Privacy Policy). But it will be easier to establish that the profile belongs to the deceased if he or she uses additional protection of his or her account during his or her lifetime using two-step authentication, the essence of which is that in order to access his or her account, in addition to entering a

[167]Deleting inactive accounts. // WhatsApp : [site]. URL: https://faq.whatsapp.com/828406668498455/?helpref=uf_share (accessed: 26.05.2024).
[168]WhatsApp Privacy Policy. // WhatsApp : [website]. January 04, 2021. URL: https://www.whatsapp.com/legal/privacy-policy?eea=0#privacy-policy-key-updates (accessed: May 26, 2024).
[169]Telegram Privacy Policy. //Telegram: [site]. July 8, 2023. URL: https://telegram.org/privacy/ru (accessed: 05/26/2024).

login and password, the user is also required to enter a special code sent to his or her phone number or email. Telegram rules allow you to specify an email address not only for two-step authentication, but also for password recovery (clause 3.2 of the Telegram Privacy Policy ), which will allow the heirs to prove that the account belongs to the deceased by providing his or her email address or phone number. In fact, having access to the testator's email address and knowing his or her login, you can request a password by email and gain access to all content.

3) The Telegram electronic service is designed for communication between users. It contains cloud storage with unlimited volume, provides the ability to download files up to 2 GB, use audio and video calls, group chats for up to 200,000 participants, support for working on several devices simultaneously, etc.

As a general rule, using Telegram services is free, but additional paid services may be provided that expand the user's capabilities.[170]

4) Telegram has a cloud service where messages, photos, videos and documents from *the user's cloud chats are stored on servers so* that the user can access their data from any electronic device (clause 3.3.1 of the Telegram Privacy Policy). As we can see, the cloud service contains objects that have property and non-property value for the user and his heirs.

5) Of course, if these are secret chats, then technically access to them by third parties, including the Telegram administrator, is impossible. Access is carried out from the user's technical device using an encrypted key, which only the user and his addressee have (3.3.2 Telegram Privacy Policy). The user's files in secret chats, such as photos, videos and other files, for all those who do not have the key, look like "... a meaningless set of symbols that cannot be deciphered" (clause 3.3.3 Telegram Privacy Policy).

***Classmates.***

1) To work in the social network "Odnoklassniki", the user must enter into an agreement called the "License Agreement". This name of the agreement is explained by the fact that the owners of the social network consider the network and its services as a

[170]Telegram User Agreement. // Telegram: [site]. URL: https://telegram.org/tos/ru (accessed: 26.05.2024).

result of intellectual activity and build legal relations with users according to the model of providing a simple non-exclusive license (clause 3.1 of the License Agreement). [171]

The agreement with the network administrator is concluded by joining the agreement common to all persons without the possibility of changing its individual conditions at the will of the user. The agreement provides a direct reference to Articles 435 and 438 of the Civil Code of the Russian Federation - the user's performance of any actions in the network with the creation of an account or using the network without registration means his acceptance of the network offer (clause 2.2 of the License Agreement).

2) When registering an account, the network user must indicate his/her last name, first name, gender, date of birth and other information that allows him/her to be accurately identified. To independently log into the account, the user creates a login and password. All risks associated with the loss of the login and password are borne by the user (clause 5.1 of the License Agreement).

Based on the purpose of the Odnoklassniki platform, the following licensee data is available to all Internet users: last name, first name, date of birth, profile photo, city of birth, city of residence, number of persons referred to as “friends”, photos, groups, games, notes, videos and gifts (clause 4.7 of the Privacy Policy).[172]

An account (account) allows you to work online and identify the user, but any person who has logged into the account using his login and password can be identified as a user (clause 1.8, 5.6-5.7 of the License Agreement).

It is quite easy to establish the identity of an account user on a social network without the help of its administrator, since his profile is available to anyone logged into the network (clause 5.3 of the License Agreement).

3) The website provides licensees with the opportunity to communicate with each other. Its main purpose is to restore and maintain communication between people. A simple non-exclusive license grants the licensee the right to use the results of intellectual

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[171]License agreement. //ODNOKLASSNIKI.RU: [site]. January 1, 2013. URL: http://www.odnoklassniki.ru/res/default/docs/odkl/agreement13_4.html (date accessed: 05/29/2024).

[172]Privacy Policy. //ODNOKLASSNIKI.RU: [site]. URL : https://ok.ru/res/privacypolicyRu.html (date accessed: 05/29/2024).

activity or means of individualization while the licensor retains the right to issue licenses to other persons (simple (non-exclusive) license) (clause 1, clause 1, article 1256 of the Civil Code of the Russian Federation). These include data and commands of the social network (clause 3 of the License Agreement). Thus, the owner of the network (licensor) can provide opportunities for participation in the social network to an unlimited number of persons.[173]

The licensor, attracting users, makes a profit by placing advertisements on the network, and the greater the number of users, the more interest the network presents to advertisers. The licensee is interested in using the social network as an electronic platform for communication. Hence the corresponding rights and obligations of the parties to the agreement.

The social network provides the licensee with the technical ability to create their own personal pages, exchange messages with other users, create groups and communities and join existing groups and communities, post, copy and download photographs and other content to their personal computer (clause 1.1 of the License Agreement).[174]

The licensee undertakes to comply with all terms of the agreement (clause 7.2.1 of the License Agreement), and from the moment of registration in the social network and creation of an account, to indicate accurate information about himself (clause 7.2.2 of the License Agreement).

The licensee is prohibited from transferring the rights granted to him to use the network and its additional functions to other licensees or "...third parties by concluding a sublicense agreement or in some other way" (clause 4.2.4 of the License Agreement), which may be regarded as an obstacle to the transfer to the heirs of the account and the provision of access to its content and profile. But at the same time, from the purpose of the social network itself - the social network is intended for communication and messaging, it follows that various content objects are constantly transferred to other

[173]In 2022, 67.9% of Russians were registered with Odnoklassniki, see: Sokolova A. Audience of the eight largest social networks in Russia in 2023: research and figures. // ppc.world: [site]. May 16, 2023. URL: https://ppc.world/articles/auditoriya-vosmi-krupneyshih-socsetey-v-rossii-issledovaniya-i-cifry/#ok (accessed: 05/29/2024).
[174]License agreement. //ODNOKLASSNIKI.RU: [site]. January 1, 2013. URL: http://www.odnoklassniki.ru/res/default/docs/odkl/agreement13_4.html (date accessed: 05/29/2024).

persons, the content is replenished and updated both as a result of the independent activity of the user and as a result of the transfer of individual objects by other users.

It is necessary to pay attention to the unequal position of the owner of the social network and the user with a clear bias in favor of the network. For example, unless otherwise "...is expressly indicated by the Licensee when posting the Content, the Licensee, by posting Content on the Social Network, grants the Licensor, its partners and all other Licensees, on the terms of a gratuitous, non-exclusive license, the right to use this Content for the entire term of the exclusive right to the relevant Content throughout the world by any means, including, but not limited to, making it available to the public, viewing, reproducing, translating and processing" (clause 5.10, 5.14 of the License Agreement).

The licensor may unilaterally change or supplement any rules for using the social network. The licensor's failure to fulfill its obligations to provide the licensee with the opportunity to use the social network (clause 6.6.1 of the License Agreement) shall not entail any consequences for it.

If we assume that the licensor performs a purely technical function, ensuring the possibility of interaction between users without interfering with the interaction process itself and the content of the transmitted information, graphic images and other materials (clause 6.2 of the License Agreement), the question naturally arises: why does the licensor assume the authority to manage the account, user profile and their content in the event of the death of the licensee?

We observe similar distortions in relation to the licensor's right "... to delete the Licensee's Account at its own discretion, including in the event that the Licensee commits actions that violate the legislation of the Russian Federation or the provisions of this Agreement" (clause 6.4.5 of the License Agreement). Of course, the latter case does not raise objections, but the general disposition of the rules boils down to the fact that the licensor has an unlimited right to dispose of the account and its content. At any time, even without prior warning to the user, which would allow him to save the account content on another medium, the licensor may destroy objects that have significant property and personal non-property value for the user.

4) The user can post and process information in his account – create content (clause 4.1.1 of the License Agreement), spending his labor to create its content.

The content of the website, including the licensee's account, is defined as "… design elements, illustrations, graphic images, photographs, scripts, texts, videos, music, sounds and other objects posted on the Social Network, whether or not being the result of intellectual activity, the rights to which belong to the Licensor, Licensees or other persons" (clause 1.4 of the License Agreement).

A personal page (account) is "…a section of the Social Network containing part of the information posted in the Licensee's Account (including, at the Licensee's request, photographs of the Licensee, information about friends, statuses, groups, communities, etc.), available for review by other Licensees" (clause 1.7 of the License Agreement).

The user independently creates the content of his account, personal page or other elements of the social network, uses all technical capabilities provided by the network, for example: adds photos and other materials. (clause 5.4 of the License Agreement), posts information about himself in his account, adds statuses, rates and comments on photos and statuses of other users (clause 7.1.2 of the License Agreement), creates new communities, groups and joins existing ones, uses the functions of the social network and applications (clause 7.1.4 of the License Agreement), sends and receives personal messages, adds messages on the forum (clause 7.1.5 of the License Agreement).

The account content may also include personal electronic messages exchanged between network users. These messages are not accessible to other network users (clause 1.9 of the License Agreement).

5) Technically, the licensor may at any time restore access to the licensee's account for any person who has performed the actions specified in the instructions ( clause 5.10 of the License Agreement).

In the event of the death of the licensee, relatives can contact the site administration with a request to delete the page (account) of the deceased or install a mourning frame on his avatar - the photo becomes black and white and a black ribbon appears, "... closing the profile from all users of the site, except for friends. " A link to the page of the deceased and a death certificate should be attached to the application. The profile of the deceased

will be closed and accessible only to friends. [175]As of April 2021, about 13% of those who applied with such a request chose to leave the profile with a mourning ribbon, the remaining 87% asked to delete the profile.[176]

But the questions remain open: how can we determine whether a relative of the deceased has contacted the support service? What kind of relative is this - an heir called to inheritance, or any other relative? Can an heir under a will, not related to the deceased by kinship, or an executor contact?

***TikTok***

1) The User Agreement with TikTok is concluded from the moment the user gains access to or uses the social network services. The Agreement is accepted in full and unconditionally. The network, at its own discretion, may unilaterally change and supplement the terms of the agreement without the consent of the user, who, in case of disagreement with the new terms, may refuse to use the network (clause 3 of the User Agreement).[177]

2) To access or use individual platform services, the user must create an account, providing the TikTok network with accurate and up-to-date information about themselves. The user logs into their account using a unique password and is solely responsible to the network and third parties for actions that occur under the user's account name (clause 4 of the User Agreement).

3) The user has the right to use the services and functions of the network in accordance with the user agreement. TikTok undertakes to provide the user with its platform, websites, services, applications, products and content (clause 1 of the User Agreement).

4) Users can upload, publish or transmit, for example, via streaming services (streaming service) – live streaming or otherwise making available your content, which may include text, photos, user videos, audio recordings and musical works used therein,

[175]The man passed away. // ODNOKLASSNIKI.RU: [website]. URL: https://m.ok.ru/help/chelovek-ushel-iz-jizni?__dp=y (date accessed: 05/29/2024).
[176]Bunina, V. Digital will: who gets the accounts after the owner's death // Gazeta.Ru: [website]. April 18, 2021. URL: https://www.gazeta.ru/tech/2021/04/18/13561352/digital_will.shtml (accessed: May 29, 2024).
[177]User Agreement. // TikTok: [site]. November 2021. URL: https://www.tiktok.com/legal/page/row/terms-of-service/ru (accessed: 05/29/2024).

including videos that include locally stored audio recordings from your personal music library and other sounds. “Users of the services may also extract all or any part of the User Content made by another user to create other User Content, including joint User Content with other users, which combines and may diversify User Content created by more than one user,” and may also superimpose music, graphics, stickers, virtual items and other elements provided by the TikTok platform on this content and transmit their works using the TikTok services (clause 7 of the User Agreement).

5) The User Agreement and other TikTok documents do not regulate the fate of a user's content in the event of his death.

Other social networks worth mentioning are: very popular in Russia Twitter and Instagram*.

Until November 2019**,** Twitter simply deleted the accounts of deceased users, but then admitted that this policy was unsuccessful and now deletes the pages of the deceased only at the request of relatives who have provided copies of the user's ID and death certificate. [178]But even if the deceased's account is preserved, access to it will not be granted.[179]

Instagram* allows either deleting the page of the deceased or assigning it a memorial status. In the latter case, no one will have access to the content of the page, and the page of the deceased will be marked with a memorial sign. [180]The deceased's relatives have the right to dispose of the page by presenting documents confirming the death of the user, for example, an obituary in the media or a copy of the death certificate, as well as documents confirming the authority of the persons who submitted the application.[181]

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* Meta Platforms Inc is recognized as an extremist organization in the Russian Federation and its activities are prohibited (including in relation to the Instagram social network product)

[178] Twitter to save accounts of deceased people. // RBC website. December 18, 2020. URL: https://www.rbc.ru/society/18/12/2020/5fdc38649a7947d92daf4044 (date accessed: 29.05.2024);
Osina M. What to do with a social media account if a person has died? // aif.ru: [website]. August 15, 2019. URL: https://aif.ru/society/web/chto_delat_s_akkauntom_v_socsetyah_esli_chelovek_umer (accessed: 05/29/2024).

[179]Social network Twitter will mark bots and protect accounts of deceased people. // NTV. Ru : [website]. December 18, 2020. URL: https://www.ntv.ru/novosti/2492943/ (date accessed: 05/29/2024).

[180]Yashina V. Likes by inheritance: how to bequeath an Internet account. // Pravo.ru: [website]. April 19, 2023. URL: https://pravo.ru/story/245138/ (date accessed: 05/29/2024).

[181]Osina M. What to do with a social media account if a person has died?

***Ozon.***

1) The user agreement is concluded by the user placing an order on the Ozon platform. Ozon's offer to buy or sell goods on its platform is a public offer (adhesion agreement), the user cannot agree on any individual conditions with the platform. [182]

2) Individualization (verification) of the user is defined by Ozon as "... a procedure that allows establishing the reality and belonging of a certain telephone number to a specific individual, as a result of which the User is assigned a specific ID." [183] To do this, the user creates a personal account, "... linked to a verified telephone number, and is also given the opportunity to log in to the Personal Account." Personal Account This "…a personal (individual), internal page of a registered user (client, participant) on the Site, intended for their use of the functionality of the Ozon electronic trading platform."

3) The Ozon Internet resource is a trading platform that provides opportunities for buyers and sellers to make various types of transactions for the purchase of goods and services. Ozon provides its services for the implementation of the above-mentioned activities, the user undertakes to comply with the terms of use of the Ozon platform.

4) The contents of the personal account include information about purchases or future orders of goods (delivery of already paid goods may take a long time - a month or more), as well as points that the client accumulates when making purchases on the Ozon electronic platform. Points are a virtual conventional unit that affects the price of the goods purchased on Ozon, have no cash value and do not provide the right to receive their monetary equivalent. All client points are accumulated on his points account, accessible from the client 's personal account (clause 1.2. Rules for using points on ozon.ru).[184]

The same applies to another type of customer incentive – Ozon miles, which can be used to pay for only certain types of goods and services received on the Ozon platform: airline tickets from Ozon partner companies, train tickets, hotels. The miles can be used for 180 days from the moment they are credited to the user's account.[185]

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[182]Terms of Sale of Goods to Individuals. // Ozon: [site]. URL: https:// docs. ozon. ru / common / pravila - prodayoi - i - rekvizity / usloviya - prodayoi - tovarov - dlya - fizicheskih - lits - v - ozon - ru /? country = RU (date of access: 29.05.2024).
[183] Yes name, identifier.
[184]Rules for using points on ozon. ru. // Ozon: [site]. May 28, 2024. URL: https://docs.ozon.ru/common/pravila-prodayoi-i-rekvizity/pravila-ispol-zovaniya-ballov-na-ozon-ru/?country=RU (date of access: 05/29/2024).
[185]Ozon Miles Program Rules. // Ozon: [website]. April 12, 2024. URL: https://docs.ozon.ru/legal/terms-of-use/ozon-travel/miles-programme/ (accessed: May 29, 2024).

Ozon can cancel points only if the user's actions constitute an abuse of rights (Article 10 of the Civil Code of the Russian Federation), "...or in the event of detection of illegality in obtaining Points as a result of fraudulent or other illegal actions on the part of the Client" (clause 3.1. Rules for using points on ozon.ru).

As we can see, only the user's misconduct leads to the loss of accumulated points. From the logical interpretation of the terms of the agreement with Ozon, under which he loses his bonuses (points, miles), it follows that the death of the client does not apply to such circumstances.

Of interest to the heir of the Ozon product user, the Ozon gift certificate should be noted.

In accordance with the "Terms of Purchase and Use of a Gift Certificate", a certificate is "...an alphanumeric code sent to the Purchaser in electronic form (an electronic Gift Certificate) or placed under the protective layer of a plastic card (a Gift Certificate on a tangible medium, a Replenishable Gift Certificate on a tangible medium), certifying the Holder's property right to purchase the Goods on the Website, as well as Ozon's counter obligation to accept the Certificate from the Holder in payment for the cost of the Goods..., in the amount of its face value indicated on the Certificate." [186]

In connection with the subject of our research, we will consider the possibility of inheriting a certificate only in the form of an alphanumeric code.

Activation certificate, i.e. the conclusion of an agreement on the use of the certificate, occurs through the certificate holder performing "... actions to enter the alphanumeric code of the Gift Certificate into the special activation field "Code words and certificates" on the Site, after which the funds are credited to the Balance of funds."[187]

The holder has a personal account (funds balance) on the Ozon website, which displays the funds received as an advance payment for subsequent payment for goods on the website. To purchase a gift certificate, an individual must be verified, i.e. their identity must be accurately established and registered on the Ozon website (clause 1.1 of the

[186]Terms of purchase and use of a Gift Certificate. // Ozon: [website]. URL: https://docs.ozon.ru/common/pravila-prodayoi-i-rekvizity/conditions-of-using-certificate/?country=RU (date accessed: 05/29/2024).
[187]Ibid.

Terms of Purchase and Use of a Gift Certificate). Ozon specifically draws the user's attention to the fact that a gift certificate "... is not a security, banknote, bank account, deposit, electronic means of payment or other financial product and confirms the Holder's right to purchase Goods within the face value of the Gift Certificate" (clause 2.1.3 of the Terms of Purchase and Use of a Gift Certificate), and that a gift certificate "... can be used by the Holder only for the purpose of purchasing Goods on the Website" (clause 2.1.4 of the Terms of Purchase and Use of a Gift Certificate). Payment for goods using a gift certificate is related to internal settlements on the Ozon electronic platform, therefore funds "... credited to the Balance of funds upon Activation of the Gift Certificate are not subject to transfer to the Balance of funds of other Accounts" (clause 2.1.8. of the Terms of Purchase and Use of the Gift Certificate). The validity period of the electronic Gift Certificate cannot be more than one year from the date of its payment (clause 2.5 of the Terms of Purchase and Use of the Gift Certificate). But even such a short period cannot lead to the loss of interest by the heirs in purchasing goods on Ozon at the expense of funds available on the balance of the testator.

In the event of unlawful seizure of the certificate by third parties, Ozon proposes to consider that it "…is bearer-based and does not require identification" (clause 4.2 of the Terms of Purchase and Use of the Gift Certificate).[188]

With this approach of Ozon, which proposes to consider any authorized person as the legal owner of the certificate even without identification, there are no obstacles to obtaining a certificate by way of universal succession as a result of the death of an Ozon user.

5) If the user loses access to the account, this does not entail the loss of its contents. Ozon Support Service not only has the technical ability to restore access to the account, but also assumes the responsibility for restoring access if the user confirms that he is the legal owner of the account. To do this, the user must fill out a questionnaire that contains questions verifying the user (clause 6.3.2 of the Ozon Terms of Use).[189]

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[188]Ibid.

[189]Ozon Terms of Use ID / Ozon ID Teams of Use. // Ozon : [site]. URL: https://docs.ozon.ru/legal/terms-of-use/site/ozon-id-terms/ (date of access: 05/29/2024).

In accordance with the terms of the agreement, the client "... undertakes not to disclose the login and password, phone number and individual codes to third parties (clause 1.1.2. of the Terms of Purchase and Use of the Gift Certificate). [190]However, failure to comply with this obligation does not entail termination of the user agreement, but releases Ozon from liability to the user for the illegal use of the content of his account by third parties.

As we can see, the user's identity is of no importance to Ozon. The contents of the user's personal account, including undelivered but already paid goods, and the user's point account, have property value and can be included in the estate. Verification can identify the user with a high degree of probability. Having information about the identity of the testator - the user, the heir can restore access to the account. The user agreement does not limit the transfer of the rights of the deceased account owner to the heir.

***Wildberries (online store)***

1) Any individual using the Wildberries trading platform in compliance with the established conditions becomes a party to the user agreement without the possibility of changing its terms.[191]

To this end, he should:

- create a personal account, "... a personal section of the Trading Platform that is not accessible to third parties and serves for the purpose of placing Orders and executing Services." Access to the personal account is provided by entering the user's authentication data;

- start using the Wildberries online store, which is considered acceptance of the public offer made by Wildberries.

2) When registering and further using the Internet platform, the buyer provides Wildberries with their data, including personal data, "... including, but not limited to: full name, telephone number, email address, address, gender, date of birth, information about body parameters (clothing size), details of electronic means of payment (number,

[190]Terms of Sale of Goods to Individuals. // Ozon: [site]. URL: https :// docs. ozon. ru / common / pravila - prodayoi - i - rekvizity / usloviya - prodayoi - tovarov - dlya - fizicheskih - lits - v - ozon - ru /? country = RU (date of access: 29.05.2024).
[191]User Agreement. // WB Guru: [site]. URL: https://guru.wildberries.ru/user-agreement (date of access: 05/29/2024).

expiration date, CVV/CVC code), etc." The list remains open (clause 3.2 of the Rules for using the trading platform). But even the listed data about the buyer allows us to accurately identify the person who owns the personal account.[192]

3) Wildberries is a typical online trading platform through which users purchase the goods they need. Their responsibility to the platform is to comply with the established rules for using Wildberries services.

4) The purchase of goods and services is carried out through the user's personal account (in the platform rules, he is called the "buyer"), which contains all the information about his purchases, bonuses and funds, "... which he can use at his own discretion by transferring them to the bank details specified by the Buyer or by paying for subsequent orders on the Trading Platform website in the amount of up to 100% of the cost of the goods" (clause 1 of the Rules for using the trading platform).

In accordance with paragraph 5.12.1 of the "Rules for Using the Trading Platform", the buyer has the right at "...to demand at any time the transfer of funds recorded in the Balance to his account in full or in part. Wildberries transfers funds recorded in the Balance within 10 days from the date of receipt of the Buyer's request."

The Wildberries online store has various bonus programs. For example, a program designed for individuals who sell goods (individual entrepreneurs and self-employed individuals). [193] For participating in a promotion (marketing event) that helps generate interest in Wildberries' services for promoting goods on its platform, participants in the promotion are awarded bonuses at the end of the marketing event (clause 1.1 of the Rules for the March 2024 promotion "Cashback for Promotion for Wildberries Partners"). Bonuses are technical conventional units credited to the bonus account in the seller's (program user's) advertising account to promote their goods and services (clause 1.2 of the Rules for the March 2024 promotion "Cashback for Promotion for Wildberries Partners"), i.e. part of Wildberries' services for promoting the seller's goods or services can be paid for with bonuses. One bonus is equal to 1 ruble, but it is not a means of

[192]Rules for using the trading platform. // Wildberries: [site]. URL: https://global.wildberries.ru/services/terms (date of access: 05/29/2024).
[193]Rules for using the trading platform. // Wildberries: [site]. URL: https://global.wildberries.ru/services/terms (date of access: 05/29/2024).

payment and cannot be used anywhere except on the Wildberries platform for the purposes specified in the rules of the promotion. Bonuses are accrued within a month after the end of the promotion and can be used by the seller within 45 calendar days from the date of their accrual (clause 4.1-4.4 of the Rules of the March 2024 promotion "Cashback for promotion for Wildberries partners").

A fairly short period (45 calendar days) and a special subject composition (individual entrepreneur or self-employed person) significantly limit the ability of heirs to use bonuses, but the rules of the promotion do not provide for any prohibitions on inheriting bonuses. If the heir has or acquires the status of an individual entrepreneur or self-employed person, then he cannot be denied the use of the testator's bonuses.

In any case, the heirs are interested in the funds, access to which is possible only in the testator’s personal account.

5) Wildberries has the technical capabilities to fully control the contents of the user's personal account and access to it - "...collection, recording, systematization, accumulation, storage, clarification (updating, modification), extraction, use, transfer (distribution, provision, access), depersonalization, blocking, deletion, destruction of the Buyer's registration data (including personal data)." (3.3 of the Rules for using the trading platform).

Transfer of the access code to the personal account to third parties is prohibited (3.5 of the Rules for using the trading platform). However, no sanctions are established for the user for non-compliance with this rule. He/she is only subject to all negative consequences in the event of transfer of the access code and personal account credentials to third parties (clause 3.6, 6.3.5 of the Rules for using the trading platform).

***Avito.***

1) The terms of the agreement with Avito are not subject to agreement with an individual user. In accordance with paragraph 2.1. of the "Offer to Conclude an Agreement with Avito", the offer "... is considered accepted by the user, and the Agreement between the Company and the user is concluded from the moment the user pays for Avito services under the relevant transaction (in this case, it is concluded

simultaneously with the conclusion of the Agreement) or from the moment an advance payment is made to pay for Avito services used in the future...".[194]

2) To use Avito services, you must create a personal profile (account). Any person who performs actions using the username and password is considered a profile user (clause 3.12. of the Offer to conclude an agreement with Avito). Although the company, in order to identify private users, may request "… the full name, details and copies of identity documents, email address and phone number of the user used to access the profile" (clause 3.11. of the Offer to conclude an agreement with Avito

3) How the online trading platform Avito sets the typical conditions of this type of agreement - the user complies with Avito's rules, and the latter provides him with the opportunity to purchase the goods and services he needs.

4) The user account contains information about his purchases, bonuses, etc. The user's wallet is linked to it, to which the user's funds and bonuses received for participating in Avito's incentive programs are received and recorded.

I would especially like to note the bonus programs of Avito. Of interest to the heirs may be additional bonuses received by the testator within the framework of certain bonus programs. The bonus is equal to 1 ruble, the term of use is 60 days from the moment of crediting to the wallet in the user profile, and can only be used to pay for Avito services: posting or promoting ads on Avito, Avito delivery to pick-up points or postamats (device for automatic delivery of orders). [195]And in this case, the rules do not contain any restrictions on the transfer of bonuses to the heirs.

One of the types of Avito bonuses are miles accrued to a participant in the Aeroflot Miles program, where miles are acquired by purchasing airline tickets from Aeroflot. The Aeroflot Miles program allows and even encourages the transfer of accumulated miles to another participant in the program. Any individual who has created a personal account on the Aeroflot platform and registered in the Aeroflot Bonus program at least 90 days before the date of mileage transfer can become a participant in the program (clause 4.11 of the

[194]Offer to conclude an agreement with Avito. // Avito: [website]. URL: https://www.avito.ru/legal/rules/services-agreement (date accessed: 05/29/2024).
[195]Rules of the promotion "Bonuses for purchases with Avito Delivery". // Avito: [website]. URL: https://www.avito.ru/legal/promo/bonuses-delivery-buyer (date of access: 05/29/2024).

Aeroflot Bonus Program Rules). The company is interested in charging a commission for the transfer of miles. [196] In order to prevent the transfer of miles in other ways, the rules specifically state that the participant's account and accumulated miles "... cannot be transferred to other persons, transferred, combined with the accounts and Miles of other Participants of the Aeroflot Bonus Program or Participants of other Passenger Incentive Programs, except in cases where the Participant is provided with the "Mileage Transfer" service in accordance with clause 4.11." It also specifies that "...the program participant's account and miles cannot be bequeathed, inherited, bought or sold (3.1.2 of the Aeroflot Bonus Program Rules). It is interesting that the list is closed, therefore, miles can be gifted, provided as compensation, etc. This is confirmed by Aeroflot's direct appeal to bonus holders - "Give miles to your loved ones."[197]

How legal is such a restriction if miles are freely transferable to any other person during the lifetime of their owner?

Transfer of miles, at least as it is presented in the rules of paragraph 4.11, is an abstract disposal transaction, divorced from its causa. The rules do not establish any special consequences in case of violation of the above condition. In addition, from a technical point of view, bonuses can only be transferred from one account to another opened on the Aeroflot platform. Only the owner of such an account can use the bonuses. Let us assume that two owners of such accounts have entered into an agreement for the purchase and sale of Aeroflot bonuses and, in fulfillment of the agreement, one of them transferred bonuses to the other in accordance with the rules of paragraph 4.11. Will such a transaction be valid? The answer should be positive, since the disposal transaction is abstract in nature and does not depend on another transaction, in fulfillment of the terms of which it was made. Otherwise, paragraph 4.11 loses all meaning, since any transfer of bonuses will be a violation of the rules of the same paragraph 4.11. It is enough to make

[196]Aeroflot Bonus program rules. // AEROFLOT: [site]. URL : https://www.aeroflot.ru/ru-ru/afl_bonus/rules (date of access: 29.05.2024).
[197]Give miles to your loved ones. // AEROFLOT: [website]. URL: https://www.aeroflot.ru/ru-ru/afl_bonus/bonus_news/60612 (date accessed: 29.05.2024).

a request on the Internet, as you can see that Aeroflot miles are actively used in civil circulation - they are bought and sold, and on the same Avito platform.[198]

If miles are a negotiable asset and Aeroflot encourages gifting them to loved ones, then why do the rules prohibit inheriting miles? There are no technical obstacles to this. Thus, unused miles are cancelled "...if, within 2 calendar years, no flights on Aeroflot regular flights or partner airlines or on code-share flights (with the airline code in the ticket SU) are registered on the participant's account at fares participating in the accrual of miles, or no mileage accrual transactions are made within the framework of special promotions, the terms and validity of which are determined by the terms of the promotion. Cancellation is made in the current year based on the results of flight activity of the accounts during the two previous calendar years" (clause 3.5.1 of the Aeroflot Bonus Program Rules).

If you are unable to log into your personal account (lost your password/login), you can restore it by contacting Aeroflot's Feedback service.[199]

The high level of turnover of miles indicates the fundamental possibility of their transfer to the heirs of a deceased program participant.

Similar rules on bonus miles are set by other Russian air carriers. For example, Ural Airlines and Nordwind offer their loyalty programs, which say nothing about inheritance or transfer of miles to other people.[200]

However, the company may establish other rules. For example, the company " S 7" prohibits the re-registration of miles to another person or their transfer or assignment to another person (clause 5.7 of the Detailed Rules of the company S 7 Priority), but unlike other airlines, it has directly regulated the procedure for the inheritance of miles in the rules. [201]

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[198]There are 50 offers for buying and selling Aeroflot miles on the Avito platform alone // Avito: [website]. URL: https://www.avito.ru/moskva?q=%D0%BC%D0%B8%D0%BB%D0%B8+%D0%B0%D1%8D%D1%80%D0%BE%D1%84%D0%BB%D0%BE%D1%82%D0%B0 (date accessed: 05/29/2024).

[199]Feedback. // AEROFLOT: [site]. URL: https://www.aeroflot.ru/ru-ru/help/questions/afl_bonus/auth_problem (date of access: 29.05.2024).

[200]Bonus program. // URALAIRLINES : [site]. URL: https://www.uralairlines.ru/rules/bonusnaya-programma/ (access date: 29.05.2024). Loyalty program. // Nordwind: [site]. URL: https://nordwindairlines.ru/ru/faq/ffp (access date: 29.05.2024).

[201]Rules S7 Priority companies. // S7 Airlines: [website]. URL: https://www.s7.ru/ru/pravila-programmy-detalno/ (date of access: 05/29/2024).

The rules define the procedure in the event of the death of a participant: the personal account is subject to closure, "... and the available Miles are subject to inheritance in accordance with the share specified in the provided certificate of inheritance. The basis for the emergence of the right of inheritance will be copies of the Participant's death certificate provided by the heirs, as well as documents confirming the marital relationship, kinship and a certificate of the right to inheritance" (clause 2.3.9 of the Detailed Rules of S 7 Priority ). The above rules are contradictory, do not comply with the law and are simply poorly formulated. Note that inheritance is carried out by will, by inheritance agreement and by law (Article 1111 of the Civil Code of the Russian Federation), and not by any "documents". The only document confirming the rights of the heir is the certificate of the right to inheritance, but it does not apply to the grounds for inheritance. Other questions arise for the drafters of the rules: why does the heir need to present copies of the death certificate, documents confirming the marriage relationship, kinship along with the certificate of the right to inheritance? If the heir under the will or inheritance agreement was not related to the deceased by kinship or family relations, then he cannot inherit the miles?

S 7" should be generally supported , especially since the heirs can use the miles accumulated by the testator within three years from the date of the last transaction on the account.[202]

5) As for the technical capabilities of the platform in relation to the user account, it should be noted that failure to use the profile on Avito for 3 years leads to automatic termination of the agreement upon expiration of the specified period. Upon termination of the agreement, the user can return the unused balance of funds "... in the amount of the Wallet balance excluding the bonuses provided." The unused balance of funds is returned to the account of the user from which these funds were deposited, or in another way determined by the platform itself (clause 7.5. Offer to conclude an agreement with Avito).

When applying for a refund of the unused balance of funds, the user is obliged to identify themselves as a party to the agreement: send an application from the email

[202]Ibid.

address specified in the profile, use the phone number specified in the profile and confirmed in the manner prescribed by Avito, etc., and also provide the necessary documents and information (including documents required to identify the user, documents confirming the fact of payments made by the user, etc.) (clause 7.6. Offer to conclude an agreement with Avito). However, the user may not apply for a refund of the remaining funds, but delete the profile along with them by performing the appropriate actions on the platform (clause 4 Delete profile).[203]

As we can see, it is technically possible to return unspent funds by the user. The return procedure itself is regulated in sufficient detail and does not cause any difficulties for the platform administrator. The agreements with Avito do not contain any direct indication of a ban or restriction for heirs to demand the return of the testator's remaining funds. The list of documents that must be submitted to receive the remaining funds is open. From our point of view, it is quite acceptable for the heir to submit, along with documents confirming the ownership of the profile by the deceased, a document confirming his claim - a certificate of inheritance.

***Yandex Market.***[204]

1) When a user performs any actions on the Yandex Market platform, it is considered that he/she has entered into a user agreement and unconditionally accepted all the conditions listed in the Yandex Market Service Rules (clause 2.1 of the Yandex Market Service Rules).

Yandex Market has the right to unilaterally and without notifying the user change any rules and agreements governing the use of its services. (clause 2.14 of the Rules for Using the Yandex Market Service).

The agreement with Yandex Market provides the broadest powers to the platform administrator and grants the user very limited rights. The latter can only refuse the platform services at any time, but cannot influence the terms of its use.

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[203]Delete profile. // Avito: [site]. URL: https://support.avito.ru/articles/1775 (date accessed: 05/29/2024).
[204]Rules for using the Yandex Market service. // Yandex: [site]. February 15, 2024. URL: https://yandex.ru/legal/market_termsofuse/ (date of access: May 29, 2024).

2) All information about the user that can be obtained through this Internet platform is freely available to Yandex Market (clause 2.2 of the Rules for Using the Yandex Market Service). This information may be used by Yandex Market without any restrictions or remuneration to the user "... in advertising or marketing materials posted on Yandex resources on the Internet, as well as on other resources and sites on the Internet, to attract the attention of other users to the Service as a whole or to other Yandex applications and services, Products...". In this case, the user name is not important, since the user can act both under his real name and under a pseudonym (clause 2.4 of the Rules for Using the Yandex Market Service).

Receipt and processing of the user's personal information by Yandex Market is entirely acceptable - "...when provided for by applicable law, processing is necessary to ensure Yandex's legitimate interests if such processing does not have a significant impact on your interests, your fundamental rights and freedoms." It is also noteworthy that Yandex Market explicitly states that when processing the user's personal information, "...Yandex will always strive to maintain a balance between its legitimate interests and the protection of your privacy" (clause 5 of the Privacy Policy).[205]

Providing information about the content of the deceased's account to the heirs or to a notary who assists them in exercising their inheritance rights falls within the "legitimate interests" and "fundamental rights and freedoms" mentioned in the agreement.

In addition, Yandex Market may transfer the user's personal information to third parties if the user has consented to its transfer, as well as "... to any national and/or international regulatory body, law enforcement agencies, central or local executive authorities, other official or state bodies or courts, in relation to which Yandex is obliged to provide information in accordance with applicable law upon the relevant request" (clause 7.2 of the Privacy Policy). The user's will has all the properties of the user's consent to the transfer of personal information to a third party. Clause 3 of Article 1171 of the Civil Code of the Russian Federation establishes that legal entities are obliged, upon request of a notary, to inform him of the information these persons have about the

[205]Privacy Policy. // Yandex: [site]. May 19, 2022. URL: https://yandex.ru/legal/confidential/ (accessed: 05/29/2024).

property belonging to the testator. Yandex Market LLC is not an exception to this rule, therefore the company is obliged to provide personal information about the user upon request of a notary.

But if the user has provided information about himself that does not correspond to reality, is it possible to accurately establish the ownership of the personal profile by the testator? We think that it is possible, since personal information includes all information collected by Yandex Market about the user during his use of Yandex Market websites and services. This also includes the user's account data, such as information about his identity, contact information, age and gender, if this information was provided to Yandex Market. Yandex Market does not always check the compliance of the information provided to it with the actual state of affairs, but by comparing all the information available to it about the user, it is possible to determine with a very high degree of probability the ownership of the account by a certain person.

When using Yandex Market services and websites, the platform receives personal information provided by the user during registration (creation of an account): name, phone number, address and age (clause 4 of the Privacy Policy). Information about the user collected by Yandex Market is stored indefinitely - "... as long as necessary to achieve the purpose for which it was collected, or to comply with the requirements of laws and regulations" (clause 9 of the Privacy Policy). Note that the Civil Code of the Russian Federation also applies to legislation, including Part 3, which regulates inheritance relations. A notary can notify the Yandex Market service of the user's death, the opening of an inheritance and request the necessary information.

3) The main activity of Yandex Market is to provide interested parties with access to a database - an information and reference system containing "... information about goods, digital content products, intended for potential buyers (consumers) of goods, digital content products" (clause 1 of the Rules for using the Yandex Market service).

Using the platform, the user purchases goods, including with delivery to the address specified by him, and uses the services offered by sellers on the platform services, pays for them (clause 3.1 of the Rules for using the Yandex Market service ).

For participation in various types of Yandex Market advertising events, the user receives discounts on goods and services. Such a user is given a promo code for access to discounts, which is valid for a short time, but has a property value, since it allows you to purchase goods and services at a reduced price. [206] The savings of the buyer or customer represent a certain property value for his heirs.

4) When investigating the possibility of inheriting the rights of a deceased Yandex Market user, it is necessary to distinguish between the position of user-buyers and user-sellers (individual entrepreneurs or legal entities).

The user-buyer account stores emails and documents related to the use of Yandex Market services (clause 9 of the Privacy Policy). It may also store information about discounts and bonuses due to the user for using the platform and participating in promotions.

A user-seller on the Yandex Market service has not only an account, but also information about his business activities, which may be necessary for the heir to determine his rights and obligations in relation to buyers and the seller's employees.

The seller on the Yandex Market platform carries out activities related to the sale of goods to consumers using a remote method, provides digital content and digital products (clause 1 of the Rules for using the Yandex Market service). For this purpose, he creates his own account, which is the center for managing business activities on the Yandex Market platform. The account allows the seller to post product catalogs, manage sales, connect new models, manage employee access, process orders, receive reports, communicate with customers, creating a customer base. [207] Inside the account there may be one or more shops with various sales settings.[208]

It is obvious that the entrepreneur’s office can be of great value and without access to it the heirs will not be able to continue the entrepreneurial activity established by the testator and will be deprived of significant assets.

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[206]Rules for using Yandex Marketplace Promo Codes. // Yandex: [site]. URL: https://yandex.ru/legal/marketplace_promocode/ (date accessed: 04.06.2024).

[207] Yandex Market API for sellers // GitHub. : [site]. URL: https :// yandex. ru / dev / market / partner - api / doc / ru / (date of access: 04.06.2024).

[208]What is a cabinet? // Yandex: [site]. URL: https://yandex.ru/support2/marketplace/ru/account/introduction (date of access: 04.06.2024).

5) One of the purposes of processing personal information is to provide access to the account, "…including the Yandex email account and file storage" (clause 5 of the Privacy Policy), therefore Yandex Market has all the technical capabilities to restore the login to the user's personal account.[209]

***E-mail.***

E-mail is similar to regular mail in many ways, the main difference being the form of correspondence. Thus, the transmission of audio and video messages can be carried out using regular mail, if these messages are transferred to tangible media, such as a flash drive.

Nowadays, even those users who are not members of social networks and do not use online stores, usually have an email for home or work purposes.

The most common mail services in Kazakhstan and Russia are Yandex Mail, Mail.ru, Rambler. Their user agreements, unlike social networks and online trading platforms, are quite similar, so we will not consider each of them separately, but will give a general description from the point of view of the possibility of inheriting an electronic mailbox and its contents.

1) The agreement with the service owner provides for the same conditions for all users, which are not agreed upon with each individual user. The latter may either unconditionally accept the conditions offered by the platform and all subsequent changes, or refuse to use its services. The agreement is concluded by performing conclusive actions to create a mailbox and use it.[210]

2) To work with the service, the user must register - create a unique account, login and create a password. When creating an entry, the user specifies their data, but the service does not check the data provided by the user to ensure that it is true.[211]

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[209]Personal account Yandex.Market // Yandex: [site]. URL: https://market-code.ru/lichnyy-kabinet-yandex-market.html (date of access: 04.06.2024).

[210]Clause 1.3 of the User Agreement for the Mail service Mail. ru. // Mail: [site]. URL: https://help.mail.ru/legal/terms/mail/ua (accessed on 04.06.2024); clause 1.4 of the License Agreement for the Grant of Rights to Use Yandex Mail Programs. // Yandex: [site]. URL: https://yandex.ru/legal/mail_termsofuse/ (accessed on 29.05.2024); clause 2 of the Terms of Use. // Rambler: [site]. URL: https://help.rambler.ru/legal/1430 (accessed on 04.06.2024).

[211]Clause 3 of the User Agreement for the Mail service Mail. ru. // Mail: [site]. URL: https://help.mail.ru/legal/terms/mail/ua (accessed on 04.06.2024); clause 2.1 of the License Agreement for the Grant of Rights to Use Yandex Mail Programs. // Yandex: [site]. URL: https://yandex.ru/legal/mail_termsofuse/ (accessed on 29.05.2024); clause 2 of the Terms of Use. // Rambler : [site]. December 04, 2023. URL: https://help.rambler.ru/legal/1430 (accessed on 04.06.2024).

3) The user has the right to use the platform services free of charge and is obliged to comply with the terms of the agreement, which require him to respect the rights and interests of third parties, including not using someone else's login and password.

The platform stores the contents of the mailbox on its servers, has the right to deliver advertising to the user, block the mailbox in the event of the user violating the terms of the agreement, and terminate the mailbox.[212]

4) The mailbox content may contain: emails, designs, graphics, images, photographs, texts, articles, videos, music, songs, computer programs, databases, trademarks, logos, any other results of intellectual activity and means of individualization, posted or being posted on the Internet. [213]

5) The contents of the mailbox are stored on the platform servers and it is technically possible to provide either access to the content or transfer the content itself to the user's heirs.[214]

The above agreements do not contain any special conditions in the event of the death of the email user.

## § 2. Criticism of user agreements in terms of the conditions of succession in the event of the death of the user

3.2.1. None of the user agreements of the Internet platforms that we studied contain a condition on succession in the event of the death of the user. On the contrary, the agreements contain indications that under such circumstances the agreement ceases to be valid.

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[212]Clause 5.1 of the User Agreement for the Mail service Mail. ru. // Mail: [site]. URL: https://help.mail.ru/legal/terms/mail/ua (accessed on 04.06.2024); clause 2.1 of the License Agreement for the Grant of Rights to Use Yandex Mail Programs. // Yandex: [site]. URL: https://yandex.ru/legal/mail_termsofuse/ (accessed on 29.05.2024); clause 2 of the Terms of Use. // Rambler : [site]. December 04, 2023. URL : https://help.rambler.ru/legal/1430 (accessed on 04.06.2024).

[213]Clause 5.3.2 of the User Agreement for the Mail service Mail. ru. // Mail: [site]. URL: https://help.mail.ru/legal/terms/mail/ua (accessed on 04.06.2024); clause 2.4 of the License Agreement for the Grant of Rights to Use Yandex Mail Programs. // Yandex: [site]. URL: https://yandex.ru/legal/mail_termsofuse/ (accessed on 29.05.2024); clause 1.8 of the Terms of Use. // Rambler : [site]. December 04, 2023. URL : https://help.rambler.ru/legal/1430 (accessed on 04.06.2024).

[214]Clause 5.1 of the User Agreement for the Mail service Mail. ru. // Mail: [site]. URL: https://help.mail.ru/legal/terms/mail/ua (accessed on 04.06.2024); clauses 2.3-2.4 of the License Agreement for the Grant of Rights to Use Yandex Mail Programs. // Yandex: [site]. URL: https://yandex.ru/legal/mail_termsofuse/ (accessed on 29.05.2024); clause 1.2 of the Terms of Use. // Rambler : [site]. December 04, 2023. URL : https://help.rambler.ru/legal/1430 (accessed on 04.06.2024).

However, it is necessary to distinguish between the legal relationship between the user and the platform, related to the user agreement itself, from the rights of the user and his heirs to the contents of the user's account (account, profile, page), which may contain the deceased's correspondence, diaries, notes, photos and audio materials, etc. With rare exceptions, in scientific literature these legal relationships are mixed up and not considered separately.[215]

First, let's consider the possibility of inheriting rights and obligations from the user agreement.

Firstly, to what extent is it permissible in principle to include in a user agreement a prohibition on the transfer of user rights to his heirs? By virtue of the general civil principle of the permissive direction of regulation of civil legal relations (clause 2 of Article 1 of the Civil Code of the Russian Federation) and the principle of freedom of contract (clause 1 of Article 421 of the Civil Code of the Russian Federation), the parties to an agreement, including a user agreement, have the right to establish consequences in the event of death or termination of the legal capacity of the other party. However, freedom of contract may be limited by imperative provisions of the law (for example, Articles 977, 1002, 1010, 1024 of the Civil Code of the Russian Federation) or by the very nature of the relationship between the parties to the agreement, when the identity of the debtor or creditor is inextricably linked with the performance of the obligation (Article 418 of the Civil Code of the Russian Federation). [216] For example, for the customer, the obligation to fulfill the contract of author's commission - the creation of a painting by a famous artist, may be inextricably linked with the personality of the debtor. The identity of the debtor may have a similar significance in the case of the performance of obligations under a contract for the performance of research and development work, experimental design and technological work.[217]

[215]Kodaneva S. I. Inheritance of the "information body": problems of legal regulation // Monitoring of law enforcement. 2023. No. 1 (46). 30 p.
[216] Zhanabilova A. B. User Agreements and Account Inheritance. 40 p.
[217]Commentary on the Civil Code of the Russian Federation. Part Three: educational and practical commentary / E.N. Abramova, N.N. Averchenko, V.V. Grachev [et al.]; edited by A.P. Sergeev. Moscow: Prospect. 2011. 29 p.

Secondly, the law directly indicates the possibility of concluding an agreement to prevent the inheritance of the rights and obligations of a deceased participant in a business partnership or company or production cooperative, while the legal entity has an obligation to pay the heir the actual value of the testator's share (paragraph 2 of Article 1170 of the Civil Code of the Russian Federation). A similar provision is also contained in some special laws. [218] The absence of mention of other types of property in relation to which interested parties may establish a ban or certain rules for its transfer to the heirs by agreement cannot be considered a qualified silence of the legislator and interpreted as a ban on concluding such agreements. The rules on the inheritance of certain types of property, placed by the legislator in Chapter 65 of the Civil Code of the Russian Federation, are exceptions to the general rule of universal succession, and the exceptions are not subject to broad interpretation.[219]

It is noteworthy that the provisions of the law that allow, at the will of the parties, to establish a ban on the transfer to the heirs of certain property and other rights that belonged to the party to the contract during his lifetime, as a general rule, do not deprive the successor of the opportunity to receive monetary or property compensation in the amount of the value of the asset that belonged to the testator during his lifetime (see, for example, Article 979 of the Civil Code of the Russian Federation).

Let us consider the contents of the user agreement based on the above theses. The rights and obligations of its parties are typical for all providers. The Internet platform undertakes to provide the user with its services under the terms of the user agreement. This includes means of navigation, communication, search, placement and storage of various types of information and materials (content), personalization of content, making

[218]Clause 8, Article 21 of the Federal Law of February 8, 1998 No. 14-FZ (as amended on June 13, 2023) "On Limited Liability Companies": "Shares in the authorized capital of the company shall be transferred to the heirs of citizens and to the successors of legal entities that were participants in the company, unless otherwise provided by the charter of the limited liability company. The charter of the company may provide that the transfer of a share in the authorized capital of the company to the heirs and successors of legal entities that were participants in the company, the transfer of a share that belonged to a liquidated legal entity, its founders (participants) who have property rights to its property or obligatory rights in relation to this legal entity, are permitted only with the consent of the other participants in the company" - Access from the reference and legal system "ConsultantPlus" (date of access: 05/31/2024).

[219]Vas'kovsky, E. V. Civilistic Methodology. Part 1. The Doctrine of Interpretation and Application of Civil Laws. Odessa: "Economic" Printing House, 1901. 175 p.; Pigolkin A. S. Interpretation of Normative Acts in the USSR. P. 113.

purchases, etc. [220] The user undertakes to comply with the rules established by the platform for using the services provided to him. The platform has only one obligation - to provide the user with access to the services under the conditions specified in the agreement. After this, its behavior is passive, the platform administrator monitors the user's compliance with the rules established by the agreement; the user's behavior, on the contrary, is active, he uses services in his own interests that function automatically without any effort from the platform.

Therefore, neither the essence of the relationship between the parties nor the legal status of the platform offering anyone and everyone who responds to the offer the opportunity to enter into a user agreement with it (clause 2 of Article 437 of the Civil Code of the Russian Federation) implies that the identity of the user is important for the platform. The nature of the relationship between the platform and the user is not of a personal-trust nature, as, for example, in an agency agreement or an agency agreement. The identity of the user is of no importance to the platform. There are no obstacles to the fulfillment of obligations under the user agreement by the user's legal successor, as well as the fulfillment of the platform's obligations to him. Moreover, the user is authorized by entering a login and password without any establishment of his identity on the basis of a passport or other document that allows for the precise identification of a participant in civil transactions. If the platform administrator does not have information about the death of the user, a person with access to the account can use it for as long as they like and these circumstances will not in any way affect the position of the Internet platform as a participant in the user agreement.

What then is the basis for these prohibitions? To assume that the inclusion of such conditions in the user agreement is related to "...requirements for the protection of the user's personal data and the protection of his private life" [221] seems to us to be a big stretch, since the user as a subject of civil legal relations ceased to exist from the moment of death.

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[220] As an example, we took the user agreement of the Yandex search engine // Yandex: [site]. September 12, 2022. URL : https://yandex.ru/legal/rules/ (date of access: 04.06.2024).

[221] Abrosimova E. A., Vlasenko E. V. Inheritance of accounts in social networks in Germany and Sweden // Bulletin of St. Petersburg University. Law. 2022. Vol. 13, issue 2. 457 p.

From the point of view of the rules of formal logic, after the death of an individual, he no longer has a life, including a private one.

The personal nature of the relationship between the user and the platform also cannot be accepted as an argument for the inability of rights and obligations to be transferred to the successors in the event of the user's death. The Supreme Court of Germany pointed out in this regard that the heirs are universal successors and the right to protect all secrets of the deceased and information about his personal life also passes to them. According to the court's logic, if letters and diaries on paper are inherited and the law does not prohibit the heirs from familiarizing themselves with their contents (§ 2047 and 2373 BGB), then there are no obstacles to inheriting the same letters and diaries in electronic form. In a specific case, the court concluded that only an order from the testator himself to destroy or conceal the contents of the account can limit the rights of the heirs to access them.[222]

In our opinion, the Federal Court of Germany has provided a sufficiently reasoned rationale, according to which a user agreement with a specific person does not necessarily imply a personal nature of legal relations, and the administrator of a social network has an obligation to protect the content of the account from unauthorized use by third parties from the moment the agreement is concluded until the death of the user. The argumentation of the opposite point of view in Russian literature seems completely unconvincing to us. It is based on the fact that for using an account "... a data verification procedure is provided, the transfer of access is not assumed." [223]The platform administrator does not set the task of protecting this particular user, verification occurs by entering certain characters to access the account. The condition prohibiting the transfer of access to the account to other persons serves as protection against potential claims of the user if an outsider, using his password and login, was able to enter the account without

[222]Ibid. 464-465 p.
[223]Ibid. 457 p.

authorization.[224]

At the same time, the law does not contain any indications on the termination of the user agreement in the event of the user's death. Consequently, its parties have the right to link the termination of the agreement with the death of the user, i.e. to include in the agreement such an additional condition of the transaction as a term determined by an event that will inevitably occur (Article 190 of the Civil Code of the Russian Federation), giving it the significance of an essential one. Similar rules can be applied in a lease agreement (clause 2 of Article 617 of the Civil Code of the Russian Federation) or a contract for the provision of services for a fee (Article 780 of the Civil Code of the Russian Federation), even if the rights and obligations of the parties are not closely related to the personal qualities of one of them.[225]

In our opinion, the inclusion of such a condition is acceptable. Platform providers quite reasonably justify the need to terminate the agreement upon the death of the user by the fact that they do not want to mislead other users if the legal successor acts on behalf of the deceased. Indeed, there is nothing contrary to the principles of civil law in other users knowing that messages from their usual mail or website are not from the deceased person, but from his legal successor.

However, termination of the user agreement upon the death of the user entails certain legal consequences. The right to the user's account content cannot be transferred to the platform automatically. The user agreement only states that in the event of the death or inactivity of the user, the account with all its content can be deleted or blocked with an icon indicating mourning, which for the user's successors is equivalent to deleting the content due to lack of access to it. During his or her lifetime, the user had access to the account content, could copy any parts or all of the content to his or her own media (flash

[224]Clause 2.2 of the Agreement on the Use of the Website on the Diafan Platform: "Access to information located on the secure sections of the Website is permitted only to registered Users who have received a password to enter the secure sections of the Website. The password cannot be transferred to other persons, and the User is fully liable for all damage caused to him, the Company or third parties, arising from the intentional or unintentional transfer of the password by the User to another person. The User is responsible for maintaining the confidentiality of the password and any use of the Website using his password" (Agreement on the Use of the Website on the Diafan Platform. // Diafan.Cloud: [site]. URL : https://www.diafan.ru/agreement/ (date of access: 04.06.2024).

[225]Clause 14 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of May 29, 2012 No. 9 "On judicial practice in inheritance cases" recognizes the possibility for the testator to provide in the contract for other consequences in the event of his death with respect to property rights.

card or hard drive of his or her computer), and at his or her own discretion transfer it to other persons both with and without the platform's participation, for example, print a letter on a printer and transfer it to someone on paper. After the death of the user, in accordance with the terms of the user agreement, the platform at least acquires the right to dispose of the account content.

To what extent does this provision of the user agreement comply with the principle of freedom of contract? Can the user change this provision?

The terms of the user agreement are defined by the platform in a standard form and can be accepted by the user only by joining the proposed agreement as a whole, therefore the user agreement should be qualified as an accession agreement (clause 1 of Article 428 of the Civil Code of the Russian Federation). [226]The German court qualified the agreement in a similar way, indicating that the user could not agree to or exclude the condition of the agreement on installing a "memorial sign" on the account after his death, directly applying § 307 of the German Civil Code on the accession agreement.[227]

Most user agreements are concluded by joining the agreement. For example, OOO Yandex sets the following rules: "By starting to use the Service/its individual functions, the User is considered to have accepted these Terms, as well as the terms of all the above documents, in full, without any reservations or exceptions. In the event of the User's disagreement with any of the provisions of the above documents, the User has no right to use the Service."[228]

As we can see, the user is the weaker party to the agreement, he can either accept all the terms of the platform or not enter into an agreement with it. The most well-known Internet platforms, as follows from the documents studied, offer the user an accession agreement; nowhere can the user agree on any individual terms. Often, the user does not even have a choice - to enter into such a relationship with any of the Internet platforms or

[226]Zhanabilova A. B. User Agreements and Inheritance of Accounts. P. 42; This argument is also confirmed by judicial practice, see: Determination of the Second Cassation Court of General Jurisdiction dated July 22, 2021 No. 88-16389/2021 in case No. 2-6769/2020 - Access from the reference and legal system "ConsultantPlus" (date of access: 01.08.2024).
[227]Tatarina K. P. Agreement on the use of a user account in a social network is inherited. Decision of the Supreme Federal Court of Germany dated 12.07.2018 III ZR 183/17 and commentary thereto // Bulletin of Economic Justice of the Russian Federation. 2019. No. 2. P. 19-33.
[228]P. 1.3 Licenses for the use of the Yandex search engine // Yandex: [site]. URL : https://yandex.ru/legal/termsofuse/ (date of access: 04.06.2024).

not. For example, in many Russian schools, parents cannot otherwise get acquainted with their child's academic performance or receive other information that is important to them, except in electronic form, and for this they must use one of the Internet platforms. The same should be said about the provision of public services to citizens through the reference and information Internet portal "Gosuslugi". The digitalization of the economy, the widespread introduction of new methods of communication simply does not leave a person a choice - he either uses the services of Internet platforms, or will not be able to exercise most of his civil rights.

The highest judicial authorities of the Russian Federation have repeatedly drawn the attention of courts to the fact that the principle of freedom of contract may in some cases be significantly distorted or actually absent. The extent to which the parties were free to develop the terms of the contract should be based on the totality of all the circumstances of the case, for example, on the actual balance of the parties' negotiating power. Courts should find out "...whether accession to the proposed terms was forced", study competition in this sector of the economy, establish "...whether the accessing party had a real opportunity to negotiate or conclude a similar contract with third parties on different terms, etc." (clause 10 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 14.03.2014 No. 16 "On Freedom of Contract and Its Limits").

Applying the above-mentioned explanations of the highest judicial authority to the user agreement, we see that there can be no talk of any freedom of contract when concluding it. Based on the principles of balance of interests of the parties, reasonableness and expediency, those terms of the user agreement that prevent the user's successors from gaining access to the content of the account and, moreover, from disposing of the data contained therein should be recognized as invalid. At the same time, the termination of the user agreement itself should be recognized as entirely acceptable if this is not related to the value of the account itself as a record. In the overwhelming majority of cases, the heir has no interest in using the deceased's account itself. However, the accounts of famous media personalities, such as politicians, artists, athletes, etc., can have significant value in themselves. The termination of an account known to a wide circle of users, even

if its content is saved and moved to another account, can significantly reduce the interest of advertisers and, consequently, the value of the heir's newly created account with the same content. The validity of such a condition of the user agreement should depend on how much the value of the account created to replace the previous one decreases. Since the user does not have the opportunity to agree on this condition when concluding the agreement, the presumption of economic losses of the account's heirs should be applied here in the event of the impossibility of its inheritance. The burden of proof to the contrary should lie with the owner of the platform. Let us emphasize once again that we are talking about the inheritance of the account itself, i.e. the account expressed in a certain digital form, with the corresponding functional capabilities. The content of the account itself, created by the testator, in the absence of a prohibition or restrictions on his part, should be inherited without any conditions.

3.2.2. Some platforms allow the inheritance of account contents by performing various types of operations in the system itself or by disposing of account rights in a will.[229]

Apple platform offers users to designate a "digital heir", which means a person who will have access to the data in the Apple account after the user. [230]To do this, the user must have certain technical data of the platform, the devices used by him (mobile phone, computer, tablet, etc.), namely, the fifteenth version of the iOS mobile operating system (iOS 15.2), developed by Apple for devices such as the iPhone, iPad and iPod Touch. This also applies to the iPadOS 15.2 and macOS 12.1 operating systems. All of these systems have been in effect since 2021, i.e. before that, it was technically impossible to appoint a digital heir. If the user has not updated their operating system and remains, for example, on the fourteenth version of iOS, then they will not be able to appoint a digital heir. All of these rules operate primarily in the interests of the developers and copyright holders of the operating systems. Thus, the Apple platform links the user's rights with the purchase of its new product - operating systems.

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[229]Service "Just in case". // Google: [site]. URL: https://support.google.com/accounts/answer/3036546?sjid=12862550538017372780-EU (date of access: 04.06.2024).
[230]How to Add a Digital Heir to Your Apple ID ID. / Apple: [site]. – April 24, 2024. URL: https://support.apple.com/ru-ru/HT212360 (accessed: 04.06.2024).

According to Apple's platform rules, a user can transfer data to an heir that "...may include photos, messages, notes, files, downloaded apps, device backups, and more. Some information, such as movies, music, books, or subscriptions purchased with an Apple ID, as well as data stored in Keychain, such as payment information, passwords, and login keys, will not be available to the digital heir." This also includes credit card numbers and their expiration dates, as well as Wi-Fi passwords.[231]

At the same time, purely technically, the testator cannot restrict the heir's access to some account services and prohibit or restrict access to others. The Apple platform gives the following example: "... the account owner cannot provide access only to the Messages and Mail applications and exclude the iCloud Photos function."[232]

In order for the heir to access the deceased's account, the user must contact the platform administrator and present the access key created by the testator when determining the heir, and the death certificate. The platform will then provide the heir with access to the deceased's account. During life, the user must transfer the key to the heir either via an electronic device or in printed form. In any case, the platform recommends that the heir's access key be kept in printed form.

The platform itself limits the heir's access to the deceased's data to three years from the moment the first request for access to the account is approved. After this period, the account is deleted forever. The platform also sets its own rules regarding the possibility of disposing of the deceased's account in the case of multiple "electronic heirs", while the platform ignores that there may also be heirs by will or heirs entitled to a mandatory share. Any of the "electronic heirs" can independently make decisions on disposing of the deceased's account, including deleting it forever.[233]

The Internet platform itself determines the age of a person who can make a testamentary disposition in relation to his account. A “digital” heir can be determined by a person who has reached the age of 13.[234]

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[231]Ibid.
[232]Ibid.
[233]Ibid.
[234]Ibid.

This order can be cancelled by clicking the "Remove Heir" button.[235]

It should be noted that the instructions in case of death made by the user in accordance with the rules established by the Internet platform in relation to the content of the account are null and void. An electronic record or standard setting of the relevant functions of the account, with the help of which one can make an instruction in case of death of the user, does not meet the requirements of the law imposed on the form of a will. Whatever we call such instructions in case of death, they are mostly testamentary instructions. The norm of the law imperatively establishes a general rule according to which a will or inheritance agreement must be drawn up in writing and certified by a notary. In the same article, the legislator specifically included a prohibiting norm: "It is not allowed to draw up a will using electronic or other technical means (paragraph two of clause 1 of Article 160 of this Code)" (paragraph 4 of clause 1 of Article 1124 of the Civil Code of the Russian Federation). The legislator specifically indicates that the exception to the general rule established by paragraph must be applied to the will. 2 p. 1 art. 160 of the Civil Code of the Russian Federation.[236]

These circumstances have been noted in the literature and it has been correctly pointed out that Internet companies are creating supranational rules that contradict Russian legislation.[237]

The notarial form of a will ensures the legality of the testator's instructions and control over the execution of his last will. Certification of a will by a notary gives the transaction public credibility, since the notary establishes the identity of the person wishing to make a will, determines his legal capacity, explains to the testator the legal consequences of making a will, the procedure for making, canceling or changing a will, as well as the provisions of Art. 1149 of the Civil Code of the Russian Federation on the obligatory share in the inheritance so that legal ignorance does not lead to a violation of his legitimate interests (Part 1 of Article 16 of the "Fundamentals of the Legislation of the Russian Federation on Notaries", paragraph 4.1 of the "Methodological

[235]Ibid.
[236]Zhanabilova A. B. User Agreements and Account Inheritance. 43 p.
[237]Yatsenko T.S. Problems of execution of a will in relation to the digital assets of the testator. 32-33 p.

Recommendations for the Certification of Wills and Inheritance Agreements" (approved by the Decision of the Board of the FNP dated 02.03.2021, protocol 03/21). Unlike a notary, the platform administrator cannot provide this kind of verification and establish that the testamentary disposition was made by the account owner, and not by another person who illegally took possession of the login and password or hacked the user's account. The administrator does not explain to the user the content of the rules of inheritance law, the provisions of Article 1149 of the Civil Code of the Russian Federation, and his legal capacity is not checked. Even when making a testamentary disposition of rights to funds in a bank, a bank employee certifies such an order, which includes establishing the identity of the testator and informing him of the contents of Articles 1128, 1130, 1149, 1150, 1162 of the Civil Code of the Russian Federation.[238]

Another group of Internet platforms does not allow the inheritance of account content at all, which, after the death of the user, the platform administrator either makes inaccessible to the heirs or destroys.

The rules of both platforms violate current Russian legislation. Some establish a new form of will, violating the mandatory provisions of the law on the form of will, so it is dangerous for the legislator to follow their lead and specifically introduce an electronic form of will for the inheritance of digital objects. Others violate the fundamental principles of civil law, illegally depriving the legal successors of the property of the deceased, appropriating or destroying it. [239]

What should be done in such a situation? The heirs have a legitimate interest in the account content, including non-property interests. The account content may be of a property-value nature and should be taken into account when determining the size of the obligatory share in the inheritance (Article 1149 of the Civil Code of the Russian Federation) or the amount of liability of the heirs for the debts of the deceased (clause 1 of Article 1175 of the Civil Code of the Russian Federation). Therefore, even if one of the heirs received access to the content in accordance with the rules of the platform, he

[238]Clause 4 of the Resolution of the Government of the Russian Federation of May 27, 2002 No. 351 "On approval of the rules for making testamentary dispositions of rights to money in banks". - Access from the reference and legal system "ConsultantPlus" (date of access: 05/20/2024).
[239]Zhanabilova A. B. User Agreements and Account Inheritance. 43 p.

will not be considered an heir under the will and the inheritance of the account content will occur according to the law.[240]

The experience of countries where the procedure for transferring the contents of accounts to heirs is regulated by law is not applicable to the Russian system, since the issue is resolved by national legislators (for example, the USA). [241] Of much greater interest are the approaches of countries without this type of regulation, which is closer to the Russian legal system.

In this regard, the position of the Supreme Federal Court of Germany in the case concerning access to the content of the account of a deceased daughter (12.07.2018) can serve as a model. The parents of the tragically deceased 15-year-old girl had the login and password for her Facebook* profile. But the platform, upon learning of the user's death, set the account to "memorial status" and refused to grant the parents access to its content.[242]

However, using foreign experience, it is necessary to take into account the specifics of the Russian legal order. The German court recognized the succession of the heirs of the deceased in the user agreement not so that they could use the account in the same way as their deceased daughter used it, but for the purpose of obtaining its contents.

The most reasonable thing, in our opinion, would be to recognize the termination of the user agreement if it includes such a condition.

The platform does not have the right to delete the account until the heir has exercised his right to the content. You can set a period during which the domain heir will dispose of the content of the account, for example, 6 months from the moment of gaining access to the content of the account.

In the case of the above-mentioned precedent in Germany, the court found that the mother also had a non-property interest in familiarizing herself with the contents of the account – to resolve doubts about her daughter’s suicidal thoughts. The court answered

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[240]Ibid. 44 p.

[241]Kodaneva S. I. Inheritance of the “information body”: problems of legal regulation 29 p.

* Meta Platforms Inc is recognized as an extremist organization in the Russian Federation and its activities are prohibited (including in relation to the Facebook social network product)

[242]Tatarina K. P. Agreement on the use of a user account in a social network is passed on by inheritance... 19-33 p.

three main questions: the validity of the terms of the agreement on “memorial status”, whether the deceased’s entries in the account can correspond to ordinary personal diaries and letters, whether the rights and obligations from the user agreement are personal in nature. The court answered all these questions in favor of the heirs of the deceased account owner.[243]

The privacy of a user's personal life and correspondence, to which Facebook* referred, as well as other platforms, cannot be an obstacle to heirs' access to the account content. Note that in user agreements (as well as in scientific and practical literature) there is a misunderstanding of the dynamics of rights and obligations under the user agreement. [244]The user has died, his legal capacity has been terminated, therefore, as stated above, the deceased cannot have "privacy of personal life", at least by virtue of the rules of formal logic: his life ended at the moment of death.

Recently, such large Internet platforms as Google, including under the influence of legal proceedings in countries of the Romano-Germanic legal family and direct legal regulation in common law countries, have begun to implement additional services with the function of providing access to accounts at the user's request to other persons if the account is not active within the period specified by them.

Google platform has a special feature called "Just in Case", which allows the platform to notify a person designated by the user if the account is inactive for a certain period of time from 3 to 12 months. Up to 10 such deputies can be designated and determine the scope of access to various account data, such as email, YouTube page, etc.[245]

Of course, this is not a will, and the Just in Case service is in no way connected with the death of the user, but it is its functions that allow the transfer of digital assets to other persons in the event of the user's death to the greatest extent. In the event of his

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[243]Abrosimova E. A., Vlasenko E. V. Inheritance of accounts in social networks in Germany and Sweden. 457 p.

* Meta Platforms Inc is recognized as an extremist organization in the Russian Federation and its activities are prohibited (including in relation to the Facebook social network product)

[244]Tatarina K.P. Agreement on the use of a user account in a social network is inherited... 19-33 p.

[245]Service "Just in Case". // Google: [site]. URL : https://support.google.com/accounts/answer/3036546?sjid=12862550538017372780-EU (date of access: 04.06.2024); Krivoshapko Yu. What to do with an account on social networks after the death of the owner. // RG. RU : [site]. October 22, 2018. URL : https://rg.ru/2018/10/22/chto-delat-s-akkauntom-v-socsetiah-posle-smerti-vladelca.html (date of access: 04.06.2024).

death, the deputy appointed by him, according to the circumstances of the case, should be considered the heir, executor, legatee.

As we can see, platforms have the technical ability to provide access to user data in various situations, including in the event of death. From a legal point of view, the legal consequences of a user's death will depend on the interpretation of the provisions of the user agreement prohibiting the transfer of user rights to third parties: does this prohibition apply to the user's heirs? If the answer is yes, then to what extent does this prohibition comply with positive law?

**General conclusion.**

In conclusion, we should sum up:

- most of the account content is related to civil rights and can be inherited,

- the user agreement, as stated in all studied agreements of this kind, without exception, terminates upon the death of the user,

- the content of the account cannot be transferred to the platform or destroyed,

- the electronic form of a will on the Internet is contrary to the law,

- heirs can protect their rights only by immediately filing a lawsuit with a simultaneous application for interim measures in the form of a ban on the destruction of the account.

## Conclusion

1. The traditional legal theories we have studied (labor theory, utilitarian theory, and personality theory) explain the phenomenon of digital assets as objects of civil rights from different angles. It follows from the study that both the investment of labor to create digital assets, and the property of usefulness for the person who created them and the whole society, and the connection with the personality of the person who created them allow us to conclude that digital assets can and should be included in the inheritance.

The owner of digital assets has a legally protected interest in passing them on by inheritance. The specificity of digital assets is not related to their legal nature, but to the form of their objectification (existence). Of course, one should take into account the objective properties of things - their corporeality (materiality), and in this regard, the possibility of destruction, damage and, as they are used, the rendering of even non-consumable things unusable. In this regard, digital assets are fundamentally different from corporeal things. Their value does not depend on consumer properties, but on the possibility of receiving material goods in return, or with their help satisfying needs in non-material spheres - culture, art, games, etc.

In the absence of a direct indication of the law on the procedure for the inheritance of already known digital assets, it is possible to apply, by analogy with the law, the norms governing the inheritance of contractual rights, rights to the results of intellectual activity, etc.

Where necessary, the legislator has developed special rules for certain types of digital assets, such as financial digital assets. In other cases, the law does not establish special rules for the inheritance of other digital objects in Kazakhstan and Russia, but it would be extremely strange to assume that these objects cannot be inherited.

This assumption does not correspond to law enforcement (judicial) practice, [246]tax legislation, criminal law regulation (see criminal law methods of protecting digital rights in the Republic of Kazakhstan).

Recognizing the existence of a separate branch of law - “digital law”, and even more so “digital inheritance law”, will be an unnecessary multiplication of entities and will lead to confusion in the rules of inheritance.

The question naturally arises: which norms should be given priority? The norms of inheritance law, enshrined in law, or special rules established by the private will of subjects, often located outside of Kazakhstan and Russia? The well-known Latin maxim - "private agreements cannot derogate from public law" (pacta privata juri publico derogare non possunt), is quite applicable to the current state of affairs. In the event of a conflict between the terms of a private law agreement and the norm of law, preference should be given to the latter.

The conducted legal analysis of the legal norms of the Republic of Kazakhstan and the Russian Federation regulating relations developing regarding digital assets clearly showed that the general socio-economic conditions of development of our countries have led in many ways to the general results of legal regulation. The problems that arose in this regard, related to the novelty of the legal phenomenon itself and, as a consequence, difficulties in formulating the relevant legal norms, were also similar.

This tendency manifested itself in the contradiction between the norms of the Civil Codes and individual industry laws, and in the very rare and fragmentary regulation of the inheritance of digital rights, and in the almost complete loss of attention from the

[246] Of all law enforcement agencies, only the judicial system has proven to be the most flexible and ready to respond to the emergence of new phenomena that have all the characteristics of objects of civil rights, but are not directly called such. Thus, arbitration courts and courts of general jurisdiction, even without special legal regulation, recognize accounts as objects of civil rights and resolve disputes, in essence, regarding these digital assets. From the point of view of judicial practice, an account can be part of an enterprise as a property complex, accounts can be alienated in any way provided for by civil legislation, etc. Moreover, the number of such cases tends to increase. See: Decision of the Petrozavodsk City Court of the Republic of Karelia dated 09.09.2019 in case No. 2-6001/2019; Resolution of the Thirteenth Arbitration Court of Appeal dated 17.01.2018 No. 13AP-30540/2017 in case No. A21-6695/2017; Resolution of the Arbitration Court of the Moscow District dated 10.01.2023 No. F05-31696/2022 in case No. A40-77662/2022; Resolution of the Arbitration Court of the Moscow District dated 14.07.2022 No. F05-6061/2020 in case No. A40-143196/2016; Resolution of the Fifteenth Arbitration Court of Appeal dated 14.02.2023 No. 15AP-269/2023 in case No. A32-54296/2021; Determination of the Ninth Cassation Court of General Jurisdiction dated 19.05.2022 No. 88-4397/2022; Resolution of the Seventh Arbitration Court of Appeal dated 18.07.2019 No. 07AP-5465/2019 in case No. A27-29639/2018; Resolution of the Intellectual Property Court dated 01.12.2022 No. S01-2110/2022 in case No. A40-236095/2021.

legislator of accounts, including gaming accounts, digital assets located in social networks and on electronic trading platforms, etc.

The lag of legislative regulation behind the development of scientific and technological progress should not create legal obstacles to the inheritance of digital assets.

2. Due to the gaps in the legislation, interested parties have a need to regulate relations that develop regarding digital assets using a universal civil law instrument - an agreement, in this case - a user agreement.

The User Agreement refers to public contracts of accession, in which the user-consumer is the weaker party and cannot agree on any terms, including those allowing him to dispose of his digital assets in the event of death.

Most of the content of a user's account is related to civil rights objects, such as letters, video and audio recordings, images, etc., which can undoubtedly be passed on by inheritance - there are no technical or legal obstacles to this.

Thus, storing letters and documents, including audio and video, in an electronic mailbox is no different from storing the same documents on a tangible medium in an individual bank safe deposit box (Article 922 of the Civil Code of the Russian Federation). No law enforcement officer has any doubts that the lessor of the safe deposit box, even if the heirs do not have an access code to it, has no right to destroy or appropriate its contents. He is obliged to provide the notary with all the necessary information about the owner of the safe deposit box and access to the safe deposit box to make an inventory of its contents (at the request of the heirs) or provide access to the safe deposit box directly to the heirs of the deceased tenant.

Based on the studied material, we have come to the conclusion that the point of view according to which an account and its contents cannot be inherited is erroneous. The reference to the privacy of the deceased, which must be protected even from the heirs, cannot be accepted, since the deceased is no longer a participant in any relationship and there can no longer be a "privacy" after his death. The end of life also ends the privacy of private life, and it is up to the heirs to decide how to dispose of the property and other rights that belonged to the testator during his lifetime. Of course, the owner of the account during his lifetime can leave an order for his account to be destroyed or blocked, and,

apparently, the will of the testator must be taken into account, but within certain limits. For example, Franz Kafka bequeathed all his manuscripts to be destroyed, but contrary to his order, they were preserved and made public. Another example: is the heir obligated by the will to destroy any of the deceased's belongings - burn paper money, sink jewelry in the sea, etc., or liquidate a successfully operating legal entity? If the account is of significant value, is the heir obligated to take steps to block or destroy it?

Inheritance law is a sub-branch of civil law, where such general principles of civil law as the principle of permissible limits of the exercise of rights and the principle of good faith are also applied. The unjustified destruction of goods that are valuable to society cannot be justified by the freedom of testament. Undoubtedly, the author of a work decides its fate himself. Thus, F. Kafka could destroy the material carriers of his works himself, as, for example, N. V. Gogol did with the second volume of Dead Souls. But it is unlikely that jurisdictional methods of protection should be provided for such posthumous orders ordering the destruction of a work of literature or art. The decision of the heir to whom the digital assets have passed to execute the will of the testator and destroy them should be qualified as an expression of the will of the person to whom these objects belong.

The activities of digital platforms themselves should be considered to a greater extent as a technical tool with which the user can create and introduce digital rights into civil circulation.

In this regard, it should be noted that the rules of Internet platforms on the methods of appointing an heir or manager of a user account in the event of his death are, in their content, an electronic form of a will, which is contrary to the law and does not entail any legal consequences.

3. At the same time, we believe that termination of the user agreement by mutual agreement in the event of the user's death is entirely acceptable. However, the account content cannot be transferred to the platform or destroyed without the express consent of the user in the proper form and taking into account the above arguments.

The platform owner is obliged to provide the heirs with the opportunity to receive any digital assets that belonged to the deceased. The issue of the transitivity or non-

transitivity of digital assets may be resolved in a user or other agreement only if such an exception is allowed by law to the general rule on the transitivity of property rights, even if some non-property rights are closely related to them. In extreme cases, by analogy with the rules on the inheritance of a share in a limited liability company, the law must determine the conditions for the heir to receive the actual value of a digital asset if, according to the terms of the user agreement, this object cannot be inherited by the user's successors (paragraph 2 of clause 1 of Article 1176 of the Civil Code of the Russian Federation).

As a general rule, the heir has no interest in further use of the testator's mail or profile. Almost all digital assets representing both property and non-property interest for the heir can be embodied in tangible media (for example, a letter on paper, a reproduction of a painting, audio and video recordings).

Terms of the user agreement that prevent the inheritance of digital assets have no legal or economic basis. They should be considered invalid. The appropriation of the content of a deceased person's account by an Internet platform or its destruction is contrary to the basic principles of civil law.

The impossibility of inheriting digital assets leads to economic losses not only for the heirs, but for the whole society as a whole, depriving the testator of the incentive to develop and create new digital assets during his lifetime, increasing public wealth.

The current legislation of Kazakhstan and Russia makes it possible to prevent these negative trends, since in the event of the Internet platform administration’s refusal to provide access to an account or transfer its contents to the heirs, the court can effectively protect their rights based on the general principles of civil law.

Digital assets as objects of civil rights can and should be transferred after the death of their owner to heirs and other persons for economic reasons, since they have value and for reasons of personal connection with the deceased. In Roman law, initially, it was the non-property aspects of succession after the death of the testator that were given primary importance. Spiritual connection with generations of ancestors for heirs was the main content of succession. And today it can be said that for many heirs, photo albums, letters

from the front, personal belongings of the testator are of great value regardless of the form of their objectification (on a tangible medium or in electronic-digital form).

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