

Artículo de investigación

Legal regulation of the inheritance of personal electronic assets

Правове регулювання спадкування персональних електронних активів

Reglamentación legal de la herencia de bienes personales electrónicos.

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The article is devoted to issues of inheritance of such digital assets as personal pages and accounts. The peculiarities of the legal nature of these objects of legal protection are determined, the interdependence between the peculiarities of the legal nature of electronic assets and the legal regime of their inheritance is determined. The article analyzes the norms of the current legislation and defines the problematic moments of the application of the norms governing the similar relations in relation to the investigated relations. The factors influencing the legal mode of information from online correspondence are determined.

Keywords: The inheritance of electronic assets, virtual property, the mystery of correspondence, the right to privacy

Анотація

Статтю присвячено питанням спадкування таких цифрових активів як персональні сторінки та облікові записи. З'ясовано особливості правової природи даних об'єктів правового захисту, визначено взаємозалежності між особливостями правової природи електронних активів та правовим режимом їх спадкування. Проаналізовано норми чинного законодавства та визначено проблемні моменти застосування норм, що регулюють схожі за змістом відносини до досліджуваних відносин. Визначено фактори, що чинять вплив на правовий режим інформації з онлайн-кореспонденції.

Ключові слова: спадкування електронних активів, віртуальне майно, таємниця листування, право на приватність.

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Resumen

El artículo está dedicado a investigaciones de herencia de activos digitales como páginas personales y cuentas. Se determinan las peculiaridades de la naturaleza jurídica de estos objetos de protección legal, se determina la interdependencia entre las peculiaridades de la naturaleza jurídica de los activos electrónicos y el régimen legal de su herencia. El artículo analiza las normas de la legislación vigente y define los momentos problemáticos de la aplicación de las normas que regulan las relaciones similares en relación con las relaciones investigadas. Se determinan los factores que influyen en el modo legal de información de la correspondencia en línea.

Palabras clave: Herencia de activos electrónicos, propiedad virtual, confidencialidad de la correspondencia, derecho a la privacidad.

Introduction

The life of a modern person can not be imagined without information technology. Information society plays an important role in information and communication technologies that allow collecting, processing, receiving and transmitting information at the local, national and international levels. The leading place among such technologies is the Internet - the global telecommunication network, which appeared in 1969 and actively develops, starting with the 80s of the XX century. The main purpose of the Internet is to disseminate information among users, sharing such information (Kharytonov, Kharytonova, Tolmachevska, Tkalich & Fasii, 2019).

The benefits and opportunities that provide digital age products transform the work, education, home, communication processes of a person. Information technology from day to day imposes its imprint even on leisure and entertainment, known to mankind. The penetration of information technology into our lives determines their influence on the evolution of social relations. Already it can be stated that the technological revolution has led to the emergence of a new form of social relations - the electronic one; new objects of law; new spheres of social relations and, accordingly, spheres of legal regulation. The emergence of objects in the virtual space that have economic, cultural, social, financial value or value at the level of emotions and feelings of a person has led to the need to revise different approaches to existing institutions of law - property rights, intellectual property rights, etc. The actual and potential expansion of the list of subjective civil rights and the change in the content of specific subjective rights should be taken into account in the legislation with previous research and substantiation in the science of civil law, since effective legal regulation is a guarantee of the protection of the rights and interests of

individuals and their coherence with rights of other subjects of law.

Today, the inheritance of any objects that have no expression in the real world seems impossible in realization. If intellectual property rights to objects such as electronic databases, domains, computer programs with some exceptions have found their place among the rights that can be inherited, the inheritance of individual and public pages in social networks, profiles of access to electronic resources, email accounts, media subscriptions, and other virtual objects are not regulated by law.

Methodology

In the process of research, dialectical, synergetic, systemic, historical, comparative legal and other research methods were used.

For example, on the basis of the dialectical method, the concept of inheritance of accounts on the Internet is considered.

The comparative legal method was used to study the legislation of foreign countries for the presence of legal regulation of the inheritance of accounts on the Internet.

The synergistic approach has allowed to analyze the domestic legislation for the legal regulation of the issue of inheritance of accounts.

Finally, thanks to the systematic method, an attempt was made to find solutions to the issue of inheritance of accounts in domestic legislation.

Analysis of recent research

Questions of the inheritance of objects of the virtual world are just beginning to attract the attention of representatives of the domestic science of civil law. There are no fundamental

developments in this area. The first scientific investigations of the topic were conducted by K. Efremova, D. Guzem, O. Omelchuk, but one can state that there is no single approach to the definition of the legal nature of such objects in general. Therefore, the purpose of this study is to determine the state and prospects of legal regulation of the inheritance of electronic assets in Ukraine.

Presentation of key research findings

The norms of the current civil law regulate the most typical and characteristic for a certain stage of social development of property and non-property relations. However, the sphere of social relations is not constant and continues to evolve over time under the influence of a wide variety of factors. The non-regulation of specific civil relations by law, however, can not be the reason for refusal to protect one or another civil law. According to Art. 8 of the Civil Code of Ukraine, civil relations are not regulated by the Code, other acts of civil law or the contract, they are governed by those legal norms of this Code, other acts of civil law which are regulating similar content of civil relations (analogy by the law).

The modern doctrine of civil law also recognizes the plurality of objects of civil rights. Quite common in modern civilist doctrine is the approach to defining the object of subjective civil law through the notion of "goods". Thus, objects of civil rights are recognized as tangible and intangible goods, thus there are relations between subjects of civil law relations that constitute the subject of civil law regulation (Danylenko, 2016).

A wide range of intangible objects serving objects of civil law, such as honor, dignity, information, results of intellectual or creative activity, testifies to the heterogeneity of the system of objects of civil law. Scientific discussion on the necessity of allocating virtual objects in accordance with the peculiarities of their legal nature necessitates an in-depth analysis of existing approaches to the definition of the concept of "virtual object".

In legal science there is no unity in the definition of virtual objects. Under virtual objects in legal literature refers to goods that do not have material expression, but exist only in digital form (Stakhya, 2017), electronic objects, which by the essence of their virtuality are not things, but have features of things and can not be defined as the rights or behavior of subjects of legal relations (Yefremova, n.d.). Such objects usually

include information products and services (Ennan, 2013). The objects of relations in cyberspace are called electronic objects in the form of tangible and intangible goods that exist in electronic form and can be transferred to the subject by means of software and hardware complexes or communication channels (Getman, Atamanova & Prylypko, 2013).

The attribution of the virtual objects to goods or services, things or information when trying to identify them reduces the potential range of such objects and does not reveal their legal nature at all.

The penetration of information technology into our lives predetermines their influence on the evolution of social relations. Already it can be stated that the technological revolution has led to the emergence of a new form of social relations - the electronic one; new objects of law; new spheres of social relations and, accordingly, spheres of legal regulation. The emergence of objects in the virtual space that have economic, cultural, social, financial value or value at the level of emotions and feelings of a person has led to the need to revise existing approaches to existing institutions of law - property rights, intellectual property rights, etc.

In a virtual environment, more and more objects are created, the rights of which are protected by law. At the same time, more and more products created within the virtual environment or for use in the IT-environment are recognized as objects of legal relationships. Increasingly, we have to talk about the commercial value of an IT object, the possibility of its "monetization," and so on. At the same time, information technology products have a large amount of individual or commercial information, which also provides for a special legal regime for its protection.

Virtual objects are such elements of a virtual space that do not have the same material expression, are of an aesthetic, cultural, informational, economic or other value, integrated into the corresponding virtual system accessed through technical means using information technology.

The legal nature of virtual objects is different from the legal nature of things, which is conditioned by the immateriality of such objects and the peculiarities of the exercise of civil rights in relation to them. The rationale for the introduction of a special legal regime for the inheritance of electronic objects is a promising area of scientific research with a complex subject

involving interaction with representatives of various sciences.

Increasing the number and increase the value of electronic objects of legal relationships necessarily leads to the emergence of new legal relationships in related branches of social life. Against this backdrop, issues of possession, use and disposal of electronic objects after the death of their developer or owner are actualized. Particular importance in the subject of the topic becomes the issue of the possibility to dispose of their own virtual property in the event of death. Today's legal practice shows that the inheritance of any objects that are not expressed in the real world is impossible to implement. If intellectual property rights to objects such as electronic databases, domains, computer programs with some exceptions have found their place among the rights that can be inherited, then the inheritance of cryptographic wallets, individual and public pages in social networks, access profiles electronic resources, email accounts, media subscriptions, and other virtual objects are not regulated by law.

It can be noted that the Ukrainian legislation does not contain norms governing the inheritance of objects in the virtual space, such as profiles in social networks, different accounts on the Internet or other networks that provide personal access to them. Legislation of foreign countries also does not contain a clear answer to the legal regime of inheritance of such objects. Western experts predict that legislation in this area will evolve around the world (The right to virtual property: Everything that remains after me, n.d.). However, nowadays, the only example of such legal regulation is the Delaware Law in the United States, which states that a lawyer who implements a will can transfer accounts to social networks, e-mail, subscriptions to services defined by a family member. The law provides a very broad interpretation of digital assets, which will have a positive effect on the further development of virtual inheritance. In addition, on the basis of the aforementioned normative act, a unified act has been developed, which is recommended to be adopted in all states of the country (Guz, n.d.).

In most other cases, the situation is left to the discretion of the Internet companies themselves, the forms of user agreements which, as a rule, involve not simply closing accounts of users in the event of their death, but also the complete destruction or memorization of the information there. This means, in fact, archiving information with the right to restrict access to certain sections

of the account to registered "friends" of deceased users (Drobyshev, n.d.).

However, in this case, it is a question of inheritance by will, which does not solve the problem of inheritance of such assets by law. There is no single view on this issue and in the scientific environment. The difficulty lies in the impossibility of unambiguously determining the legal nature of the rights that a person has with regard to his own account or profile on a particular resource. Each on-line platform has its own functional support, which is usually divided into public and private parts. If a public part, including published records, photographs, audiovisual files, documents, etc., is available to anyone or a specific circle of persons at the request of the owner of the page, the functional load of the private part of the private usually determines the legal nature of its content.

The literature points to the existence of controversial issues between the inheritance of virtual objects and the disclosure of personal information and examples of a unified approach to solving similar problems with the practice of known social networks and e-mail providers (Getman, Atamanova & Milash, 2016).

Indeed, most social networks are based on a messenger or other private messaging system. The user selects the respondents at their own discretion and freely exchanges with them messages. According to the Art. 32 of the Constitution of Ukraine no one can interfere in his personal and family life except in cases stipulated by the Constitution of Ukraine. Art. Article 31 of the Constitution of Ukraine establishes guarantees of secrecy of correspondence, telephone conversations, telegraph and other correspondence. However, the secret of the correspondence regime extends to any correspondence, even that which does not include the circumstances of a person's or family life of a person.

The mystery of correspondence is protected, first and foremost, by constitutional law, and it extends not only to traditional correspondence but also to all other ways of transmitting information (by telephone, e-mail, various messengers or private messages on the Internet resource). This right is one of those who does not terminate his actions after the death of a person. According to Art. 306 of the Civil Code of Ukraine in the case of the death of the natural person who sent the correspondence, and the addressee of the use of correspondence, in particular by publishing it, is possible only with

the consent of their children, the widow (widower), and if they are not, - parents, brothers and sisters. At the same time, correspondence, which has a scientific, artistic, historical value, may be published in accordance with the procedure established by law.

However, the above articles of applicable regulations can not be applied organistically to online correspondence, since the permission to use correspondence should be provided by persons who are members of the family of the deceased and who have access to correspondence (in the case of traditional correspondence). If the solution to the issue of information about messages from the computer and mobile devices of the deceased (subject to availability of access to the latter and their content) is obvious, then the question of using correspondence, which relatives do not have access due to their location on certain resources and the protection of personal passwords, has no unequivocal solution. Immediately, several factors must be taken into account during deciding on access to the deceased's communications history. First, the factor of relative anonymity of users on the Internet does not make it possible to unambiguously find out that this account belonged to the deceased. Secondly, it is impossible to determine precisely the content of the will of the deceased in relation to providing third-party access to his own online correspondence. Thirdly, in many cases it is virtually impossible to obtain consent from the other party to the correspondence (for example, because of its anonymity). In addition, the correspondent information operator may not even have the technical ability to remotely access the message history.

Conclusions

Summarizing the above, one can determine the following:

- the issues of inheritance of personal pages and accounts remain unregulated by the current civil law;
- legislative norms regulating similar content relations can not be applied to

the investigated relations for a number of reasons, including ethical moments, possible violation of human rights and technological problems;

- issues of the inheritance of digital assets require a fundamental study at the level of civil law science, with subsequent legislative consolidation of the basic principles of legal regulation of these relations.

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