

Inheritance of social media accounts: seeking compromise solutions

Абдуллаева Умрайил Абзагировна

Студент (специалист)

Российская правовая академия МЮ РФ, Северо-Кавказский филиал, Юридический факультет, Кафедра гражданского права и процесса, Махачкала, Россия

E-mail: umka.abdullaeva@gmail.com

All over the world, social networks have become an integral part of people's lives. In addition to the method of communication, they represent a full-fledged source of income. In Russia, 99 million Internet users have an account on at least one social media [2]. Such involvement of the population raises the question of the legal regulation of the activities of users in this area. One of the most controversial is the issue of inheritance of the right to access the accounts of deceased persons, since the possibility of such access can have both economic and intangible value for heirs.

In the framework of this article, we will consider a compromise solution to this issue, which is based on an analysis of the features of such a digital asset as a social network account, taking into account the experience of foreign legislation.

It is necessary to understand the essence of the user account. This is understood as a set of data about a user that is necessary to authenticate him and provide access to his personal data and settings. The account stores all the user's chats, as well as saved audio and video files, documents and other assets.

One of the most important components of a user account is information in private chats. It seems that the information contained in the correspondence is closely related to such intangible benefits of a citizen as personal secrets and privacy, specified in Art. 150 of the Civil Code of the Russian Federation. The right to secrecy of correspondence and to restrict access to the information contained in it, therefore, will be a personal non-property right.

The consequence of ascertaining the close connection of personal correspondence in the account with intangible benefits is that it will be impossible to inherit access to the account. According to Art. 1112 of the Civil Code of the Russian Federation, the inheritance does not include personal non-property rights and other intangible rights. This provision means that it is impossible for heirs to obtain access rights to the user's account in the event of his death or in the event that he is declared dead based on a court decision, since a significant part of the contents of the account is a set of correspondence.

Probably, because of the connection between the contents of personal accounts and intangible benefits analyzed above, the settings of various social networks do not imply the possibility of inheriting user accounts. Therefore, the automatic deletion of a Telegram account occurs if the user is not active for 1, 3, 6 or 12 months. A similar approach is used, for example, by the Apple iCloud service, which also prohibits the transfer of one person's account to another at the user agreement level [1].

The impossibility of inheritance and the impossibility of making transactions with information in personal accounts is due to the protection of the personal non-property rights of the user himself and third parties whose messages and other information may be contained in the user's personal account. The notion that the death of the owner of personal rights entails their termination should not serve as an argument for allowing the inheritance of his account and providing access to it to third parties.

However, when considering the issue of inheritance of accounts in social networks, one cannot fail to notice that foreign legislation increasingly allows the transfer of access rights to an account to the user's heirs.

One of the clearest examples of legislative regulation of inheritance issues is the law of the State of Delaware (USA) [3], adopted in 2014 and securing the ability of heirs to obtain the right to access accounts owned by the testator. In addition to the ability to inherit accounts, the law gives guardians who care for people with disabilities the right to manage their social media accounts.

American jurists criticize this law. It is noted that heirs and guardians get unnecessarily wide access to the personal information of the deceased [5]. The law provides access to all content of personal accounts, including correspondence with living people.

It seems that the analyzed experience of the state of Delaware can be adopted only in part. Inheritance of an account, including correspondence, can be carried out with the consent of the testator, expressed in the will, as well as all persons with whom the correspondence was conducted. In the absence of the consent of certain persons to the transfer of their correspondence with the deceased person to the heirs of the latter, the administration of the application may delete the corresponding chats. The presumption of consent of a person to provide access to an account should not be allowed. With this approach, the personal non-property rights of persons will not be violated, since according to Art. 152.2 of the Civil Code of the Russian Federation, the use of information about the private life of a citizen in the event that such information «became publicly available or was disclosed by the citizen himself or at his will».

In order for personal non-property rights to access information contained in a personal account to be inherited, they should be included in the inheritance (Article 1112 of the Civil Code of the Russian Federation). A possible way to do this is to introduce the category of personal non-property digital rights subject to inheritance. In addition to the proposed method, we consider it possible to include an account in the inheritance as an inheritance of the right to the result of intellectual activity. A number of authors also follows this approach [4].

In the issue of regulating the Internet sphere, one cannot do without legal tools alone. We can agree with the opinion of E.H. Capel that when regulating the issue of account inheritance, it is important to use not only legislative mechanisms, but also the functionality of social networks [1]. Thus, it should be possible to put in the application the question of whether the user agrees to the transfer of access to his account in the event of death or he would prefer to delete it.

Based on the above, we note that the increasing value of digital assets of users in social networks obliges to provide for legal mechanisms for their inheritance. However, when developing legal norms in this area, one should take into account the specifics of such objects, the rights and legitimate interests of testators, heirs and third parties.

Источники и литература

- 1) Capel E.H. Conflict and Solution in Delaware's Fiduciary Access to Digital Assets and Digital Accounts Act / E.H. Capel // Berkeley Technology Law Journal. 2015. No. 30. Pp. 1235-1242.
- 2) Digital 2021: The Russian Federation [Site] - Available at: <https://datareportal.com/reports/digital-2021-russian-federation>
- 3) Fiduciary Access to Digital Assets and Digital Accounts Act [Site] - Available at: <https://delcode.delaware.gov/title12/c050/index.shtml>
- 4) Gurkovskaya M.I. Account inheritance: problems and development prospects // Scientific aspect. No. 2. 2020. Pp. 523-527.
- 5) Lee J. Death and live feeds: privacy protection in fiduciary access to digital assets / J. Lee // Columbia Business Law Review. 2015. Pp. 656-657.