

## **Properties of digital assets defining features their inheritance**

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**Abstract.** The article raises the unsolved problem of digital asset inheritance. An attempt is made to answer a practical question: how can potential testators dispose of this asset in case of death. The same question is asked by notaries. However, the legal issues of civil turnover of digital assets have not yet been clarified due to the novelty of this area and the rapidity of its spread. The properties of digital assets as a hereditary mass are also not entirely clear. The issue of inheritance of digital assets will remain open even if the published draft amendments to the Civil Code of the Russian Federation are adopted. In our opinion, when solving issues of inheritance of digital assets, it is necessary to proceed from their properties as a hereditary mass. The properties of digital assets that affect their inheritance have been established.

**Keywords:** digital assets, inheritance law, properties of assets, testator, heir, inheritance.

### **Introduction**

The relevance of the research topic is due to the fact that legislation on digital assets has been adopted and the spread of digital technologies. Digital currencies, non-cash money, digital libraries (library club, scientific electronic library, etc.), scopus systems, web-of-sense and many others have come into use. Many digital objects are located on Internet servers and corporate networks. All these are informational objects that do not exist in the space familiar to a person and are not perceived by his senses. A large amount of resources are spent on the creation and maintenance of these databases, messengers, social networks: material, natural, energy, labor. In US legislation, digital assets are included not only in civil circulation, but are also taxed [1]. Many citizens are the owners of digital assets, so a practical question naturally arises: how can potential testators dispose of them in case of death. Notaries ask the same question. However, the legal issues of creation, ownership, civil circulation of digital assets, due to the novelty of this area and the rapidity of its spread, are not yet perfect. They are archaic as they are based on pre-digital categories and concepts. The issues of inheritance of digital rights remain unresolved, even their legal status is uncertain.

The state of study of the issue. The analysis of the features of inheritance of digital assets was carried out in the works of A.V. Gapanovich, O. Gorokhova, I. Granik, E. A. Kirillova, K. A. Medofyeva, L. Yu. Mkhitaryan, M. M. Panarina, L. V. Sannikova, Yu. S. Kharitonova, TS Yatsenko, etc. In this regard, the purpose of

our research is to reveal the features, properties and essence of digital assets as objects of inheritance. To solve it, we analyzed scientific works in this area, identified and classified the properties of digital assets as hereditary mass, and developed conclusions on their inheritance in the context of Federal Law No. 259-FZ of July 31, 2020 [2].

The scientific novelty of the provisions of the article lies in the analysis of the properties of digital assets from the point of view of their inheritance.

The theoretical significance of the work lies in the fact that the conclusion that follows from the research carried out can serve as the basis for discussions about the inheritance of digital assets. The study is of practical importance for notaries who formalize inheritance in the form of digital assets.

The object of the research is the relationship arising from the inheritance of digital assets.

The subject of the research is the norms of Russian law related to the inheritance of digital assets.

Information and regulatory framework: scientific publications on the digitized literary sources of the Russian Public Library "CyberLeninka" and the libraries of the US Congress, information sources of the scientific electronic library, the university electronic library "on-line", the reference legal system "Consultant Plus", digitized materials of the scientific libraries of the Russian State Economic University "RINH" and the SFedU.

Theory and methods. The research is based on the theoretical basis of hereditary legal succession. Used research methods such as comparative legal and logical.

### **Discussions and results**

Digital financial assets as a legal institution were first introduced into the legal field of the Russian legal system by the adoption in the final reading and official publication last summer of the federal law in the field of finance [2]. It defines digital assets as digital rights and the possibility of their implementation (release, accounting, circulation) [2, clause 2, Art. one]. Practicing notaries have a question of hereditary succession of digital assets. In particular, how to inherit the "digital ruble" and other cryptocurrency, and in general, how to include digital assets in the hereditary mass (a pre-word cryptocurrency that everyone has heard about, but few have used, since at present the price of only one bitcoin is \$ 40,000. And how to include in the inherited mass digital assets of Instagram or YouTube with hundreds of thousands of subscribers and really having a high market value). The heirs cannot but worry about the question of what tax and how the inheritance received is taxed. For the tax service, the issue of the taxable base is relevant for the transfer of digital assets by inheritance and their subsequent possession.

Upon the introduction of this law on digital assets, their accounting, circulation, the activities of operators of information systems and operators of exchange of notorious assets were regulated.

The issues of inheritance, taxation, ownership, preservation during storage remained "overboard". For example, if the inheritance is not stored properly in digital form, from the moment of its inception until the registration of the

certificate of inheritance, it can disappear without a trace, and on the basis of its storage, highlight the claims and how to confirm the existence of digital assets at the time of the inheritance? For example, Google cloud storage of the testator can be deleted without the knowledge of their creator as early as July 2021, if the user did not use it for a long time or did not pay for storage, although before that the asset was free. And the file-sharing service - the "cloud" could store digital signatures, cryptocurrency passwords, photographic works, artistic values, intellectual property, etc. However, the features of the turnover of digital assets during inheritance are not established in it, only a remark is made: "To legal relations arising from the issuance, accounting and circulation of digital financial assets in accordance with this Federal Law, including with the participation of foreign strange persons, Russian law applies "[3]. But amendments to the legislation, taking into account the peculiarities of digital assets, are only being developed.

In the article by the State Duma of the Russian Federation<sup>1</sup> 28 of the Civil Code of the Russian Federation, it is proposed to add a phrase stating that things include cash and documentary securities, and other property - including property rights (including non-cash funds, non-documentary securities, digital rights). Legislators in the Civil Code of the Russian Federation propose to include article 141.1 1. on what is recognized as digital rights, the features of their implementation, pledge, order, transfer, encumbrances, who is recognized as its owner, especially the transfer of digital rights under a transaction. However, the features of the transfer of rights by inheritance are overlooked [3, p. 3]. It is also proposed to consider a possible written form of the transaction using electronic or other technical means [3, amendment to Art. 160 of the Civil Code of the Russian Federation], which contradicts the amendment to paragraph 1 of Art. 1124 of the Civil Code of the Russian Federation [4, Art. 1124], which expands the ban on the use of electronic means to draw up a will. A will cannot be sent to a notary electronically, such as an electronic personal income tax declaration. A number of authors of articles express the opinion that "the changes proposed by the draft law may lead to significant difficulties in further law enforcement and judicial practice" [3].

A discussion has developed about the upcoming changes in the public scientific space, a lot of scientific articles have been published and a monograph has already been defended.

It is proposed to operate with the concept of virtual property when registering an inheritance (Gapanovich A. V., 2020), nevertheless differentiating between this concept and "account". The author substantiates the position: only that virtual property that has value can be inherited. For example, virtual property mediated by a commercial account. And immediately there are contradictions in her reasoning: then the account is not virtual property, and at the same time the account is virtual property, if it is commercial [5].

MA Rozhkova specifies objects that refer to "virtual property (or, as it is inaccurately called in domestic publications, " virtual property ") [6]. In another

publication, MA Rozhkova clarifies that virtual property has property value not by itself, but only in the context of the corresponding information product ”[7].

In the development of this topic (Sannikova L.V. and Kharitonova Yu.S., 2018), we add that this point of view is adequate for the hereditary succession of the content of social networks. We agree with the respected authors that “... this content is contained exclusively in digital format and is of an intangible nature. May have potential value in relation to virtual space ”[8, p. 86-95]. The concept of "virtual property in social networks" is broader than the term "account". Indeed, in social networks there is not only an account, but also stored on servers on tangible media in the USA, Australia, the Spitsbergen Islands and other places, the exact location of which is unknown to the testator, heir, or notary. These are text and media files, stickers, postcards, pictures, QR codes, digital signatures, computer programs (including in the form of texts in algorithmic languages, assembler, digital codes), descriptions of algorithms, digital graphics of parts, assembly units and machine codes for their reproduction in water 3D objects. For example, on a 3D printer or digital machine. Social networks, especially Instagram, Tik Tok and Telegram, often host intellectual property objects such as works of art, vocals, dance, original genre, etc.

The opinion dominates (Lazarenkova O. G., 2019; Rozhkova M. A. 2019; Oreshkin E.; Gaponovich, 2020, Sannikova L. V., 2018) that “when recognizing this virtual property as an object of civil rights, legislative consolidation of provisions on the actions of Internet sites (social networks) upon receipt of information about the death of a user in order to avoid blocking (deletion) of his Internet pages ”[6-8].

The response [9] to the draft law [3] suggests that “based on the definition of the concept of digital rights, it seems that such rights are actually a way of formalizing traditional property rights of a different nature (property rights, obligations of law, corporate rights, exclusive rights ), as well as their fixation and transition from one owner to another. However, these rights can exist in electronic form without creating a new type of objects of civil rights ”[9].

There is no doubt that the introduction of digital assets into circulation will create conflicts and problems in solving practical turns in legal succession. For the simple reason that the mechanisms for the transfer of legal assets by inheritance have not yet been worked out. And the very understanding of what is inherited in this case is not fully understood.

Digital assets as a “digital designation” are an object of law; during inheritance, the question arises: what should be included in the hereditary mass - a digital code or another object designated by it? Yu. S. Kharitonova noted that “the inheritance of digital assets in practice, in the absence of a testamentary disposition indicating all the necessary access codes, logins and passwords and a list of digital assets that the testator owned, creates a lot of problems in practice, since the fact that the testator has a digital asset is quite difficult, and it is almost impossible to obtain access codes .. thus, the issue of establishing the ownership of digital assets and gaining access to them by heirs remains unregulated in law and unsolved from a technical point of view ”[10].

In our opinion, the discord about digital assets has a doctrinal basis: the concept of digital assets is scientifically under development. First of all, it is necessary to define the essence of digital assets. As a result of logical reasoning, we came to the conclusion that digital assets have the following qualities:

they are intangible, not perceived by the human senses and can be perceived only through complex electronic (photonic) technical means;

a digital asset always has a creator, and it can be either an individual or an artificial intelligence. If a digital asset is developed by a legal entity, then either a person or artificial intelligence creates it (this concept also includes algorithms for image processing and creation (editing) of texts, electronic translators, graphic editors, etc.);

a digital asset does not have a real output tangible by the human senses when it is activated and manifests itself only when using technical means: devices and gadgets;

with the help of digital assets, it is possible to provide services to individuals and legal entities (systems "Government servants", "Consultant pole", information automated system of the Ministry of Internal Affairs, etc.);

the service provided using digital assets is inseparable from it; it is simultaneously created and consumed by its consumer (a client of a digital service (for example, Government services); the presence of a person in the provision of such a service in the person of the client is mandatory: no client, no service;

certain types of digital assets are used to provide services to the audience - students, viewers, listeners;

specialized types of digital assets are used in the education system, both full-time and online;

the use of digital assets accompanies scientific research (Scopus systems, RSCI, Statistic, MatLab, MatCad, Compass, etc.) and generates new digital assets;

the use of digital assets is accompanied by licensing, accreditation and payments in favor of beneficiaries (for example, Microsoft, Apple, etc.);

the transfer of rights to a digital asset by inheritance is associated with the need to register it,

the use of digital assets in the provision of a service is an exclusive process, since this service is individual;

a digital asset necessarily has a tangible medium or part of it (cells of permanent or temporary computer memory, including a server, that is, property that does not necessarily belong to the owner or creator of services;

a digital asset is inseparable from its material medium (removable storage, hard drive, etc. device);

digital assets of the Internet, blockchain, social networks, systems of State servants, etc. are shared by an indefinite number of users, both authorized and unauthorized, both legal and illegal (hackers);

the quality of digital assets and the quality of their provision depends on providers, terrestrial positioning, the characteristics of signal propagation over open and closed networks;

the consumer and owner of digital assets located on Internet servers does not have the ability to control their safety, assets can be deleted by a moderator or by a court decision, content can be used without the knowledge of its creator or owner;

the consumer and the owner of digital assets located on Internet servers cannot control the absence of distortions and content and its availability;

the rights to digital assets in our country are not formalized by its creators in an adequate degree;

issued some digital assets can be a source of financial and other funds;

duly formalized and even unregistered rights to digital assets, for example, websites and network accounts, can be a source of payments, material and intangible benefits.

### **Conclusion**

After performing the research, we came to the following conclusion. There is a controversial assumption that “digital rights can exist only in decentralized information systems” [9].

The issue of inheritance of digital assets will remain open even if the amendments to the Civil Code of the Russian Federation and draft existing laws are finally read, approved by the upper house of the Federal Assembly of the Russian Federation and the President.

The features and essence of digital assets as objects of inheritance have been established: intangibility, the presence of a creator, the absence of a really tangible use of it, the possibility of using it for the provision of services, the need for licensing and accreditation, the presence of a tangible medium, inseparability from the medium, the need to register rights to it when the transfer of rights by inheritance, the use of an indefinite number of users, the inconstancy of quality and availability, the impossibility of proper registration of rights to some of them, the ability to be a source of material and intangible benefits.

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