The right to digital death in the Russian Federation, EU, and USA

El derecho a la muerte digital en la Federación de Rusia, UE y EE. UU

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ABSTRACT

The purpose of this study is to identify common and specific features of the theoretical and legal foundations of the right to digital death. Today, the regulation of this right is at the initial stage, and only a few countries (USA, France, Spain) have established in their legislation the norms regulating the order of inheritance of virtual objects. The legislation of the Russian Federation does not contain any special norms, however, the latest amendments to the Civil Code of the Russian Federation, which come into force on October 1, 2019, have indicated a completely different vector of development of this sphere than that followed by other countries. The analysis of the existing legislation revealed the problems of fixing and implementing the right to digital death and suggested ways to solve them.

Keywords: digital rights; inheritance; digitalization; digital death; digital life.

RESUMEN

El propósito de este estudio es identificar características comunes y específicas de los fundamentos teóricos y legales del derecho a la muerte digital. Hoy, la regulación de este derecho se encuentra en la etapa inicial, y solo unos pocos países (EE. UU., Francia, España) han establecido en su legislación las normas que regulan el orden de herencia de los objetos virtuales. La legislación de la Federación de Rusia no contiene ninguna norma especial, sin embargo, las últimas enmiendas al Código Civil de la Federación de Rusia, que entraron en vigor el 1 de octubre de 2019, han indicado un vector de desarrollo de esta esfera completamente diferente al de seguido por otros países. El análisis de la legislación existente reveló los problemas de arreglar e implementar el derecho a la muerte digital y sugirió formas de resolverlos.

Palabras clave: derechos digitales; herencia; digitalización; muerte digital; vida digital.

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INTRODUCTION

Today, one of the priorities for the development of the Russian Federation is digitalization, which covers all spheres of public life, from the need to update infrastructure and increase digital literacy of the population to the construction of a digital economy and the transformation of legislation. However, despite the apparent penetration of digitalization into all aspects of an individual's life, it can be stated that all of them concern only the stage of human biological life. At the moment, the sphere of regulation of a person's digital existence after his or her physiological death is out of the legislator's interest, while more and more people are interested in the issues of postmortem digital life, transfer of virtual data and accounts to heirs, mandatory preservation or deletion of profiles belonging to them during their lives, etc.

The existing Charter on Preservation of Digital Heritage (The Charter, 2003), adopted on October 15, 2003, does not extend its effect on the virtual data of ordinary people (social pages, e-mail, etc.), but only obliges states to select what is the digital heritage and to ensure its protection. At the same time, a whole industry has emerged around the issue of people's post mortem digital existence. Thus, in 1995, the first and still functioning virtual cemetery was created - the site The World Wide Cemetery (The World, 2019). Users from all over the world create virtual graves for their deceased relatives and friends, leave epitaphs, add photos and data of the deceased, thus forming a digital memory of this person.

With the development of technology, the approach to creating digital memory has changed, in particular, the possibility of creating holograms and avatars of deceased people. Thus, in 2012, thanks to the use of modern technologies for creating holograms, the repertoire Tupaj Shakur, who was killed in 1996, performed at the Coachella festival. In 2016, the AI-startup Replika created a chat bot based on a really existing person. The appearance of this project was conditioned by Eugenia Kuida's desire to preserve the memory of her friend Roman Mazurenko, who was tragically killed in an accident. Having received from Roman's friends and relatives their correspondence with him, Evgeniya uploaded the received information to the neural network.

As a result of these actions there was a chat-bot or a virtual avatar Luka which answers questions as it would be made by Roman Mazurenko (Newton, 2016). In 2017, amateur journalist and programmer James Vlahos conducted an extensive interview with his terminally ill father to create his digital clone after his death (Vlahos, 2017). These examples are isolated, but those who want to make digital avatars a common thing have already appeared on the Internet: the Eternime startup (Eternime, 2016) proposes to create a copy of yours, based on correspondence and personal information, which will be able to communicate with your family and friends after death. This service still works in beta mode with several people, but 40 thousand people are in line to create their own digital avatar.

Cinematography is an active supporter of 3D avatars or animated anthropomorphic images. One of the most striking examples of the actor's "resurrection" was related to the fate of Paul Walker, shot for "Fast 7": the actor who died in a car accident in 2013 and did not have time to complete shooting was returned to the film using computer graphics. The tragic death of Paul Walker was a powerful argument in favor of the mandatory creation of a three-dimensional digital copy of the actors involved in large projects: this item was often included in the contract between the studio and the performer.

Thus, the studio not only guarantees the mandatory completion of the project, but also provides the opportunity to use this image in computer games and other films.

In parallel with the chat-bots and digital avatars industry, digital heritage preservation services were developed. One of the most famous servers of this kind, SafeBeyond (The Digital, 2016) offers its users to structure their digital heritage: to list the existing accounts, specify passwords to them and appoint an heir for each account. Besides, it is possible to prepare posthumous messages that will be sent after the death of the user. Similar service Cake (Plan, 2017) suggests to take under the control also affairs in an offline, beginning from dying treatment and finishing work with the finance. LivesOn and DeadSocial services (Why death., 2013) offered their users, in fact, digital immortality, giving them the opportunity to create content that would be published in accordance with their established schedule after their death.

Thus, it can be concluded that the issues of postmortem digital existence, the transfer of digital heritage and the ordering of virtual space in the event of one's own death are of concern to a significant number of people. However, the solution to these problems is in the private hands and is organized by individuals, companies, servers, while more important is the existence of legal regulation of this sphere. Legislation in modern countries contains appropriate offline equivalents: the institution of inheritance, the right to privacy, the right to secrecy of correspondence, the right to protect the image of a citizen, etc., but most of them ignore their virtual embodiment. While all data remaining on the Internet after a person's death is a modern version of post-mortem photography popular in the Victorian era: a person is no longer alive, but his digital image continues to exist, and in some cases "live".

These phenomena can be legally introduced through the human right to digital afterlife, which allows the digital embodiment of human life to continue without a living biological prototype, and the human right to digital death, which enables a person who died in reality to become one for virtual space as well.

At the present stage of development of the digital society, the right to digital death is more relevant for the majority of people, as it is inextricably linked to inheritance issues. Accordingly, it seems necessary to study the existing

experience of foreign countries in the field of post-mortem rights, established practice, including judicial practice, the solution of conflicts, the position of companies owning social networks, e-mail, as well as regulatory legal acts of the Russian Federation for the subsequent identification of the position of the legislator in respect of property remaining on the Internet after the death of a person.

Aim and objectives

The purpose of this study is to identify common and specific features of the theoretical and legal foundations of post-mortem rights, in particular, the right to digital death.

The following research objectives are aimed at achieving this goal:

- Identification of the policy of social network owners and servers regarding the inheritance of their accounts;
- Identification of the main provisions of judicial and other practices in resolving controversial issues in the field of inheritance of e-mails, pages in social networks, etc;
- Definition of legislative approaches in the field of post-mortem rights, in particular, the right to digital death, in the Russian Federation and foreign countries;
- Identification of the essence of postmortem rights in the Russian Federation and problems of their regulation.

DEVELOPMENT

Methods

The methodological basis of the study is made up of general scientific methods of cognition (analysis, synthesis, modeling, dialectics) and private scientific methods of cognition (historical, logical, comparative legal), which will contribute to the comprehensive and substantive study of the questions posed. It is impossible to study digital rights in specific conditions, particularly in post-mortem settings, without considering their offline equivalents. Accordingly, the primary analysis was given to constitutional and civil rights outside of the digitalization conditions. The application of the synthesis implied the unification of the previously identified common and specific features of constitutional and civil rights, taking into account the absolutely new conditions for their implementation - the digital space. At the same time, the use of the above mentioned methods conditioned the effect of a special mechanism of analysis through synthesis, which made it possible to include the object of research in absolutely new links. At the same time, the analysis was not a mechanical separation of constitutional and civil rights into their components, but rather a reconstruction of the traditional properties of the relevant individual's rights under specific conditions, which made it possible to justify the changes in the generally accepted understanding of the essence of these rights within the digital reality.

Modeling made it possible to build and study the existing models of implementation of postmortem digital human rights in foreign countries and in the Russian Federation, to identify problems and gaps in these models, to formulate opportunities for their elimination and replenishment. Despite the fact that in the Russian Federation this sphere can be referred to as an insufficiently regulated area of legislation, the adopted but not yet effective amendments to the Civil Code of the Russian Federation have outlined the general outlines of the state policy in respect of the rights under study. The data obtained made it possible to identify a more rational approach to the regulation of post-mortem digital rights in the Russian Federation.

This study was impossible without the use of a dialectical method of cognition, which provides for the identification of a compromise variant of regulation of postmortem digital rights through the consideration and comparison of opposing viewpoints. The need for the use of the dialectical method of cognition was conditioned not only by the diversity of positions of companies owning social networks, mail servers, and lawyers, but also by the lack of a coordinated position of the legislator on this issue. The consideration of the relevant points of view in their opposition allowed us to eliminate the disadvantages of each of the existing positions and to form a balanced approach to solving existing problems.

Despite the fact that virtual space and digitalization are phenomena that characterize modernity, a full-fledged study was impossible without the use of historical and logical methods. The presentation of practical positions and legislative provisions in their chronological sequence allowed us to clearly identify the regularities, problems and defects of the approaches being implemented. Taking into account the transformation of views and positions allowed us to assess the current prospects and risks of regulation of post-mortem digital rights. To achieve this goal, it was impossible to do without the use of the comparative legal method. In the Russian Federation, the regulation of postmortem digital rights is in its infancy, which is not the case in some foreign countries (USA, France). A comparison of categories, concepts, and institutions existing in the field of post-mortem rights made it possible to formulate recommendations on the prospects of borrowing the best foreign practices and their adaptation to the Russian realities.

Results and discussions

According to the theory developed by American scientists V. Strauss and N. Howe (Howe, Strauss, 1991), people born after 2000 belong to the "Generation Z", the peculiarity of which is that they have been "connected to the Internet" since childhood. Accordingly, the generation, for which the digital existence and transfer of their own accounts will be of fundamental importance, has only begun to cross the threshold of adulthood and is not interested in the legal fate of their own digital space after their death. Therefore, the need for legal regulation of this sphere has been predetermined by the emergence of individual cases, on the basis of which the practice of resolving such conflicts is formed. The first high-profile case in this area was the dispute between Justin Ellsworth, the father of the American military who died in Iraq in 2004, and Yahoo. Before and during his service, Justin Ellsworth exchanged letters with his father through his Yahoo mail account. After his son's death, the father asked Yahoo to grant him access, but was refused.

According to the company's policy, accounts with a 90-day inactivity period were automatically deleted without the right to transfer them to third parties, including close relatives. At the same time, the Yahoo user agreement contained a provision on the possibility of disclosing the account content by court decision (Who owns.., 2019). It was this clause that allowed Mr. Ellsworth to appeal to the court. In the decision in this case, an Auckland County judge on 20 April 2005 ordered Yahoo Inc. to deliver the contents of the e-mail to the victim's family. Yahoo did not contest this decision and handed Mr. Ellsworth a 10,000-page disc of texts (Yahoo, 2018). Thus, the court confirmed that the content of the letters was the property of those who had written them, and was therefore inherited, regardless of the fact that they were actually on Yahoo's servers.

Following the court decision, this position was enshrined in U.S. law, namely in one of the first laws governing the use of user information after death, the Access to Deadly E-mail Accounts Act of June 24, 2005 in Connecticut, which came into force on October 1, 2005. This act gives authorized persons the right, after the death of the account holder, either to access it or to request a copy of the information on the account. Standard documents such as a written statement and documents certifying the rights of the applicant are specified as the conditions for obtaining this access (An act, 2016).

Although this approach was developed in the U.S. as early as the mid-2000s, it was not until 2015 that this area of law was comprehensively regulated. In 2014, an act amending Section 12 of the Delaware State Code concerning trust access to digital assets and digital accounts was adopted (Title 12, 2018). This act not only equated the electronic accounts of the deceased with "other objects of ownership", finally establishing the right to inherit them, but also explained the content of the basic concepts used in the act ("account holder", "digital asset", etc.), indicated the scope of application of these rules, as well as the procedure for obtaining access to digital assets and accounts.

On the basis of this act, a unified act was developed in 2015, recommended for adoption in all states of the country - the act on trust access to digital assets (Fiduciary, 2017). An overwhelming number of states have already applied this act (Fiduciary, 2018), thus making the U.S. legislation the most progressive in the field of digital property and inheritance.

The policy of the U.S. social network Facebook, which in 2013 added the possibility of appointing a curator of the page, that is, the person who will be responsible for the account of the deceased person after the assignment of that memorable status, also looks consistent in this case. The custodian has limited functionality (change of profile photo and cover, publication of attached record, etc.) and is not considered to be the heir to this profile, therefore, the appointment of the custodian does not create a conflict with the current legislation that allows the transfer of the account by inheritance. However, if the custodian and the heir is the same person, it greatly facilitates the post-mortem management of another's account.

However, such a coordinated implementation of social network policy and legal norms is possible only if the legislation contains appropriate provisions clearly prescribing the measure of proper behavior of social network owners in the event of death of the user. For example, unlike US legislation, German legislation does not contain clear provisions on the post-mortem management of social media accounts. In these circumstances, social network owners turn to their own user agreements and acts of the country concerned that regulate similar institutions outside the digital environment.

For example, in 2012, Facebook denied the parents of a 15-year-old girl who died on a train in 2012 access to her account, citing the requirements of data privacy legislation. The information on this account was necessary to clarify the circumstances of the death: whether the death was a suicide or an accident. This also had a bearing on the indemnification of the driver, which was paid only in the case of suicide. The Court of First Instance recognized the right of parents to access their account on the basis of an analogy with the transfer of personal diaries and letters of inheritance (Sub-Clause 2, § 2047 and § 2373 of the German Civil Code). The appeal decision denied the parents the right to grant access to the account on the grounds that the personal information of both the account holder and those with whom she had communicated on the social network could not be disclosed. In 2018, the case was heard by the German Supreme Court, which considered that it was possible to transfer the account by inheritance, including with the opening of access to data relating to user communication in the social network (Parents, 2018).

Thus, Facebook, which used to give the relatives of the deceased only the right to delete a page or turn it into a digital memorial, should now give the parents of the deceased girl full access to her social network account. However, despite the fact that the adoption of this decision is fundamental, it should not be forgotten that Germany belongs to the Romano-Germanic legal family, in which the judicial precedent is not recognized as a source of law. Consequently, the decision of the German Supreme Court had an impact on the specific situation, without guaranteeing that other courts would take a similar decision in such cases. At the same time, no legislative changes are currently being drafted.

Despite the urgent need to adopt relevant legislation, only a few countries in the European Union have legislated on this issue. In France, for example, the right to digital death is provided for by the Digital Republic Act of 7 October 2016. According to the provisions of this law, a person has the right to respect his or her will regarding the fate of his or her personal information published on the Internet after his or her death by the persons concerned, i.e. to a certain extent this right is experienced by its owner (LOI, 2016).

Under the influence of the French experience in Catalonia, a law was adopted in 2017 to regulate the management of accounts and other heritage left dead on the Internet. The Digital Inheritance Law provides for the drafting of a so-called "electronic will", which appoints an heir to a person's "virtual property" after his or her death. The "virtual property" includes social networks, e-mail, mobile applications, downloaded files, purchased network services, goods and website domains.

At the same time, a higher legal force of a written will is established, i.e. in case of a contradiction between an "electronic will" and a regular will, the latter is applied (LEY, 2017). And in 2019, Spain adopted the Federal Law "On Protection of Personal Data and Guaranteed Digital Rights", which established the right to leave digital property to the heir (Spain, 2018).

Accordingly, we can conclude that the formation of post-mortem rights is only just beginning. Single cases of judicial practice may both give rise to legal regulation of the institute (USA) and not affect the current legislation (Germany). However, it does not seem right to expect the emergence of extensive practical experience in this area in order to conduct comprehensive legal regulation in the future. Today, the development of legislation lags behind the digitalization of society and cannot fully ensure and guarantee the implementation of rights and freedoms in virtual space. The legislator is always in a catching-up position, which, given the length of the legislative process, has a negative impact on the quality of regulation. It seems that this area should be subject to anticipatory legislative regulation, which will be further improved as practical experience in the field of post-mortem rights becomes available.

However, despite the apparent simplicity of this model, it faces significant challenges in the process of its implementation. In particular, it is impossible to fully regulate post-mortem rights of the individual if the state does not have a legally established list of rights guaranteed within the digital space, and their content distinguishes them from similar rights, but accessible to the individual outside the virtual environment. Along with the developed and developing countries, the Russian Federation is also entering the era of building a digital society, the integral part of which is the availability of appropriate legislative regulation. Despite the fact that digitalization is currently one of the most discussed topics, there is no significant practical experience in the field of digital rights in general and post-mortem rights in particular in the Russian Federation.

The position of owners of social networks and other resources on the Internet in relation to post-mortem rights is based on the norms already existing in the legislation of the Russian Federation, which were created without taking into account the future digitalization and the issue of inheritance of virtual things. In 2019, for example, the media covered the situation around musician Vasily Tsirin, who two years ago lost his mother, violinist Lyudmila Karpushkina, and who wanted to receive recordings, photographs and videos from her concerts stored at the appropriate post office. He was denied access to his deceased mother's email after requesting technical support from Rambler. This decision was based on current legislation and, in particular, on article 63 of the Federal Law on Communications. According to the provisions of this article, access to e-mail will be granted only if the court recognizes him as the heir to his mother's e-mail account (About.., 2003). There is no confirmation that the statement of claim was sent to the court at the moment.

Thus, it can be concluded that the companies have formed their own position on the transfer of accounts in social networks and e-mail, changes to which are available only in court. But the question arises, to what extent is it reasonable to load the judicial system with monotonous cases, the solution of which can be established at the level of legislation? Despite the apparent simplicity of solving this problem by means of legal regulation, the content of the relevant legal norms is complicated. In particular, before making the necessary decisions, legislators need to answer a number of questions to identify the nature of the approach they are taking.

The first question that needs to be answered is what exactly can be inherited within the virtual space. Even once on the Internet, each person has left a digital trace, whether it be visiting a page, writing a comment, using services provided by government agencies, organizations, etc. However, it is not possible to speak about the inheritance of the same comment, once left on the Internet by a dead user, because it is impossible to transfer the freedom of thought and speech that does not possess property rights and is realized by inheritance. Accordingly, we should talk about virtual objects that have a certain form (file, complex work, etc.) and have certain properties (transferability,

cost evaluation, etc.).

Due to the absence of separate provisions on inheritance of virtual objects, consideration of this issue is possible only on the basis of general rules on inheritance. According to the provisions of Article 1112 of the Civil Code of the Russian Federation (hereinafter - the Civil Code of the Russian Federation), the inheritance includes the things belonging to the testator on the day of the opening of the inheritance, other property, including property rights and obligations. Rights and obligations inseparably connected with the personality of the testator, as well as personal non-property rights and intangible benefits are not included in the inheritance. Taking into account the abovementioned norm, the question arises whether it is possible to inherit e-mail.

In this case, the Civil Code of the Russian Federation gives a clear answer that the inheritance does not include non-property rights and other intangible benefits. Conducting correspondence is one of the forms of implementation of Article 23 of the Constitution of the Russian Federation (hereinafter - the Constitution of the Russian Federation), in particular, the right to privacy and secrecy of correspondence. The text form of communication has no cost expression, a person enjoys the constitutionally granted freedom of thought and speech (part 1 of article 29 of the Constitution of the Russian Federation), therefore, the positions expressed by him are directly related to his personality. In this case, e-mail acts as a means of communication, such as, for example, mobile communication, but there are no questions about the inheritance of telephone conversations made by a person in life. It is impossible to recognize e-mail and intellectual property. Accordingly, the e-mail itself, by means of which a person conducted personal correspondence, cannot be recognized as an object of inheritance.

However, as noted in the above examples, e-mail may contain not only text messages, but also photo, audio and video files that have attributes of property, and therefore should be included in the inheritance. It seems that in this case we should talk about the right to content (files) and not to form (account). The solution to this problem is to provide the heirs with files stored in the post office without opening access to the account itself. The controversial point of this position is how to solve the issue of transfer of text files attached to letters: the content of these files may vary from draft artwork or scientific work to personal correspondence copied, for example, from another social network. Placing the obligation to check the content of the relevant files on the site owners, firstly, will increase the burden on companies and, secondly, create the possibility of violation of the secrecy of correspondence, the restriction of which may need careful study, but the presented method of solving this problem is partially implemented on the server "Yandex.Money" (electronic wallet and service of electronic transfers and payments) (I leave, 2019).

Money on the electronic purse is the same property as any other, so it is included in the inheritance and should be transferred to the heirs. Receipt of funds is available only from the identified wallet and in the case of providing the necessary documents (original or certified copy of the certificate of inheritance, certified copy of the death certificate, handwritten application with details for the transfer of money and identity document). After checking the documents, the company "Yandex" transfers money to the heir's account, without giving him access to the wallet itself. This approach is due to the fact that the identified e-wallet is directly related to the person's identity (its registration requires the provision of passport data), so access and management of it can create a situation where the deceased transfers. At the same time, the e-wallet contains information on remittances, which can be referred to as a constitutionally established form of "other messages". Accordingly, opening access to this information will be a violation of Article 23 of the Constitution of the Russian Federation.

Along with virtual objects created by the user, there are objects in the digital space purchased by the user (digital books, music albums, etc.). For example, throughout the life of a person, he or she was able to create an entire collection of musical works by various performers on iTunes. But does this mean that it has to be passed on to its heirs?

From a classical legal point of view, it is not possible to inherit these objects because the user agreements of these sites contain a reference to the fact that by clicking the "Accept the terms of the agreement" button, the user receives only a license from the company to use the file. This license is valid for life. That is, the user and the company are bound by a contract of lifelong services. Therefore, this music does not belong to a person after his death, and therefore can not be the object of inheritance.

Over time, the approach to social networks has changed: while they used to be primarily a means of communication, today a significant part of accounts bring profit to their owners. Examples of such accounts can be channels on YouTube video hosting, where views are "monetized", as well as "working" accounts in Instagram, where advertisements are placed and orders for goods and services are placed. Despite the fact that these sites similarly host photos and videos, it is difficult to say that the heirs should only transfer files. In this situation, the financial component is lost. And if in the case of video hosting a compromise solution is possible (files with video recordings are transferred to the heir without removing them from the site, and the money received from viewing is periodically transferred to the heir's account (minus the page security services), the "worker", corporate profile in Instagram requires direct human involvement in the management of the account. Thus, there is a question of necessity to inherit the whole page in certain cases, not only its content.

From the legal point of view, a certain page in a social network can be recognized as a result of intellectual activity, for example, as a composite work or database (Article 1260 of the Civil Code of the Russian Federation). Thus,

for a long time there has been a dispute between the social network "Vkontakte" and LLC "Double" (developer of scoring programs), the subject of which is the issue of ownership of the database of users of the social network "Vkontakte" and the possibility of its use. On July 17, 2018, the Intellectual Property Rights Court overturned the decision of the 9th Arbitration Court of Appeal, which declared illegal the actions of startup Double to collect information from open profiles of VKontakte.

The cassation sent the case No. A40-18827/17 to a new hearing, the date of which is still unknown (Cassation, 2019). However, the very fact of recognizing that the social network is a database of users gives grounds to believe that individual pages are the same systematized independent objects. Accordingly, the courts approach the issue of the status of pages on social networks, but to date, no final conclusion has been made in this discussion.

The second question to be answered by the Russian legislator before developing provisions on inheritance of digital rights and virtual objects concerns the procedure of such inheritance.

Of course, user agreements contain indications that, for example, a person is prohibited from registering as a User on behalf or instead of another person ("fake account") (para. 6.3.1. Rules for using the VKontakte website (Rules, 2019). However, in practice, it is impossible to track and verify the authenticity of the name used, as the network owners do not have the right to request identity documents. Accordingly, before establishing the regulation of the digital heritage, it is necessary to specify the rules and procedures for confirming the identity of the owner of the page, as it seems that even the use of a maiden name or stage alias may become an obstacle to the confirmation of rights to a page on a social network.

One possible solution to this problem may be to confirm the page, identification, as it is done with the e-wallet on the server "Yandex.Money". To users three kinds of electronic purses are accessible: anonymous, nominal and identified, thus money to successors are transferred only at use of dead of last kind of an electronic purse. Thus, the fact of acknowledgement of page in a social network can be an indirect component of desire of the person further to transfer the given page to successors.

Direct consequence of the question put above is necessity of definition of the form of the order by means of which there will be a transfer of virtual objects. Given the existence of functionality offered by individual sites, such as the possibility of appointing a curator of the page in the social network Facebook, the solution to this problem is allowed in several ways: recognition of such actions as a smart contract or a habitual will (in paper or electronic form).

The Federal Law No. 34-FZ "On Amendments to Part One, Part Two and Article 1124 of Part Three of the Civil Code of the Russian Federation", which was adopted and will come into force on October 1, 2019, established digital rights and established the possibility of entering into smart contracts. At the same time, the same federal law contains a direct ban on making a will using electronic or other technical means. Consequently, the legislator leaves no other variants of the will except for its written form certified by a notary public.

In the current legal environment, the testator may prescribe appropriate provisions for the transmission of his or her own virtual possessions in a written will, but this does not guarantee their actual transmission. Inheritance in the Russian Federation is recognized as things, property, property rights and obligations (Article 1112 of the Civil Code of the Russian Federation), so the absence of property status for virtual objects may become an obstacle in the transfer of virtual things to the heir. Moreover, as discussed above, website owners often refer to the norms on the human right to privacy and secrecy of correspondence, which can be limited only by a court decision. In this case, the question may arise as to whether the consent of the person expressed in the will is sufficient to ensure that the transfer of the account is not considered a breach of applicable confidentiality rules.

Thus, it can be argued that unless the basic provisions on digital rights and virtual things are established, their status and characteristics are not defined, further legislative regulation is impossible. Due to the specificity of virtual things, on the one hand, belonging to a certain person, and on the other hand, existing within the limits of someone else's property, it is possible to consider the prospects of introducing a new type of property, taking into account the peculiarities of virtual things, on the basis of Part 2 of Article 8 of the Constitution of the Russian Federation (other forms of ownership). This will help to avoid changes in the content of private property, which may cause confusion and contradictions with respect to the objects of property that already exist outside the digital space.

CONCLUSIONS

Analysis of legal views on the regulatory framework for postal rights, in particular, the right to digital death in the Russian Federation and foreign countries, regulatory legal acts, as well as court decisions allows drawing a number of conclusions. Firstly, in most countries the sphere of regulation of a person's digital existence after his or her physiological death is outside the area of interest of the legislator, while an increasing number of people are interested in one or another component of post-mortem rights.

Second, within the framework of postmortem rights, one can highlight the right of a person to digital afterlife, which allows his or her digital embodiment to continue living without a living biological prototype, and the right of a person to digital death, which provides an opportunity for a person who has died in reality to become one for virtual space as well.

Third, the right to digital death in one form or another is legally enshrined in such states as the United States, France, and Spain. In these countries, virtual objects are recognized as property and are subject to inheritance.

Fourth, the legislation of the Russian Federation does not contain any special norms regulating post-mortem rights; therefore, in the event of disputes, general norms adopted without taking into account digitalization and the need to transfer virtual objects by inheritance should be applied. The analysis of the relevant rules of law allows us to assert that, until the basic provisions regarding digital rights and virtual things are fixed and their status and peculiarities are determined, further legislative regulation, including of the sphere of post-mortem rights, is impossible.

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