

# Digital Inheritance of Social Media Accounts

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**Abstract:** *This article discusses the possibilities and specifics of the digital inheritance of social media accounts. Nowadays, the fate of a deceased user's account becomes especially relevant and important for heirs since this account can store intellectual property, as well as be a source of income. This situation is caused by the novelty of hereditary legal relations in the digital environment. The study aims to determine the legal nature of a social media account and the ability to inherit its content. While writing the article, the authors used the methods of collecting and studying certain facts, generalization methods, methods of scientific abstraction, methods of learning regularities. The authors of the article provide definitions of the digital inheritance of social media accounts and conclude that these accounts are subject to civil rights. In some cases, the account's content is the result of intellectual activity and a means of generating income, therefore, it can be classified as a digital inheritance, which can be passed onto heirs by law or under the last will. Several heirs can simultaneously take possession of this property. However, not all rights are subject to transfer. For example, rights associated with an author's identity cannot be inherited. Heirs do not receive the right to change the results of labor or publish any information under their own name. The account user is able to transfer intellectual property rights to their results and profits to their heirs under a will or by law, while heirs can assign one of the statuses to the testator's account.*

**Index Terms:** *account, social networks, inheritance, heirs, intellectual property, copyrights.*

## I. INTRODUCTION

Being intellectual property and means for generating income, social media accounts are the real estate of the 21<sup>st</sup> century [1]. With a proper approach, social media accounts can bring their owners a substantial income from advertising and direct sales. Like any other property, social media accounts require some work. Social networks have become an integral part of people's lives. Currently, almost all Internet users have accounts in social networks [2]. In this regard, the question arises about the fate of accounts,

materials and information assigned to them after the user's death. Nowadays, the fate of a deceased user's account becomes especially relevant since this account stores lots of information that the user has collected over a long time. Arrays of information can be subject to copyright and remain unknown to relatives of the deceased who do not use social networks. The information contained on the user's page can be valuable for relatives. Furthermore, users and companies use social networks as a marketing tool to promote their own products and earn money [3]. The legal analysis should carefully consider the possible inheritance of social network pages belonging to deceased users.

Many scientists analyzed the legal status of social media accounts: Mete Celik and Ahmet Sakir Dokuz [4] detected socially similar users in social network data sets based on their socially important locations. Mahmoud S. Alhaddad [5] studied the use of social media among Saudi residents for medicines related information. Alistair G. Sutcliffe, Jens F. Binder and Robin I. M. Dunbar [2] analyzed activity in social media and intimacy in social relationships. Jong Hyuk Par, Shailendra Rathore, Pradip Kumar Sharma, Vincenzo Loia and Young-Sik Jeong [6] considered social network security: issues, challenges, threats, and solutions. Cayce Myers [7] considered social media ownership litigation between organizations and PR practitioners. Many other scholars also dealt with the legal status of social media accounts. From the viewpoint of civil law, the account mode in social networks is not defined. The ability to manage "digital inheritance" in the form of an account is not regulated at the legislative level, and international legal acts do not define whether some account is owned by a particular user. Each social network solves these issues at its sole discretion. Therefore, all problems should be analyzed with due regard to the practice, researchers' opinions and, if possible, suggested solutions.

## II. METHODS

The study object is the legal status of social media accounts and their possible inheritance.

Rapid digitalization associated with the widespread use of the Internet in all spheres of life has conditioned new opportunities for applying the systematic approach and its corresponding methods (structural and functional analysis). We used the following methods:

- Methods of collecting and studying certain facts;
- Methods of generalization;
- Methods of scientific abstraction;
- Methods of learning regularities.

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At the stage of collecting and studying certain facts, we used the methods of interpretation to determine whether an account in social networks refers to intellectual property that is subject to inheritance.

The prognostic method helped make scientifically grounded predictions about the development of hereditary legal relations in the field of digital property, in particular, the content of social media accounts with due regard to their legal nature, as well as to form recommendations for law enforcement practices. We also used logical-semantic analysis together with the above-mentioned methods, which allowed us to consider the peculiar legal nature and the possibility of inheriting accounts.

### III. RESULTS

A social media account is a record containing information that users add to a computer system [4]. Internet users perceive their account as a personal page or profile, a storage place of personal and other information on a certain Internet resource.

The legal status of social media accounts is debatable. Researchers discuss the following matters: whether accounts are objects of civil rights, what is the nature of the user agreement, how to inherit intellectual rights to an account [8].

The content of social media accounts is a digital inheritance that can include intellectual property rights [9], as well as the right to income that the user received in the process of using the account.

It is necessary to consider an account as a digital inheritance from two perspectives: first, it can comprise intellectual property, second, it is often used for advertising and providing services, thereby bringing a certain income to the page user [10]. Types of rights to the results of intellectual activity include property and personal non-property rights. Property rights to intellectual property are represented by an exclusive right to use the object. The exclusive right to some object that is a kind of intellectual property protected by copyright can be inherited [11]. This means that property rights, including exclusive rights to use some creative work (right to reproduce, distribute, dispose of, etc.), are inherited.

In practice, it means that after the death of an author or another right holder (an individual person) their creative works can be used only with the consent of their heirs and with the payment of remuneration within the term of copyright. Thus, the results of intellectual activity demonstrated in social media accounts can be inherited by law or under a will [12].

Accounts in social networks can be used to make profits by placing advertisements on a page that promote some goods and services. This way of earning is often offered by firms where an account owner works. Companies use their employee's account as a marketing tool to promote their own products and services. The company's activity in social media accounts generates additional sales and the account user who placed the above-mentioned advertisement is entitled to a percentage of sales, thus gaining income. Due to their peculiarities and increasing importance, social media accounts "form an audience", i.e. "digital locations" visited by the target audience of advertising, products and services [13].

Corporate blogging in social media accounts has already

formed a new sphere of marketing (social media marketing – SMM). Work in this area is included into duties of company's employees (sometimes an individual employee (social network manager) or a whole department) or is outsourced to a specialized firm (SMM agency) under a service contract [14].

According to this approach, a user account is regarded as a full-fledged info-business generating income. Therefore, the user's heirs have all rights to inherit this income, and active users of social media accounts lobbying interests of the company they are working for should be able to entitle their heirs to manage the above-mentioned account in case of their death. While making such a will, users have the same rights as when making a will with respect to their property, i.e. they have the right to specify one or more heirs, distribute inherited potential income equally or in certain shares, appoint a relative or related person as a legal heir.

Being a result of intellectual activity, social media accounts can be defined as works of science, literature, art or databases.

If a social media account is considered as a creative work, it should be classified as the so-called "secondary" work, i.e. complex object or composite work.

When inheriting rights to some account as a composite work, one should prove that this page is not just a collection of constituent elements (posts and texts, including illustrations, video clips, photos, hyperlinks to other Internet pages, etc.), and the selection and location of the indicated elements on the page is the result of creative activity [15]. At the same time, elements on the page do not have to be independent works, and the author of this composite work has the copyright to the selection or arrangement of materials (compilation) in conformity with law. Regarding the location and selection of content, an account page is similar to a website and can be defined as a composite work [16].

If individual elements of a page are independent copyright objects, the page can be considered as a complex object. However, a social media account should not be included into a closed list of complex objects but rather to multimedia products since a page in social networks is characterized by complexity, virtuality and interactivity [6]. The inheritance of rights to a complex object instead of a composite work does not require heirs to prove the creative nature of selected and arranged elements. At the same time, it is necessary to explain why the page under consideration includes several protected results of the intellectual activity. Heirs should also substantiate their rights to a complex object conditioned by agreements on the alienation of an exclusive right or licensing agreements on individual results of intellectual activity included into a complex object.

A social media account can also be inherited as a database, i.e. an objectively presented set of independent materials (articles, estimations, regulations, judicial decisions and other materials) systematized in such a way that these materials can be found and processed by an electronic computing machine. Accounts in social networks meet this legal definition.

To enable the systematization of materials, it is recommended to mark materials on a page (posts) with tags that allow searching and sorting page materials (Mireille M. M. van Eechoud 2003).

According to law, the creator of some database (including processing or submission of relevant materials) who bore substantial financial, material, organizational and other costs has the exclusive right to extract materials from the database and to use them in any form and in any way (exclusive rights of the database creator). In the absence of other evidence, a database whose creation requires substantial expenditures should contain at least ten thousand independent informative elements (materials) constituting the content of the above-mentioned database. Databases are subject to related rights in terms of their protection against unauthorized extraction and reuse of their content.

To inherit rights to a database, one needs to prove substantial costs for creating such a page. In this regard, it is necessary to prepare a proof of expenses in advance [10]. In case of a dispute, the court must:

- Identify components that make up the group under dispute (page in the account) and can be used with a computer program (computer code);
- Evaluate them as a material collected at a specific Internet address;
- Consider criteria characterizing the content as a database.

When inheriting a social media account, one should consider whether the content of such an account belongs to protected objects of intellectual property. The table below demonstrates a list of intellectual property objects and criteria for attributing a certain account to some type of intellectual property (Table 1).

**Table 1.** Criteria for social media accounts as a result of intellectual activity

Criteria	Complex object	Composite work	Database
Type of activity oriented towards the creation of intellectual property	Comprises several works created by different authors	The compiler is the only author	Not a creative work
Requirements for elements of intellectual property	Protected objects of intellectual property	Materials can be unprotected objects of intellectual property	Unprotected materials: regulatory acts, judicial decisions, etc.
Number of elements	≥ 2	≥ 2	≥ 2
Costs for creating an object of intellectual property	Non-mandatory proof	Non-mandatory proof	Costs are presumed if there are 10,000 informative elements

As universal recommendations for social media accounts, we suggest the following preventive measures aimed to determine some account as a database:

- To draw up contracts with all persons involved in the creation of the page in question: authors who make a creative contribution to the result and persons who provide only technical, consulting, organizational or material assistance;
- To acquire rights to the content used for designing and filling the page;
- To record and take into account all the costs of creating the page, as well as consider the possibility of bringing the result of intellectual activity to the balance sheet as an intangible asset.

As a result of the analysis, we concluded that the content of accounts can be a result of intellectual activity and a means of generating income. Therefore, it can be classified as a digital inheritance that can be passed on to heirs by law or under a will. Several heirs can simultaneously take possession of this property. However, not all rights are subject to transfer. For example, rights associated with the author's identity cannot be inherited. Heirs do not receive the right to change the result of labor or to publish any information under their own name. The author is able to transfer exclusive and other intellectual property rights to the results of their labor to heirs under a will or by law. They are inherited in a general manner, like other property and testator's rights.

#### IV. DISCUSSION

According to the legislation of Western Europe, the USA and Russia, social media accounts are not recognized as citizens' property and rules governing the official order of drawing up and executing a will do not apply to accounts in social networks. Therefore, owners of social networks establish special rules of transferring the content of some account as a digital inheritance to legal successors.

As a rule, any account contains information to identify the user connecting to the system, data for authorization and accounting, and can also comprise additional data about the user. A social media account can contain one or more users' photos, consider different statistical properties of the user's behavior in the system, etc.

In practice, after the user's death, access to their page remains open but there is little judicial precedent on this issue. For instance, the Federal Supreme Court of Germany recognized the right of relatives of a deceased user to inherit the corresponding Facebook account [7].

User (license) agreements (terms and conditions of use) of social networks do not regulate accounts of deceased users stipulating only the possibility of deleting some accounts if they promote violence, terrorism and other criminal activities. The need to establish such a norm is increasing every year and there is still no unified mechanism for solving this problem. Therefore, it is necessary to analyze how the largest social networks deal with pages of deceased people. Facebook is one of the first social networks that responded to this problem and developed its own rules for users, which let express the person's will in life.



According to these rules, users have the right to make a will in relation to their account in social networks. Heirs of Facebook accounts will be able to manage the account of their deceased relative or friend who granted them such a right [18]. To use this opportunity, users need to contact Facebook administration, submit the appropriate application, provide a death certificate or a court decision recognizing a citizen as deceased and thus obtain the right to a social media account. After heirs appeal to the administration, they are able to manage the account in question only by transferring it to one of the statuses: "Memorial" or "Remembering".

In April 2013, Google launched Google Inactive Account Manager, which allows users to determine what will become of photos, music and other "digital inheritance" stored in their account. The user sets the period of inactivity, after which all the information stored in the account is either deleted or transferred to heirs. The term can range from three months to one and a half years [19]. Before the end of the term, Google will inform the user to avoid any mistakes. If the user does not respond to the warning, their information will be treated as indicated.

In 2013, Twitter launched the LivesOn application with the following tagline: "When your heart stops beating, you will keep tweeting". If the user connected the application with their account and died, it continues to generate tweets based on previous entries, analyzing the words and topics used. The application can also retweet posts from the pages often quoted by the deceased.

LiveJournal provides an opportunity to place the account of a deceased user in the "memorial" status that disables new posts in the journal but allows other users to comment the existing entries [20]. To do this, heirs of the deceased should send a request to the tech support entitled: "username acct memorial", where "username" is replaced with the name of the deceased user.

Thus, the largest companies independently solve the problem concerned with the inheritance of social media accounts [21, 22]. They have to do it themselves since this issue has not entered the legal field yet and there are no local legal acts on inheriting social media accounts, special agreements or conventions that would solve the issue of accounts belonged to deceased users. Despite the absence of legislative regulation, social networks find a way to solve the issue of "inactive pages". However, not all users would like the information posted on their page to go public after their death, even by the decision of the court. In this regard, the practice of Google should be consolidated and improved, i.e. social networks should give users the opportunity to decide for themselves what their social media accounts will be and to who transferred under certain conditions [5]. This idea can be realized during the user registration process on a social network, with the possibility of changing the selected option.

Registered users should also be able to make a digital will to their account, but it is necessary to consider the possibility of inheritance by law. Relatives of the deceased should be legally entitled to use all materials on the account pages and have the right to receive the income earned by this account). [8]. After the user's death, heirs should contact the administration of the social network where the account of the deceased is registered and request to assign a certain status to the account. We suggest three types of post-mortem statuses

(Figure 1):



**Fig. 1. Types of post-mortem statuses of social media accounts**

If a social media account brought a certain income to its user, heirs have the right to receive this income. Regardless of its content, digital inheritance does not create any hereditary relationship. It acts only as a primary legal fact which, in combination with another legal fact (the opening of digital inheritance) forms a hereditary relationship, i.e. heirs by will are called upon to inherit.

## V. CONCLUSION

Social media accounts are objects of civil rights. The content of a social media account can constitute digital inheritance, i.e. the results of intellectual activity and related property and some personal non-property rights, as well as income derived from activities carried out by the testator in the account transferred to heirs under the last will or by law after the initial user's death. Due to intellectual activity, an account in social networks can be defined as a work of science, literature, art or a database.

If a social media account is considered as a creative work, it should be classified as the so-called "secondary" work, i.e. complex object or composite work.

The digital inheritance of social media accounts is the citizen's will regarding the content of an account in case of the user's death revealed in the indication of heirs in the relevant documents posted on the social network where the testator's account is registered. Any user has the right to bequeath the content of their account that is the result of intellectual activity and the income that the user received in the process of using the account to one or several persons, regardless of their status of heirs by law, as well as legal entities.

At the legislative level, it is necessary to regulate the ability of heirs to manage the account and assign one of the post-mortem statuses to the account:

- Memorial (ability to comment on previous posts);
- Commemorative (new comments are prohibited);
- Frozen (closed access to the account).

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