

# SUCCESSION OF DIGITAL ACCOUNTS

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**Abstract:** *Author is examining the consequences of the death of the contractor on different digital accounts. Methodology that is going to be used is primary analysis of actual private and legal regulations, and their comparison.*

*First, there are different types of digital accounts, and they should be managed differently. Strictly personal accounts should be considered in one way, and professional accounts should follow the succession of the business. The social network sites offer to the user to choose the faith of their account upon their death. Mostly, it is possible to assign one person to manage the account after death, or inactivity. Social network accounts contain a wide list of services, and contain a wide spectrum of information about the user. There are copyrights on photos and texts, there are pieces of personal information and personality rights in messages and private notes.*

*Law provides the rules for heritage of copyrights and intellectual property. Those provide to its holder the possibility to decide on their fate upon his or her death, but there are also some limits.*

*The author compares the provisions offered by social network sites, and other digital accounts' contracts with each other. Also, it is analyzed whether the decisions made in digital form meet the requirements of legal form of the will.*

*Recent case in Germany, before Federal Court in Berlin, no. III-ZR-183/17, of 12th July 2018, compared the data on Facebook to diaries and memoirs and ordered the provider to give full access to the legal heirs. In this case, the deceased was a 15 years old child, and there are usually no secrets that would be morally unacceptable to be revealed to the parents. But in case of a death of an adult person, whose legal heir is the child, the question is whether the parent wants own child to browse personal messages. Also, there were parents that continued to use the account of the dead child. In that case, the situation is clear, because that is false presentation, and all social networks have that as a valid reason to block access.*

*Professional accounts usually have protocols on how to access the account in case of illness or other leaves, so they are applied in case of death. The problem is to determine whether a certain account is personal or professional.*

*The questions that rise are whether it is moral to access personal data of the deceased relative, or should they be lost in digital universe.*

*This article provides the suggested solutions for preventive measures for the use of professional accounts, to avoid future legal battles with heirs, by analyzing the actual state of possible provisions.*

**Keywords:** *digital accounts, succession, property.*

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## 1. INTRODUCTION

Nowadays, the majority of population that has access to the Internet has one, and usually more, digital accounts. Even if it is hard to talk about death, in civil law it is defined as improper necessary condition: because there is no uncertainty. In legal textbooks its example is death [1]: *dies certus an incertus quando*. So, we should consider what happens with on line accounts upon their user death.

First of all, not all accounts can be considered equally. The content and its purpose are different for various types of accounts, and also how they were formed. It should be looked differently whether it is an account that was formed to promote or run a business activity, or it was formed just as private and personal account.

## 2. METHODOLOGY

First, some of the major digital account offers for the case of the death or nonactivity are going to be analyzed. It is going to be examined what they offer, and what implications their offer has to the content of the account. Then the requirements of the will are going to be explained and it is going to be examined whether the on-line forms can meet such requirements.

Then the case of the German court is going to be explained, and it is going to be analyzed the real applicability of the previous findings.

## 3. RESULTS

### 3.1. On-line accounts and their solutions in case of death

The short form of the article doesn't allow to examine many digital accounts, just some major ones.

The wide spread social network Facebook offers to its users the possibility to upload materials protected by the copyright, like photos, videos and texts. But also provides means for private communications. These intellectual properties are protected by copyright laws, but also privacy laws.

Within its "General Account settings", there is the option "Manage account" that provides means to delete own account, but also the options for "account's legacy". Every user has the right to name a friend that gets the right and opportunity to manage the legacy account. She or he has these authorities: manage who can see or post tributes to the late user, delete tribute posts, change who can see tribute posts that the late user is tagged in, remove tags of former user that someone else has posted, pin a tribute post on late friend's profile, respond to new friend requests, update profile picture and cover photo, but they are not able to post as late user, and also, they are not able to see the messages. [2]

Google account, under "Data and personalization settings", offers to "Make a plan for your account". Differently from Facebook, they are a bit euphemized. They don't use the words like legacy and death, but they are considering the inactivity of the account. It's a good solution for the Google, because they can legally delete inactive accounts. Those happen; In cases people

forget the password, in cases when people create incognito accounts, and stop using them. Google is obliged to keep the disk space.

In description it is declared to be in cases of death or accident. As it literally declares: “Take control of what happens to your Google Account if you’re unexpectedly unable to use your Google Account, such as in the event of an accident or death. Decide when Google should consider your account to be inactive and what we do with your data afterwards. You can share it with someone you trust or ask Google to delete it.”

They are offering to send all the data to a person designed by the owner of the account, or just delete it. [3]

Instagram offers any user to inform them about death of any user, and only to the close relatives, they offer the possibility to request to delete the account. The account can be memorialized or removed. Sole inactivity is not sufficient for Instagram to take actions, but they require a proof of death. For removing an account, they request further more proofs: the deceased person’s birth certificate, the deceased person’s death certificate and the proof of authority under local law that you are the lawful representative of the deceased person, or his/her estate. But they never provide username and password, reasonably explaining it as it states: “Please keep in mind that we can’t provide login information for a memorialized account. It’s always against our policies for someone to log into another person’s account.”

After death the only action another person can obtain is for the account to be removed, but protecting the copyright, no one can modify the content. [4]

### **3.2. The form of the will**

The will always had a very strict form. Before people were literate, it required presence of two witnesses or even the priest. [5]

The will is a strictly formal act, and it’s permitted forms are defined by strict rules of the law. [6] Testamentary formalities are very strict in many countries, and in all EU countries. [7] The only liberal countries, that accept informal will are some Islamic countries. [8]

Electronic wills are not regulated within EU, and when they will be, they are, probably, going to require advanced digital signature in accordance with Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. And the possibility to limit the validity of electronic documents is provided by the article 9, comma 2 of the Directive on electronic commerce. [9]

The strict formality of the testament is a logic consequence of its moment of validity. When the will is applied, its author is dead, and doesn’t have the ability to confirm, to deny, or to interpret its content.

### **3.3. The German court decision**

Recent case in Germany, before Federal Court in Berlin (Bundesgerichtshof) no. III ZR 183/17. of 12th July 2018, compared the data on Facebook to diaries and memoirs and ordered the pro-

vider to give full access to the legal heirs. In this case the deceased was a 15 years old child, and there are usually no secrets that wouldn't be morally unacceptable to be revealed to the parents. But in case of a death of an adult person, whose legal heir is the child, the question is whether the parent wants own child to browse personal messages.

The Court determined that the heirs of a Facebook user who is deceased ("User") shall have the right to access the User's Facebook account. This results from the general inheritance law provisions of the German Civil Code (Bürgerliches Gesetzbuch – "BGB"), pursuant to which the User's contract with Facebook is transferred by law to the User's heirs, in particular the fundamental German civil law principle of 'universal succession' under Section 1922(1) BGB. In practice, this means that the situation is similar to the one regarding diaries or private letters, the rights to which pass to heirs under Section 1922(1) BGB.

Facebook's contractual obligations to maintain confidentiality are not in conflict with the heirs' right to access: The Court focusses on the relevant user account as a contract rather than on the relevant User. In the view of the Court, other Facebook users who have corresponded with the User cannot reasonably expect that their communications will be sent to a specific individual, i.e. the User, only. Rather, they can only demand that Facebook makes their correspondence available solely to the relevant user account to which their communications were directed. Furthermore, other Facebook users cannot reasonably expect that their communications will not be made accessible to third parties.

The BGH stresses that the statutory requirement to protect the secrecy of telecommunications, as set out in Section 88 of the German Telecommunications Act (Telekommunikationsgesetz – TKG), is not in conflict with the heirs' right to demand access. The reason is that the User's heirs do not qualify as third parties within the meaning of the secrecy of telecommunications.

Finally, on the basis that the GDPR does not apply to deceased persons, the Court clarifies that the GDPR does not prohibit the heirs' right to access the User's Facebook account. The dead are not protected regarding their privacy. Furthermore, the Court takes the view that the transfer of personal data concerning other Facebook users who have corresponded with the User can be legitimized by both Article 6(1)(b) GDPR ("necessary for the performance of a contract") and Article 6(1)(f) GDPR ("legitimate interests"). [10]

This Court decision opens the request of any successor to access the deceased account, whether it was a child, parent, sibling or spouse.

#### **4. DISCUSSION**

The court ruling as stated above are opening a new perspective on digital accounts. The expressed desires of the late person can be overruled. The form of the in-account expression of after death desires, does not meet the testamentary formalities requirements. It can only be a guide line for successor, just a moral obligation, but not legal. Even if a person declared to want all her or his content of Google account to be sent to a friend, the legal heir could get a court request to obtain it. There is Instagram provision that blocks anybody, except the original user, to modify posts is in accordance with the copyright laws. [11]

This simplifies the business accounts. If an account is considered as a contract, then the person that pays for it, can legally obtain access to it. The majority of promotional accounts require payment, therefore, the legal entity owing the account used for paying, can request full access to the account. It also sets the rules for all other contracts connected to the digital account, that have to be transferred to the heirs or successor by other legal titles.

## 5. CONCLUSION

This is a new field that opens. The users of digital accounts are mostly young (or youngish) people, that do not think about death. They don't have wills, and probably, even if they had them, the provisions on one's digital accounts wouldn't be included. So, for now, we are considering only legal succession, not testamentary succession.

It would be necessary to raise the awareness on this problem among digital accounts users and make them prepare valid decisions. In case that a deceased person states in a valid will that a certain person, and that person only can access certain account, the courts wouldn't be allowed to grant access to general heirs.

The problem is that users do not consider the use of a cell phone, social network, or other digital accounts as a contract, because the majority are free, or they are supported for by third parties, advertisers. Therefore, as it is logical for heirs to discuss the succession of a mortgage, they do not discuss in front of the judge, the access to digital accounts of the late relative. The majority have someone in the family that knows the computer password, and from there they access all accounts, illegally! It can be macabre to see comments from a late person in reality written by a relative with access to the late person computer or cell phone. For now, the majority of problems arise when parents want to access the late child account, but many other problems are going to arise when children are going to access the late parent account.

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