DOI: 10.5433/2178-8189.2024v28n3.p115-131

PRIVATE AUTONOMY AND POST-MORTEM TRANSMISSIBILITY OF DIGITAL ASSETS OF EXISTENTIAL/HYBRID NATURE

Jeferson Jaques Ferreira Gonçalves*

Leonardo Macedo Poli*

Como citar: **GONÇALVES**, **Jeferson Jaques Ferreira**; **POLI**, **Leonardo Macedo**. Private autonomy and post-mortem transmissibility of digital assets of existential/hybrid nature. **Scientia Iuris**, Londrina, v. 28, n. 3, p. 115-131, nov. 2024. DOI: 10.5433/2178-8189.2024v28n3p115-131. ISSN: 2178-8189.

Abstract: The present article aims to evaluate the role played by the concept of private autonomy and the principle of informative self-determination, as encompassed in the LGPD (General Law of Data Protection), regarding the possible transmissibility of digital assets of existential and hybrid nature, which is negated by some part of the doctrine and the digital conglomerates. It was concluded that total intransmissibility based only in contractual terms, adhered through electronic means, comprises of mitigation of an individual's private autonomy, as well as consisting of tangible influence on an individual's personality development. In order to develop this article, the method adopted was the hypothetical-deductive approach and the bibliographic research, through books and scientific articles.

Key-words: Digital Assets; Digital Heritage; Informative Self-Determination; Private Autonomy.

*Mestre em Direito Privado (Pontifícia Universidade Católica de Minas Gerais - PUC MINAS)
Email: jefersonjaques.adv@gmail.com
ORCID: https://orcid.org/0000-0002-7207-0265

**Doutor em Direito (Universidade Federal de Minas Gerais- UFMG)
Mestre em Direito (Pontifícia Universidade Católica de Minas Gerais - PUC MINAS)
Email: leonardopoli@pucminas.br
ORCID: https://orcid.org/0000-0001-9632-0225

INTRODUCTION

The main goal of this article is to investigate the prevalence of private autonomy on the transmission of digital assets of hybrid/existential nature, considering that a significant part of the present doctrine and of the digital conglomerates advocate for total intransmissibility of assets of such nature, be it anchored in the electronic adhesion of contractual terms or the existence of a deceased person's right to privacy.

As such, the article intends to answer the following question: does the intransmissibility of digital assets of hybrid/existential nature constitute a mitigation of an individual's private autonomy? Since most assets of this nature are acquired and stored through online services, and the rules for access and transmission are dictated through the non-negotiable adhesion of a digital contract regarding terms of use and services, it would seem reasonable to assume a positive answer, meaning a mitigation of the user's private autonomy as a necessary result.

Therefore, to further answer said questions, the first section is dedicated to tracing the concepts of digital heritage, digital assets and its regarding classifications, focusing on assets of hybrid/existential nature, since there is no dissension in regards to the transmissibility of digital assets of patrimonial nature.

The investigation unfolds in the second section with respect to establishing the stances adopted by the doctrine, the legislation and the digital conglomerates, indicating the main lines of thinking in Brasil, exposing the complete lack of specific legislative ruling on the subject(leaving aside the proposition of many law proposals in the Brasilian Congress) and analyzing said digital contracts from a few of the major digital platforms.

At the third section, a pivotal point in the article, it will be discussed the role of private autonomy in the transmission of said digital assets, whether there exists a correlation between private autonomy and the principle of informative self-determination, as present in the general law of data protection(LGPD), as well as debating whether the terms of use and service, as adopted by major digital conglomerates, results in a mitigation of individual private autonomy.

Finally, it is envisioned that this article can offer some contribution to the study of transmissibility of digital assets of existencial/hybrid nature in Brasil, taking into account a nuanced view that would otherwise be lost in a dogmatic defense of any position, be it the principles of private autonomy or informative self-determination. In order to offer possible answers for the question at hand, the hypothetical-deductive approach was the method adopted, in conjunction with the bibliographical research and analysis of books and scientific articles regarding the subject.

1 DIGITAL ASSETS THEORY

Before we go any further on dissecting the concept of digital assets, it would be fitting to introduce the concept of digital heritage, considering its relevance in this era. As underlined by Bruno Zampier (2016), as time goes by, millions of people will interact through the internet in an ever increasing number, emitting opinions, sharing videos and photos, acquiring goods and services (tangible or intangible). As such, each user will own a digital patrimony which may need protection, be it in case of passing, incapacitation or of violation of one's legacy left online.

That being so, Marcos Ehrhardt Júnior (2020) conceptualizes digital heritage as post-mortem transmission of digital assets, and Gustavo Santos Gomes Pereira (2020) adds to that assertion arguing that it consists of that same traditionally known heritage, only the object here is more definite, that is, the deceased's digital estate.

After establishing digital heritage as the transmission of digital patrimony, one must reflect on the nature of such transmissible assets, that may include personality, copyright or patrimonial rights. According to Bruno Zampier (2016), digital assets are incorporeal goods[1] progressively loaded on the internet, consisting of personal information of some sort of relevance to the user, not necessarily containing any economic value. Therefore the author suggests two different categories for said assets: patrimonial[2] and existential. The first category would include assets which could generate immediate economic repercussions, while the second would reveal itself in assets containing information directly related to personality rights, while still noting the possibility of assets of mixed nature (LACERDA, 2016).

Such bipartisan division, as proposed by Zampier, is considered adequate when taking into account what also is done in a variety of intellectual rights, such as copyright, that also have a dialectical juristic nature, when considering that intellectual work has both personal and material aspects. The personal aspect links the author to their work and the material aspect assures their economic exploitation. The former is of non-pecuniary nature while the latter of patrimonial nature. The former intends to protect the author's personality, as externalized on their work, the latter to protect any material legal assets produced.[3]

1 We note the use of such terminology by the notable author of the classic roman expression configuring the classification of assets as corporeal and incorporeal, however we consider more adequate the expression of intellectual assets (as perceivable by human intellect), in order to avoid any questioning regarding the idea that the res incorporalis in the digital era should necessarily do without not only the existence of a material body, but also a digital body. To a broader explanation on the concept of intellectual assets we suggest the following work: POLI, Leonardo. Direito Autoral: Parte Geral. Belo Horizonte: Del rey, 2008.

2 A few examples of digital assets of patrimonial nature would be digital currency, that is any form of cryptocurrency, game tools, e-books, music, movies, and any reward program (airline and credit card mileage). (LACERDA, 2016, p. 86-88).

3 "Por ultimo, merece ser citada la teoria dualista, que intenta conciliar las tesis anteriores, y distingue, para proteger la creacion, dos derechos diferentes, interdependientes, pero distintos uno del outro: el patrimonial, transferible, y el personal, insubrogable" (EMERY, Miguel Angel. Propiedad intelectual. Astrea: Buenos Aires, 1999. p. 6).

In this day and time, there is a lot of debate regarding the possibility of transmission of digital assets, be it from a perspective linked to the doctrine or the jurisprudence. In regards to digital assets of patrimonial nature, there is not much space for controversy, since most doctrine theorists and judicial decisions point towards normative transmissibility, considering its straightforward economic nature, meaning these assets can easily be converted into cash.

Therefore, in order to work with a more acute perspective, the transmission of assets of said nature will not be accounted for in this manuscript.[4]

In contrast with that, there is no consensus on whether digital assets of existential/hybrid nature should be a part of what is called digital heritage. The prevalent interpretation does not consider important principles such as private autonomy and informative self-determination, that can offer relevant nuances regarding the question at hand. On that note, the following topic on this article will account for the main standpoints on the subject, according to the doctrine, the legislation and the digital conglomerates, relating each one to the principles mentioned above.

2 TRANSMISSIBILITY OF DIGITAL ASSETS OF HYBRID/EXISTENTIAL NATURE

2.1 Doctrine Viewpoints

In the foreground, we intend to establish the main line of reasoning, which argues for the instransmissibility of assets of existential nature. In short, according to this viewpoint, assets of said nature should not be passed on, due to the need for preservation of the deceased's privacy, and therefore only assets of unmistakably patrimonial nature should follow the laws of legal succession. In the list of adopters of this viewpoint are included Lívia Teixeira Leal, Maici Barboza dos Santos Colombo, Heloisa Helena Barboza, Vitor Almeida[5] e Pablo Malheiros Cunha Frota.

A second perspective, which has been gaining momentum in Brasil, claims that the totality of what constitutes someone's digital patrimony is liable to be a part of their heritage, except if the contrary is expressed by the owner while still alive. Authors such as Karina Nunes Fritz, Laura Schertel Mendes and Laura Marques Gonçalves are the main endorsers of this perspective.

Finally, there also exists an intermediary position, which stands for the transmission of assets of existential nature only when said transmission is authorized by the holder while still alive, and only when said consent does not violate another's right for privacy or intimacy. Supporters of this view include Cintia Burille, Gabriel Honorato e Gustavo Santos Gomes Pereira.

4 The jurisprudential position on the subject will also not be addressed here, since there does not yet exist an established position by the supreme courts, given that there only exists a few isolated judged cases, that until this moment do not contribute to the writing of this manuscript.

5 Heloisa Helena Barboza e Vitor Almeida (2021) share an understanding that, since these are subjective legal situations of existential and personal character, the subject should not be freely transmitted, meaning their extinction.

In all cases, regardless of whatever viewpoint is adopted, there is a need to look into the possible impact of transmissibility on the privacy of third parties. Juliana Evangelista de Almeida (2019) argues that the Brazilian legal system allows for tutelage of some extent regarding personality rights. However, in contemporary network society, protection should not be restricted to violations against someone's reputation, but ought to include dissemination of personal data after one's passing, considering the complexity of privacy after death. Although post-mortem privacy is, as of now, not admitted, situations regarding the privacy of third parties involved in a private manner with the deceased could easily arise. (ALMEIDA, 2019, p.95).

On an important note, the idea of transmissibility of rights of existential nature does not seem to be the most suitable. There ought to be some examination of whether that would include transmission of intellectual rights or only transmission of legitimacy of use and defense, meaning what is transferred to the heirs is only the defense of said rights. (POLI, 2008, p.32)

Following the same line of thought, Ascensão (2020, p.277) asserts that the right called upon by the heir is not their own. According to Perlingieri (2007, p. 181), since the concern is not of patrimonial nature, the word transmission is used improperly, when in reality it constitutes extraordinary procedural legitimacy. As stated by Debois (1973, p. 645), after death, existential rights continue in service of the former holder, not of their heirs.

2.2 Legal Viewpoints

On the legal aspect, already three law projects were submitted in regards to regulating digital heritage in Brasil. On the Chamber of Deputies, said projects have been protocoled as: PL 4.099/2012, PL 4847/2012 e PL 7.742/2017.

PL (Law Project) 4.099/2012 aimed to include a single paragraph to the Article 1.788 of the Civil Code (Código Civil), while PL 4837/2012 aimed to include chapter II - A to the Civil Code, regarding heritage and its administration. This chapter would bring three new articles (Art. 1.797-A a 1.797-C) to the civil code, with intention to specifically regulate digital heritage. Finally, project nº 7.742/2017 ambitioned to alter the Internet Civil Mark (Marco Civil da Internet, Lei nº 12.965/2014), with the inclusion of Art. 10 - A.

Both law projects have been archived due to the end of the legislative term. Unfortunately, the National Congress did not concede the matter its due attention, and as each day goes by more conflicts brought forth by digital succession arise, indicating the urgency, in Brasil, to consolidate some sort of legislation that encompasses the ever more relevant topic of digital heritage, so that the conflict resolution can be done in concrete and equalitarian terms.

Following the archival of the aforementioned law projects, new proposals have been presented, some which literally replicate the aforementioned objectives, and some which bring a few innovations, however all have the same goal: to regulate the transmission of digital heritage in

Brasil. The following projects have been (re)submitted: PL 1.331/2015, PL 7742/2017, PL 8.562/2017, PL 6.468/2019, PL 3.050/2020, PL 410/2021, PL 1.144/2021 e PL 1.689/2021. Nonetheless, none of these projects have been effectively converted into legislation, as far as the date of publishing of this manuscript.

Furthermore, when evaluating law 12.956/2014 (Internet Civil Mark) and law 13.709/2018 (General Law of Data Protection), all recent legislation regulating internet use in Brasil, it is notable that neither digital heritage or the transmission of digital assets are encompassed in the aforementioned legislation.

Hence, given the absence of brazilian regulation that differentiates assets stored virtually, transmission of said assets occurs according to the hermeneutic approach. From this perspective, digital assets stored through drives of *cujus* property can be easily transmitted to the respective heirs, since they are composed of tangible media, such as photos and videos archived in a notebook. However, most digital assets are stored or acquired through online services, as is the case for digital assets of existential nature, and thus the rules for access and transmission are dictated on the app's terms of use and service. (COSTA FILHO, 2016, p 34-35).

2.3 The Digital Conglomerates Viewpoints

Effectively, the big digital conglomerates dictate the rule for use, access and transmission of digital assets of existential nature. Part of the doctrine considers the stance adopted by these digital platforms as a third standpoint. In most cases, these platforms stand for the impossibility of transmission digital assets of any nature, be it of patrimonial, existential or hybrid nature, arguing that since these are strictly personal contracts, transmission is not an option. As far as the position adopted by these digital conglomerates goes, the user is entitled only to the right of use, which does not correspond to property rights. (BURILLE; HONORATO, LEAL, 2021).

Apple, through its Media Services Terms and Conditions, underlines that it gives only a "non-transferable license"[6], while iCloud services[7] predicates expressly a clause of "non existence of succession rights". Therefore, any rights or content encompassed in any account are terminated after the holder's eventual death.

Furthermore, Google offers a service called "Inactive Account Manager", a tool which can be used by the user to share a part of their data or to delete their accounts after a period of inactivity. The user can select a period from three to eighteen months as a time limit for the exclusion.Up to ten family members or friends can be called upon through this procedure, all which will be notified after the account's termination. On the possibility of sharing data, a trusted contact will receive an email with a list of shared data, including access to Youtube, Gmail, Google Drive

6 Apple Media Services Terms and Conditions. Available here: Legal - Apple Media Services - Apple. Accessed 08/02/2022.

7 iCloud Terms of Use. Available here; Legal - iCloud - Apple. Accessed 08/02/2022

and Blogger accounts[8], although there is no transfer of the actual accounts, only transmission of permission for use.

In a similar way, Facebook allows for the user to choose a contact that will inherit one's account and manage it. On the app's settings it is possible to add the "heir contact" or to choose an option for the account's termination after the user's passing.[9]

When consulting Instagram's terms of use one can notice that the app allows for two different solutions in case of an user's passing: the account's termination or its conversion into a memorial. In the case of the account's transformation into a memorial, said accounts are displayed as a digital space for honoring one's life. After the account's conversion there can be no alteration of the information published there. Thus, photos, videos, comments, privacy settings, profile picture, followers and followed shall remain intact[10], meaning the accounts transmission is prohibited.

TikTok, another social media which has gained incredible popularity in recent years, asserts only an intransmissible license of use of the platform[11]. Accordingly, Twitter acts in a similar way, claiming a "non-attributable" license of use[12].

Therefore, it should be made clear that, even though a few platforms, such as Facebook, offer the possibility of a heir contact, most digital conglomerates do not accept the transmission of assets of existential nature, basing that alone on the grounds of it being a personal contract of instransmissible use, without any regards to an user's private autonomy to decide in favor of transmission of their assets to any heirs/third parties.

3 PRIVATE AUTONOMY AND THE TRANSMISSIBILITY OF DIGITAL ASSETS

After thoroughly comprehending what constitutes all three viewpoints, derived from the doctrine, the legislation and the digital conglomerates position, a proper analysis of the role played by private autonomy in the possibility of transmission of digital assets is due. Historically, the most prominent term used has been autonomy of the will, rather than private autonomy. The former appears in the context of the Industrial Revolution, when the concept of legal theory itself was coined under the lens of the moral principle of autonomy of the will, meaning that will was considered the essential aspect for the configuration of the state, the undertaking of obligations, etc. (FIUZA, 2021)

8 Information available on Google's account help section. Available here: Sobre o Gerenciador de contas inativas - Google Account Ajuda. Accessed 08/02/2022

9 Account termination after death. Available here: <https://canaltech.com.br/seguranca/como-garantir-que-suas-contas-online-serao-deletadas-quando-voce-morrer/>. Accessed 08/02/2022

10 Instagram's help section. Available here: What happens when a deceased person's Instagram account is memorialised? | Instagram Help Centre (facebook.com)

11 Tik Tok 's terms of use. Available here: Terms of Service | TikTok

12 Twitter 's terms of use. Available here:Twitter Terms of Service

Philosopher Immanuel Kant, through his theory of man's creative will, set aside notable contributions to the concept of autonomy of the will, thus exerting influence on the French Civil Code, which eradicated formalities so that simple consensus could be enough to transmit property. Furthermore, Kant also had an influence on German Pandect scholars, which articulated the concept of legal business as a manifestation of the will capable of producing effects. (FIUZA, 2021)

According to Cézar Fiuza (2021), Planiol, in 1899, declared the parties' will as the formative element in the obligation tied to a contract, in a way that the law plays only a sanctioning role of said will. Following the onset of the welfare state, in the twentieth century, when politicians and economists had already abandoned the idea of liberalism, jurists were still attached to the idea of autonomy of the will, since it expressed the paradigmatic model of contract that prevailed at the time.

However, following the ever growing capitalist hoarding, contracts went through a process of massification, thus revealing the need to reconsider whether the principle of the autonomy of the will would be enough to produce lawful effects. Said massification was responsible for altering the basic principles that structured contractual law. From that on, the contractual bind was no longer based only on will, since contracts began to be seen under the economic and social lens. (FIUZA, 2021).

Hence, the principle of autonomy of the will ceased to be the main factor in the development of contracts, no longer seen under a liberal lens, but rather as a social-economic phenomena. Nonetheless, it should be noted that said principle has not been completely discarded and that it has been and continues to be adopted, not as a protagonist, but rather playing a secondary role in the formation of contractual binds.

Furthermore, Francisco Amaral (2018) mentions that private autonomy should not be mistaken as autonomy of the will, since while the former expresses the power of will in law, in a concrete and real manner, the latter has a subjective and psychological connotation. Hence, whilst the former ought to be considered as cause of legal business (Art. 104, CC) and the main source of obligations, the latter ought to be considered as cause of legal action (Art. 185, CC). That being so, according to the author's lesson, private autonomy would be:

> The power that individuals have to regulate, through their own will, the relationships they part take in, establishing their content and respective legal framework. It is one of the most significant representations of freedom as a legal value, expressed in the Preamble of the constitutional text, in the principle of economic initiative freedom (Brazilian Constitution, Article 170), and in the principle of contractual freedom.(AMARAL, 2018, p. 131).

According to Bruno Torquato de Oliveira Neves (2014), private autonomy stems from a fundamental tension, so that only a concrete case gives form to the actual content of private autonomy. The author underlines that said autonomy plays a part both in existential and patrimoni-

al lawful situations, and can be understood as an integrating part of personality self-construction, once it is constituted by both action and critical autonomy[13].

Following this concept of autonomy as a personality self-construction, Francisco Amaral asserts that said autonomy possesses a projection on the ethical personalism, that is, on the axiological concept of an individual as the center of normative indictment. Hence, a human being without autonomy, while may be formally considered as a lawful holder, would be nothing more than a mere service provider to society.

3.1 Private Autonomy and Informative Self-Determination: a logical correlation?

The LGPD (General Law of Data Protection) came into being with the intention of regulating how personal data is treated, regarding both natural and juridical persons of private and public law, with its primary goal to protect fundamental rights regarding liberty, privacy and free personality development (Art. 1). Among the law's fundamental points, a few stand out: informative self-determination, freedom of expression, image and intimacy inviolability, economic development, free initiative, free personality development, etc (Art. 2).

In order to put forward a more productive dialogue, the following argument limits itself to only one of the fundamentals aforementioned: informative self-determination. According to Laura Mendes (2020), this concept originated in the german doctrine, through a report written by Steinmüller in 1971, following a request from Germany's Federal Ministry of the Interior, and was thereupon employed in following works regarding data protection rights.

In German jurisprudence, said concept became law following a sentencing regarding a census that included population, professions, residences and workplace. On said decision, Germany's Constitutional Court tackled the constitutionality of the 25th of march of 1982 law. The central point of the deal was founded in the processing of electronic data and the possibility of storing and transmitting data in unknown proportions (MENDES, 2020).

To said court, the automatic processing of data would endanger the individual's decision power, as well as their will to provide personal data to third parties, since this data processing would create a "complete personality profile" through systems, without any ways for the concerned party to manage its correction and use (MENDES, 2020). The automatic processing of data made by the census would

> expand the influence of the State over individual behavior, as individuals would no longer be able to make free decisions due to the "psychological pressure of public involvement." A society "in which citizens are no longer able to know who knows what about them, when, and in what situation," would be contrary to the

13 Critical autonomy refers to man's ability to comprehend themselves and the world around them, thus establishing links derived from previously formed concepts. Autonomy of action is the ability to act in a certain way as determined by one's world view, that is, acting through one's critical autonomy. (NAVES, 2014).

> right to informational self-determination, something detrimental to both individual personality and the common good of a democratic society. (VerfGE 65,1 (42), Recenseamento apud MENDES, 2020, p. 11).

Thus, the Constitutional Court combined two articles of said country's Fundamental Law, art. 2, §1 (free personality development) and art. 1, §1 (human dignity), to ensure a right to informative self-determination that would guarantee "an individual's power to decide on the gathering and use of their personal data". (BVERFGE 65,1 (43), census)

In conclusion, informative self-determination can be defined as a holder's right to determine whether or not they wish for their personal data to be collected, what are the limits of said approval and its subsequent utilization, transmission, storing and disposal. According to Tarcísio Teixeira, "it's every individual's right to manage and protect their private information, which can be read as an extension to the right to privacy" (TEIXEIRA, 2022, p. 40).

Maria Cachapuz (2014) underlines that the concept of informative self-determination, in the German Court's terms, authorizes a benchmark for the objectification of will, meaning it creates a possibility to make public something that belongs exclusively to the holder of personal data.

Therefore, it becomes patent that the power of will has a significant presence in the concept of informative self-determination, since the individual is capable of self-determination through his own will. On the process of exteriorization of said principle, it becomes noticeable that said will does not derive from a psychological and subjective connotation, but rather from a concrete, real and freely declared will, which encompasses a true expression of private autonomy. This affirmative is supported by Laura Mendes understanding, who asserts that

> In order for the individual to exercise their power of informational self-determination, a legal instrument is necessary through which their will to authorize or not the processing of personal data can be expressed, their consent.. This is the mechanism that the law provides to uphold the private autonomy of the citizen. (MENDES, 2014, p. 60).

Since private autonomy can be seen as a source of legal business, and since the practice of informative self-determination presumes consent[14] through a legal mechanism, it can be concluded that informative self-determination is the corollary of private autonomy, only directed specifically to data treatment.

On this matter, it is necessary to weave a few critical points regarding informative self-determination, in order to guarantee that the resulting concept can indeed represent a substantial protection to the individual, and not a mere following of protocoled legal formalities.

At first, it is important to emphasize that the principle of private autonomy, seen here as a principle of existential self-determination, cannot be restricted to a neoliberal and voluntaris-

14 Souza e Silva (2020) assert that consent acts as the exteriorization of the concept of informative self-determination, which therefore does not constitute as an element of said construct, but rather as an instrument for its realization.

tic theoretical construction, that seeks to confine self-determination to a mere idea of free consent. Existential self-determination pressumes free, informed and discerned consent, and therefore informative self-determination, which derives from existential self-determination, cannot presume to restrict it.

Secondly, self-determination can no longer reside in the idea of power, faculty, interest, or even individual freedom. In a relational perspective of alterity, self-determination, as derived from said alterity, guarantees a set of freedoms and imposes a set of non-freedoms to the holder of a subjective individual right.

Thirdly, the concept of free consent should also not be restricted to the absence of vices of consent. The existence of freedom entails an exercise of possibilities. The more restricted the possibilities are, the more restricted autonomy is. The more ample the possibilities are, the more ample autonomy is. Thus, it is not enough for free consent to be absent of vices, it is crucial that there exists a real guarantee for the exercise of possibilities, under the penalty of not being able to speak of freedom, but freedoms, and not being able to speak of autonomy, but autonomies.

Finally, we can no longer speak of existential self-determination other than as a guarantee of space for free personality development and formation of dignity.

3.2 Instransmissibility founded on contractual terms: mitigation of private autonomy?

As aforementioned, private autonomy is seen as the cause of legal business and one of the main sources of obligations. In its majority, digital assets, be it of patrimonial or existential nature, are regulated only according to online terms of use and services, specifically through contracts of virtual adhesion which do not allow for discussion of the contractual terms, thus leaving the user with no choice but to accept the contract as imposed by the digital conglomerates.

According to Cintia Lima (2009, p. 507), contracts of virtual adhesion can take one of three forms: shrink-wrap, click-wrap and browse-wrap. Shrink-wrap contracts represent a form of adhesion which contain the conditions for use of a computer program distributed through a specialized establishment, so that the clauses are unilaterally laid out by the copyright holder. In turn, click-wrap type contracts describe a form of adhesion in which the service provider determines the contractual clause, which in turn have to be acknowledged in full by the adhering part, whereas the object referred is an asset of immaterial or material nature. On the other hand, browse-wrap contracts are defined as a commercial practice in which the owner of an internet page binds the terms of use and conditions for access to the site in an unilateral way, making use of a page's corner or a hyperlink, in order for the user to acknowledge the term's content (LIMA,2009).

Article 424 of the Civil Code professes that "on contracts of adhesion, are to be considered null any clauses that prescribe for the anticipated renouncement of any rights derived from the nature of the matter". Thus arises a necessary question: what are the rights derived from

the nature of a legal business as substantiated in assets of existential/hybrid nature? As aforementioned at the start of the present manuscript, said assets not only hold elements of existential nature, meaning actual projections of personality, but could also, at the same time, hold elements of patrimonial nature.

Maria Paula Sibilia (2008) asserts that intimacy has gone through a process of spectacularization in contemporary society, thus revealing our lives as a "spectacle of the ego" in which the centrality of ego(what I like, what I want, what I need for my life) is now present in an overblown and unproportioned way in public/virtual spaces, representing a constant need to share and be seen by a public as if one's life where the center of a spectacle, where everyone can be a part of their own Truman Show. This of course can only be possible in the context of social media networks, responsible for the "democratization" of a connectivity space, where everyone can finally be seen,

Bruno Zampier, adopting Debord (1997) lessons, declares social relations mediated through self-appointed images as part of "the society of the spectacle", mentioning social media as the biggest example of said phenomena.

Undoubtedly, people engage through social media as a way to be seen, noticed and remembered, and to interact, albeit in an instantaneous and superfluous manner, with an audience. It is evident that people have always feared being forgotten, in life or after death, and that technology allows for the illusory possibility of escaping just that, through a perpetual exposure of our image in said "society of the spectacle", whether that takes the form of sharing content or techniques of digital resuscitation.

Accordingly, if social media plays a notable part in the spectacularization of life and as a form of social interaction, the aforementioned adhesion contracts regulating said activity could not contain terms that prohibit the transmission of the legitimate exercise of said rights[15], both regarding transmissions done antemortem and postmortem. In legal terms, said clauses are considered null.

Therefore it is right to attest that the intransmissibility of the legitimate use of digital assets of existential/hybrid nature, as championed by the digital conglomerates, implies genuine mitigation of private autonomy, since it imposes an anticipated renouncement of the users rights, as derived from the nature of the legal business.

Finally, we emphasize the logical contradiction that exists in, on one hand, allowing the free handling of personal data, while, on the other hand, not allowing the transmission of digital assets of existential nature, since a digital asset is, from a macro perspective, nothing more than a set of data regarding an individual. Therefore, we conclude that the endorsement of instransmissibility weakens existential self-determination itself.

15 It is important to reinforce that the present work stands for the transmissibility of legitimacy for exercise of rights, not for the transmission of said rights.

FINAL CONSIDERATIONS

As devised, the doctrine foresees the conceptualization of digital assets and its following division in assets of patrimonial, existential and hybrid nature. The discussion involving the concept of digital heritage brings out many questions to legal studies, especially regarding the possibility of transmission of assets of existential and hybrid nature.

In Brasil, there are three diverse viewpoints that argue on the transmissibility of digital assets of said nature, the most prevalent one which stands strictly for the transmissibility of assets of patrimonial nature, following an understanding that perceives the transmission of assets of existential/hybrid nature as a post-mortem violation of one's right to privacy. Therefore, the absence of viability of said viewpoint becomes visible, since to argue favorably to that would be the same as recognizing a dead person's right to privacy, when in reality what exists is a sphere of negative freedom.

The second viewpoint presented here, still outnumbered in Brasil, but ever growing in the past years, argues that all assets that compose someone's digital patrimony should be transmitted, except when there exists a contrary disposition expressed by the holder. We stress that said viewpoint seems to be the most adequate for the current context, which allows for the holder to exert their private autonomy by restricting future access to their assets of existential and hybrid nature.

There also exists an in-between position, which acknowledges that assets of existential/hybrid nature can only be transmitted when the holder has expressed consent in that regard, and when said consent does not violate a third party's right to privacy and/or intimacy. Thus it would seem this middle position prioritizes the privacy of others in detriment of the individuals private autonomy and their right to self-determination.

In the legislative area, albeit considerable parliamentary efforts regarding the proposals of law projects and the configuration of specific laws regulating use of internet and data protection in Brasil, there are still no clear specific rules that acknowledges the transmissibility of digital assets of any nature. Therefore, even though and since there exists no specific regulation on said transmissibility, the rules of succession law adopted in internal law practice should prevail. Thus, if we consider the totality of the deceased's assets as composing succession rights, as constitutionally guaranteed, the aforementioned transmission could not be fully barred, and the resolution point of the problem discussed here should be anchored in the fixation of clear criteria for transmissibility.

Considering that most assets of existential/hybrid nature are regulated based on contractual terms, and through a dedicated analysis of said terms, it becomes clear that the main viewpoint adopted by tech conglomerates goes against the transmission of digital assets, arguing the existence of only a license to use that does not render any property rights.

However, as has been pointed out before, both the position adopted according to the doctrine and the one represented by the tech conglomerates do not take into account what has

been defined as an individual's private autonomy, or even what has been called informative self-determination. Both principles have been coined under the lens of the concept of free personality development, and thus, in current day's information society, the adhesion of rules that restrict the exercise of one's private autonomy effectively evidentiates the acknowledgment, by big tech conglomerates, of a human person only as a means to obtain profit.

It became apparent that a defense of total intransmissibility based only on contractual terms reinforces the authority that big digital conglomerates hold in dictating the rules for succession law, doing so in direct confrontation with the rules previously established in internal law practice. More so, it would seem that contractual clauses that bar the transmission of digital assets are to be considered null, legally speaking, since they entail an anticipated abdication of the user's right as derived from the nature of the law business in question.

Even more, if it is made possible to establish the destination of personal data (through informative self-determination), for what reason would it not be possible to establish the destination of digital assets of existential/hybrid nature? Are digital assets not composed of data? That is, it is possible to define the destination of separate data, but not when it is combined? If, as established, in today's information society there exists a "show of ego", why stop the individual from continuing with the show after death? Should it not be possible to hold control over your own personality's digital projection?

Considering the concept of free personality development as interlinked to the ideas of private autonomy and informative self-determination, the prohibition of transmission of digital assets means actual influence in an individual's personality development. Therefore, even though there currently exists a legislative gap regarding specifically the transmission of digital assets, through the conjugation of both principles mentioned, it is possible to reach the conclusion that there cannot exist a fencing to said transmission, at least in cases when there exists a document of expressed consent signed by the holder, under penalty of completely disregarding one of the core figures of normative imputation, that is, the person.

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Como citar: **GONÇALVES**, **Jeferson Jaques Ferreira**; **POLI**, **Leonardo Macedo**. Private autonomy and post-mortem transmissibility of digital assets of existential/hybrid nature. **Scientia Iuris**, Londrina, v. 28, n. 3, p. 115-131, nov. 2024. DOI: 10.5433/2178-8189.2024v28n3p115-131. ISSN: 2178-8189.

Recebido em: 06/08/2024
Aprovado em: 01/11/2024