



Employee Property Rights on Social Media Accounts in Bankruptcy Proceedings

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Abstract

The popularity of social media has erased legal ambiguity regarding ownership rights in social media accounts. In particular, does an employee have property rights to social media accounts in bankruptcy proceedings, or is a social media account considered the property of the enterprise? The article aims to assess ownership issues of social media accounts by relevant Georgian and international legislation in force. Especially, the article, through comparative analyses, will examine if all social media accounts should automatically be considered as property. Moreover, the article discusses the purposes of social media accounts: personal, business, and mixed usage and their ascertainable value through the analysis of national and international case law. Besides the challenging issues mentioned above, the article distributes a study on distinguishing "account" and "digital content" in social media. Accordingly, the article examines the crucial question that social media accounts should be included in the insolvency estate as property and lines between ownership rights of the enterprise and the employee should be drawn case by case, according to concrete social media and legislative rules.

Keywords: Bankruptcy proceedings, social media account, digital content, property rights, insolvency estate.

Introduction

The concept of property is one of the core elements of law, regulated through different stages of acts that emphasize the role of this concept in social and political systems. Definitions and applications are delivered through the prism of constitutional, public, and private laws. To this end, the fast-changing nature of private relationships forces an enlargement of the notion of property towards the inclusion of achievements in modern science and technology. E-commerce is one of the important accelerators of these changes, bringing widespread usage of social media accounts for marketing, communications, and public relations. Engagement in these branches of business activities has established new professions related to creating and managing social media accounts. More and more people, employed in-house or freelancing for companies, are subjects of jeopardized property rights. This issue intersects different areas of private law, including bankruptcy proceedings.

In 2020, Georgia enacted a new law on the rehabilitation and collective satisfaction of creditors' claims, which introduced strong protection mechanisms for employee rights. Corresponding to EU legislation, the law acknowledges the tenet of preferential claims, covering expenses for three months' salaries and leave (except for the expenses of salaries and leave of the directors of a debtor and members of a supervisory board, as well as their family members). These payments are due before a court declares an application for insolvency admissible, along with amounts payable due to occupational injury (up to GEL 1,000 per creditor). The law also prescribes duties and responsibilities of cooperation with employees, considering liabilities before workers. Despite the fact that the law enhances employment protection mechanisms, legal practice is still poor regarding different problematic issues, including employee property rights on social media accounts in bankruptcy proceedings.

The problem could be resolved through multiple layers of interdisciplinary solutions that require systematic answers. The main question is: should social media accounts always be included in the insolvency estate as property, and if yes, what property rights might employees have on them? For further considerations, it should be admitted that, under the law of Georgia on the rehabilitation and collective satisfaction of creditors' claims, an insolvency estate includes the whole property of a debtor that is in one's ownership at the moment of declaring an application for insolvency admissible. An important fact is that an insolvency estate shall not include property that is not subject to enforcement in accordance with the Law of Georgia on Enforcement Proceedings, including property without ascertainable value (Law of Georgia on Rehabilitation and Collective Satisfaction of Creditors' Claims, 2020).

Literature review

Distinguishing property into different types dates back to Roman civil law, which divided things (res) into corporeal (res corporales) and incorporeal (res incorporales) groups. The first group of corporeal things is characterized by the nature of solid appearance, which can be touched and is visible. As for incorporeal, they are characterized as total opposite (Mousourakis, 2015). Despite historical changes, the notion of property and rights on them can be described as freedom of one towards things (res) (Zoidze, 82.). Modern constitutions enshrine property rights as one of the fundamental right of the human being, but private regulations of the right are mostly given in civil codes, which divides property/things into material (tangible) and immaterial (intangible) property (Chanturia, 2001). The emergence of virtual property rights is linked to the creation of a virtual object with characteristics of property: ownership, disposal, and value. These may be a user's account, digital items, social media account, domain name, e-mail, and other digital assets that meet these attributes. The characteristic of virtual property rights is that the absolute nature of the owner's authority is exercised only in relations with third parties. Thus, the owner of virtual property, i.e. social media account could be in different legal relationships with third parties and the provider, owner of the platform. Unlike tangible property owners, virtual property owners' powers are not absolute and they may be limited by the interests of the developer, and provider of the platform (Nekit, 2020). Even, providers of the platform i.e. Facebook, Twitter, and LinkedIn, where modern E-commerce activities are created and shared prescribe their own concepts of the virtual property owner and terms and conditions by which they are allowed to operate. Some of them, for example, Twitter, allow business enterprises to create their own social media accounts, which means that all credentials necessary to register and activate an account belong to the business and the personality of the owner is visible to third parties. On the contrary, Facebook is an illustration of alternative terms for owning a social media account. In this case, Facebook allows individuals to create accounts, which are referred to as "personal" accounts because only a person with a "real name" and birthdate can create a Facebook profile. Businesses, in contrast, have Pages, which differs from the concept of "personal profile." Even though, a Page is created when a person with a registered personal account uses to create a Page for business purposes. In cases where social media accounts for business purposes are created in multiple, a question regarding property rights sharply arises (Jamel, 2017).

Research Methodology

The research addressed the following questions:

1. Purposes of Social Media Account Usage:

- Personal profiles, categorized as individual accounts, cannot be considered part of the business debtor's insolvency estate. This is because the content posted on such accounts is owned by the individual, not the business entity.
- For accounts used by enterprises, determining ownership becomes more complex. Classification as individual or business accounts should not solely determine inclusion in the estate; a case-by-case analysis is necessary.
- The nature of the relationship between the content creator and the estate is crucial. Employment law principles, such as organizational subordination, play a significant role. If the employee uses resources provided by the employer, works under supervision and control, and creates content within the agreed time frame, property rights belong to the estate.

2. Ownership Interests Based on Platform Terms and Conditions:

- The policy of social media platforms is influential in determining ownership. Some platforms explicitly attribute digital credentials to enterprises, favoring business estate rights. The terms and conditions of each platform should be carefully examined to resolve ownership disputes.

3. Ascertainable Value of Social Media Accounts:

- Establishing the value of social media accounts is crucial for their classification as property. The asset must have material value and be subject to enforcement in bankruptcy proceedings.
- Various economic and financial methods, such as the cost method and market approach method, can be employed to ascertain the value of social media accounts.

Conclusion and Recommendations:

- Social media accounts possess the legal characteristics necessary for classification as objects of property rights.
- Ambiguities arising from the dual purposes of social media accounts (personal and business) should be resolved on a case-by-case basis.
- The legal nature of the relationship between the content creator and the business owner is pivotal. If employment relationship aspects are present, property rights belong to the business.
- In cases where ascertainable social media accounts are used for personal purposes or lack organizational subordination, they should not be included in the insolvency estate of a business in bankruptcy.

proceedings. Comprehensive analyses, including interdisciplinary, systematic, historical, and comparative approaches, support these conclusions.

References:

1. Chanturia, L., (2001). Ownership of immovable property. TSU, 59.
2. Dumbadze, M., (2014). Service agreement as the way of avoidance of employment contracts. *Labour law Collection of Articles*, 3, 311.
3. International Law Organization (ILO) Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C030
4. Jamel, L., A., (2017). Mixing Business With Pleasure: Evaluating the Blurred Line Between the Ownership of Business and Personal Social Media Accounts Under § 541(a)(1). *Emory Bankruptcy Development Journal*, 33 (2), 562-598.
5. Law of Georgia on Rehabilitation and Collective Satisfaction of Creditors' Claims, 2020. <https://www.matsne.gov.ge/en/document/view/4993950?publication=0>
6. Mousourakis, G., (2015). Roman law and the origins of the civil law tradition. Switzerland: Springer, 95-157.
7. Nekt, K., (2020). Social Media Account as an Object of Virtual Property. *Masaryk University Journal of Law and Technology*, 14 (2), 201-226.
8. Shvelidze, Z., Bodone, K., Todria, T., Khazhomia, T., Gujabidze, N., Meskhishvili, k., (2017). Georgian Employment Law and International Labor Standards. ILO, 194-195.
9. Zoidze, B., (2003). Georgian Property Law. Metzniereba, 80-82.