



## TRANSFORMAÇÃO DO DIREITO PRIVADO RUSSO NA ERA DIGITAL: PROBLEMAS E PERSPECTIVAS

### TRANSFORMATION OF THE RUSSIAN PRIVATE LAW IN THE DIGITAL ERA: PROBLEMS AND PROSPECTS

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#### RESUMO

**Objetivo:** O artigo analisa o desenvolvimento e a evolução das instituições digitais no sistema de direito privado russo. O objetivo é examinar as principais direções da transformação do direito privado no contexto da digitalização, tanto na Rússia quanto no exterior.

**Métodos:** Este estudo abrange vários aspectos digitais do direito privado, incluindo direito sucessório, direitos civis e direitos de propriedade intelectual. Os autores utilizaram métodos históricos, dialéticos, lógicos e comparativos para avaliar o desenvolvimento dos direitos digitais e das instituições de direito privado, comparando as práticas russas com os marcos jurídicos estrangeiros.

**Resultados:** A pesquisa identifica tendências significativas na evolução do direito privado russo devido aos avanços digitais, com foco nos desafios e oportunidades apresentados por fenômenos como herança digital, inteligência artificial e criptomoedas. O estudo destaca como a experiência jurídica estrangeira pode informar melhorias na legislação russa.

**Conclusão:** O artigo conclui que o desenvolvimento do direito privado russo na era digital requer reformas legislativas abrangentes. Com base no estudo das práticas jurídicas estrangeiras, os autores propõem sugestões construtivas para aprimorar o marco legal russo, a fim de melhor regular os fenômenos digitais no direito privado.

**Palavras-chave:** Direito privado; Direitos digitais; Herança digital; Direito sucessório.





## ABSTRACT

**Objective:** The article analyzes the development and evolution of digital institutions within the Russian private law system. It aims to examine the main directions of transformation in private law in the context of digitization, both in Russia and abroad.

**Methods:** This study covers various digital aspects of private law, including inheritance law, civil rights, and intellectual property rights. The authors utilized historical, dialectical, logical, and comparative methods to evaluate the development of digital rights and private law institutions, comparing Russian practices with foreign legal frameworks.

**Results:** The research identifies significant trends in the evolution of Russian private law due to digital advancements, focusing on the challenges and opportunities presented by phenomena such as digital inheritance, artificial intelligence, and cryptocurrencies. The study highlights how foreign legal experience can inform improvements to Russian legislation.

**Conclusion:** The article concludes that the development of Russian private law in the digital era requires comprehensive legislative reforms. Based on the study of foreign legal practices, the authors propose constructive suggestions for enhancing the Russian legal framework to better regulate digital phenomena in private law.

**Keywords:** Private law; Digital rights; Digital inheritance; Inheritance law.

## 1 INTRODUCTION

Today we are witnessing unprecedented changes in almost all areas of society. The current socio-economic transformations are due to scientific and technological progress, including the rapid development of digital technologies. It can be said that the digitalization of society has become a modern trend. Given its close connection with the development of public relations, the legal sphere cannot but experience the influence of digital technologies. At the present stage of development of the Russian legal system characterized by the implementation of digital technologies in many spheres of state and society, the main task of the legislator is to create an adequate regulatory framework for digital reality. Traditionally serving as the foundation of private law, civil law is involved in forced reforming aimed at legalizing new digital objects and processes. Recently, civil legislation has been amended due to the digitalization of civil transactions. Digital rights have appeared among the traditional objects of civil rights, and the year 2023 (State Duma of the Federal Assembly of the Russian Federation, 2023) is marked by the emergence of more one digital object, i.e., the digital ruble.

Due to the fact that the Russian legislator keeps up with modern trends, such





phenomena as digital assets, smart contracts or cryptocurrency have become common for legal scholars and practicing lawyers. At the same time, the legislator is not ready to create an adequate legal basis for some digital phenomena, for example, artificial intelligence. The so-called digital heritage has not been considered by the Russian legislator. Some foreign legal systems are more progressive in this sphere; therefore, it is possible to adopt foreign experience in the legal regulation of the private sphere of public relations under the active development of digital technologies.

## 2 METHODS

The methodology employed in this study draws from a multidisciplinary approach, integrating **historical, dialectical, logical, and comparative legal methods**. Each method plays a crucial role in building a comprehensive analysis of the evolution of digital institutions within the Russian private law system:

**Historical Method:** This method enabled the authors to trace the development of private law regulation in the context of digitalization. By examining the historical progression of legal norms, the study identifies key moments of legislative change that reflect the growing influence of digital technologies on private law.

**Dialectical Method:** The dialectical approach facilitated the analysis of the interaction between digital and non-digital elements within the legal system. It allowed the study to examine the tensions and synergies between traditional private law institutions and emerging digital rights, providing insights into the challenges and opportunities of integrating digital technologies into legal frameworks.

**Logical Method:** The logical method was applied to dissect and categorize the various digital institutions that have emerged in private law. This approach helped in systematically evaluating current legal provisions and anticipating future legal challenges in digital rights regulation.

**Comparative Method:** The comparative method was essential in benchmarking Russian legal practices against foreign legal systems. This comparison highlights how countries such as the United States, Germany, and France have adapted their private law systems to accommodate digital realities, providing valuable lessons for Russian legislators.

The integration of these methods ensures a thorough, multidimensional analysis of digital transformations in private law, with special attention to the role of legislative adaptation in response to the rapid advancement of digital technologies.





### 3 RESULTS

Many civil law institutions have undergone significant changes under the influence of digital reality. In the case of objects of civil rights; changes have affected the institution of transactions which allows a person to make a transaction via electronic or other technical means (Article 160 of the Civil Code of the Russian Federation).

The sub-sector of intellectual property rights regulating the circulation of intellectual property on the Internet is greatly influenced by digitalization processes. In the context of intellectual property law, there is a wide range of issues that require comprehension in terms of digital reality. The scientific community is discussing the optimization of the legal mechanism for suppressing unfair competition, fighting against deceptive advertising, and protecting exclusive rights to intellectual property on the Internet (Shakhnazarov, 2021). This problem is especially relevant due to repeated lockdowns caused by the pandemic and difficulties in traditional trade caused by sanctions against the Russian economy. In these circumstances, the expansion of sales markets and an increase in sales volumes occur on the digital territory (the Internet). Accordingly, it is necessary to protect competition in this area of activity which acts as a lever for the development of the Russian and the world economy. As practice shows, the cases of violation of intellectual rights through unfair competition and unreliable advertising have become more frequent on the World Wide Web. These include such illegal actions as misleading users and consumers, illegal collection and use of personal data with the help of digital technologies, illegal use of intellectual property protected in another country for advertising, etc. The issues of using blockchain platforms in the circulation of intellectual property also require comprehension and legislative regulation (Moskalenko, 2021).

Indeed, such a digital phenomenon as artificial intelligence is of relevance now. This issue is of interest to legal scholars, legislators, and representatives of the professional community. Today the Russian legal framework lacks the necessary regulatory acts for the functioning of artificial intelligence. The Russian legislator is taking steps towards creating a legal institution of artificial intelligence, namely acts have been adopted by the President of the Russian Federation (2019). These steps are insufficient since many issues remain outside the scope of legal norms and require their solutions. The legislator does not provide an unambiguous answer to the following question: what is artificial intelligence from the viewpoint of the traditional doctrine of legal relations? The legislator distinguishes between two concepts: artificial intelligence and artificial intelligence technologies. Artificial





intelligence is understood as a set of technological solutions that simulate human cognitive functions. Artificial intelligence technologies are regarded as technologies based on the use of artificial intelligence. Based on these definitions, artificial intelligence can be considered in various aspects: as an object of civil rights or as a subject of civil relations. The corresponding literature clarifies that artificial intelligence, being a subject of legal relations, acts not as an analog of a real person but as an independent subject (an electronic person) (Shpakovskaya, 2023). Considering the essence of artificial intelligence as a complex of technological solutions (i.e., as a result of human intellectual creative activity), the relationship between artificial intelligence and protected intellectual property is becoming relevant. Russian intellectual property law does not contain a direct and clear answer to this question; therefore, legislative work in this direction is required.

In the field of private law, some institutions are reluctant to respond to the challenges of the present time. This refers to inheritance law which is often described as a conservative sub-branch of the Russian civil law (Tsokur, 2021). To date, there are no sufficient grounds for such strong statements. The current stage of development of the Russian inheritance legislation is characterized by active and large-scale reforming. If we compare modern Russian inheritance law with its Soviet predecessor, it is obvious that the Russian legislator has introduced a lot of new rules into the legal regulation of inheritance relations. For example, we have a definition of inheritance (Article 1110 of the Civil Code of the Russian Federation). Still, the system of grounds for inheritance has changed significantly: an inheritance agreement has been added to the will and the law (Article 1111 of the Civil Code of the Russian Federation). The institution of inheritance by will has been significantly updated: citizens can draw up an undisclosed will, as well as dispose of their property in the event of death in a simple written form in a case of emergency. A significant legal innovation of the Russian institution of inheritance by will is a joint will of spouses (Clause 4 of Article 1118 of the Civil Code of the Russian Federation), previously unknown to the Russian legal order but tested in several foreign countries (Germany, Austria, Denmark, Sweden, etc.) (Martasov, 2018; Yatsenko, 2019).

As we can see, the reform affected various institutions of inheritance law: inheritance by will, trust management of inheritance, etc. The institution of inheritance (mass of the succession) has not become the object of reforming. Proposals have been made on the pages of legal literature to change the inheritance regime of certain objects of civil transactions. The rapid development of Internet technologies has led to the creation of new objects of civil circulation, i.e., digital assets. Previously, material things prevailed in property





turnover. However, with the development of digital technologies, objects emerged whose materiality was conditional. Thus, there is an urgent need to give a legislative response to the digital challenges of our time.

Modern inheritance law is developing during the active dissemination and use of digital technologies and artificial intelligence. Potential testators are also involved in the digital environment. There is no doubt that most citizens have an email, an account on social networks, virtual bonuses, electronic wallets, electronic money, etc. In the relevant literature, various terms are used in relation to all such objects or some of them, for example, digital rights (Andreev, 2018), digital assets (Sannikova & Khritonova, 2018), digital objects (Arkhipov, 2020), etc. It is necessary to determine the conceptual and categorical apparatus in the digital sphere and its regulatory framework.

Digital rights have already received their legal recognition within the civil legal field. Article 128 of the Civil Code of the Russian Federation dedicated to the objects of civil rights was supplemented with an indication of a new object (digital right) in 2019. It was covered in Article 141.1 of the Civil Code of the Russian Federation which defines the concept of digital rights. A question naturally arises about the possible alienation of digital rights, i.e., about the limits and scale of their circulability. The answer to this question is crucial in the context of this study. If digital rights are negotiable, they can be the object of hereditary succession.

Let us consider the rules of Article 141.1 of the Civil Code of the Russian Federation. Due to the analysis of this article, we have managed to formulate several characteristics of digital rights.

First, digital rights must be legitimized, i.e., they include those rights that are mentioned in the law as digital. In relation to digital rights, the so-called principle of legality is applied (Gongalo & Novoselova, 2019).

Second, digital rights may be obligatory or other types. In this regard, we support the scientific conclusion made by V.P. Kamyshanskiy that digital rights are not a new type of subjective rights different from obligations or real rights. Digital rights are obligations or other rights that are characterized by a close connection with the information system where they can be implemented (Kamyshanskiy, 2019).

Third, the content of digital rights and the conditions for their implementation can be determined in accordance with the rules of the information system. This feature is specific and is inherent only in digital rights as objects of civil rights. The above-mentioned data mean that digital rights arise in the information system and can only exist within it. The being





of digital rights is characterized by the fact that their habitat (the information system) does not have intermediaries, which are typical of other information systems for recording rights. In traditional right accounting systems, the intermediary is responsible for the circulation of rights and the correctness of accounting data. In this regard, if there is a central operator or an intermediary in the system for recording any rights, then these rights cannot be considered digital according to Article 141.1 of the Civil Code of the Russian Federation (Gongalo & Novoselova, 2019). The definition of an information system is contained in Federal Law of July 27, 2006 No. 149-FZ “On Information, Information Technologies and Information Protection” (State Duma of the Federal Assembly of the Russian Federation, 2006).

Fourthly, the legislator directly provided for the possibility of involving digital rights in civil transactions. Clause 1 of Article 141.1 of the Civil Code of the Russian Federation discusses the issue of disposing of digital rights. Special cases of disposal are the transfer of digital rights and their pledge. Clause 3 of Article 141.1 of the Civil Code of the Russian Federation mentions the possibility of transferring digital rights through a transaction. Thus, digital rights should be classified as negotiable objects of civil rights.

These characteristics of digital rights allow us to draw a conclusion about their property nature, which means that they have a legal connection to a specific entity and a monetary value.

Although there is a legal definition of digital rights in civil legislation, Article 141.1 of the Civil Code of the Russian Federation addresses several issues that require resolution. The definition of digital rights proposed by the legislator is quite abstract, and the features indicated do not fully reveal the concept of digital rights.

Modern scholars offer various definitions of the concept of digital rights enshrined in the Civil Code of the Russian Federation. For example, specialists from the Private Law Research Centre under the President of the Russian Federation named after S.S. Alekseev include digital rights to legal fiction (Council under the President of the Russian Federation on Codification and Improvement of Civil Legislation, 2018). Some authors even question the need for a new type of subjective rights (digital rights) since they believe that their emergence can have a negative impact on established and tested legal institutions (Rozhkova, 2018).

Some scholars believe that the phenomenon of digital rights does not fit into the traditional understanding of subjective civil rights as a possible behavior of an authorized subject. In this regard, digital rights are not an independent type of subjective civil rights;





they are just a digital expression of subjective rights already known to civil law implemented within the information system (Golovkin & Amosova, 2019). A similar position is held by S.I. Suslov and U.B. Filatov, according to whom the essence of digital rights is determined by the method of fixing real, obligatory, and corporate rights, i.e., their digitalization. We need to distinguish between digital rights as objects of rights and digital rights as an expression of subjective rights (a digital record) (Suslova & Filatova, 2019).

It is important to determine not only the essence of digital rights but also their types. Which digital objects will be considered digital rights in conformity with Article 141.1 of the Civil Code of the Russian Federation? One of the training courses on digital rights states that digital rights should include tokens and cryptocurrencies that are issued by individual companies. For example, Bitcoin as a classical cryptocurrency cannot be classified as digital rights (Shestakova, 2020). Some authors, particularly E.N. Agibalova (2020), believe that the concept of digital rights includes such digital objects as mobile phone balance, bonuses awarded to electronic cards by various organizations, bonuses in computer games, etc.

Considering the legal regulation of the digital sphere in foreign countries, a broad understanding of subjective digital rights has been formed. It comprises a diverse range of digital objects (digital assets), including cryptocurrencies, tokens, bonus programs, social network accounts, digital photos, e-books, domain names, emails, etc.

To a certain extent, Article 141.1 of the Civil Code of the Russian Federation enshrines the principle of legality in relation to digital rights, i.e., such digital rights that are mentioned in federal law and are allowed for release and circulation. To determine specific types of digital rights, one should be guided by the provisions of the federal law where they should be indicated. Some of these laws have already been passed. Thus, Article 8 of the Law on Investment Platforms (“On Attracting Investments Using Investment Platforms and on Amending Certain Legislative Acts of the Russian Federation”) (State Duma of the Federal Assembly of the Russian Federation, 2019) is devoted to “utilitarian digital rights.” The concept of utilitarian rights is revealed by listing digital rights that can be acquired, alienated, and exercised in the investment platform (for example, the right to demand the transfer of things, perform work, provide services, etc.). Another type of digital rights (digital financial assets) is enshrined in the Law “On Digital Financial Assets, Digital Currency, and on Amending Certain Legislative Acts of the Russian Federation” (State Duma of the Federal Assembly of the Russian Federation, 2020).







## 4 DISCUSSION

In connection with the emergence of a new object in civil legislation (digital rights), a heated discussion arose on its circulability, including the possibility of its transfer by inheritance. According to some authors, digital rights can be transferred from the owner to their heirs in the order of universal succession, i.e., “on the same conditions as the objects themselves, whose ownership they confirm” (Bychkov, 2018).

Considering the legislation on digital rights and the expressed opinions of renowned scholars, we can conclude as follows: regardless of the content put into the concept of digital rights, they are circutable, and administrative actions of the authorized person are directly permitted in relation to them. This means that digital rights can be the object of universal succession, but only in the case of drawing up a will or inheritance agreement. From a practical viewpoint, ensuring the transfer of digital rights to their heirs by law is challenging because the decentralized blockchain system excludes the possibility of heirs obtaining information about digital assets. Therefore, if the testator did not leave the necessary information about access to their digital right (for example, in the will), it would be impossible to inherit this right since the owner of the digital right can only be a citizen who can dispose of it. Still, due to technical reasons, the potential heir will not be able to become the owner of the digital right.

Summing up the analysis of a new object of civil rights (digital rights), we can agree with a famous Russian civil rights expert. Professor E.A. Sukhanov (2020) considers this legislative innovation to be a hasty and premature step. Indeed, the legislator mentioned digital rights as a new object only in Article 128 of the Civil Code of the Russian Federation and attempted to define them in Article 141.1 of the Civil Code of the Russian Federation, without developing an adequate legal regulation of the relations associated with the new object. As a result, it gave rise to many new issues, including the legal nature and essence of digital rights. After analyzing limited legal and regulatory materials on digital rights, we can characterize them as follows:

- A qualifying feature of digital rights is their mandatory legitimation, i.e., only law can classify this or that subjective right as a digital one;
- Digital rights can be obligatory, corporate, proprietary, or intellectual;
- The circulation of digital rights is allowed, as stated in Article 141.1 of the Civil Code of the Russian Federation, but only based on the will of the authorized person.





## 5 CONCLUSIONS

Given the foregoing, we can assert that digital rights, as designated by the legislator in the Civil Code of the Russian Federation, are not a new independent object of civil rights but rather are a special form of fixation of civil rights (obligatory, corporate, etc.). In this case, we see an analogy with uncertificated securities. The fact of giving subjective rights a new form (digital) does not show a change in their legal nature.

This narrow understanding of digital rights by the legislator does not determine the circulability of other digital assets: cryptocurrencies, bonus programs, social network accounts, digital photographs, e-books, domain names, and emails. Some countries already have advanced legislative experience in this area which can become a starting point for developing the Russian concept of digital assets inheritance. In the United States, the Uniform Fiduciary Access to Digital Assets Act (FADA) has been developed, which provides for the right of owners of digital assets to transmit information about persons who have the right to obtain access to these assets to their custodians.

Thus, the inheritance of digital rights is not expressly authorized by the legislator under Article 141.1 of the Civil Code of the Russian Federation and the sub-branch of inheritance law. To ensure the inheritance of digital rights, testators should choose their heirs and include all unique access codes to registers, logins, and passwords in their will. However, it is also necessary to consider heirs by law in the cases when the testator who owns digital rights did not leave a will. To resolve this issue, it is necessary to establish control over distributed registries and create electronic storage that should contain access codes to digital assets. After the death of the testator, these codes can be transferred to their heirs by law.

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