



DIGITALIZATION IN INHERITANCE LAW

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Received: March 4 th 2022 Accepted: April 4 th 2022 Published: May 11 th 2022	<p>The digitalization is entering into every direction by changing human being's position. Even the traditional paper currencies are becoming electronic. On this article, we will discuss the effect of digitalization on inheritance procedure and policy, the ways of regulating these legal relations. Social networks policy and European Union practice is already concerned some approaches to regulate this process but did not cover up it fully. However, the Republic of Uzbekistan is trying to establish normative acts of digital inheritance.</p> <p>The article also concerns suggestions of digitalization in inheritance law process in Uzbekistan by adopting several normative acts and ways regulating this process.</p>

Keywords: Digital data, Digital inheritance, Inheritance law, Data protection, Digital Estate Planning, Social networks, Succession, Practice of countries and legislation.

THE CONCEPT, OCCURRENCE, PROBLEMS AND TYPES OF INHERITANCE

At the beginning of the inheritance law formation, just close-knit family members had the right to inherit the property. The men firstly had the right to inherit. If there were no men, then women had the right to inherit. The widow was not considered as an heiress but only could take what her husband appointed. The father's property always belonged to the younger son of the family without division. Although identities could be closely tied to city-territories, the institutional force of the kingdom remained, as an inheritance from the Lombard and Carolingian periods even in the Rome Empire period.¹

Inheritance law is one of the main parts of civil law legislation. The right to inherit includes tangible and intangible materials. The types of tangible materials can

be real and personal as land, subsoil, car, etc. On the other hand, trademarks, patents, franchising, and others are considered as intangible materials. Property law relations have changed and developed depending on the social, economic, political, and personal outlook of people during the years.

For the time being, new rules have been enforced and changed it absolutely, the new century created the new legal challenges concerning the digital platforms, electronic data, and footprints that virtually all human beings regardless of age and where they reside, leave behind when they pass away.² Statistics explicitly demonstrate the essence of digitalization sharply increased, people become more affected by technology.

Our accumulation of assets is increasingly digital. Our written letters turn into text messages, e-mails and e-cards. Our paper photo albums are replaced by

¹ The author of the book is Chris Wickham. The title of the book is "The inheritance of Rome, a history of Europe from 400 to 1000". Published by the Penguin Group, Penguin Books Ltd. Published in 2009.

² Conway & Grattan (2017), *supra nota* 1; Hawkins, D. T., & Kahle, B. (2013). Personal Archiving: *Preserving Our Digital Heritage*. Information Today, Inc.



Instagram albums or stored on cloud services such as iCloud, Dropbox, and Google Photos. Our (music) library is only a click or tap away rather than stored in CD collections or bookcases.³

In 2021, Internet users number reached 4.9 billion which is equal to more than half of the people living on earth. Last year, the number of Internet users was 4.5 billion people. In just one year, their number increased by 300 million.⁴

In 2019, Internet users spent approximately 122 minutes online using their mobile devices, which is triple the Internet consumption than using desktop computers, or an average of 40 minutes per person every day.⁵ As of 2019 and 2020, the average daily social media usage of internet users worldwide amounted to 145 minutes per day, up from 142 minutes in the previous year.⁶ 49% of the world population uses social media for the time being.⁷ In addition, the restrictions imposed after "Covid 19" forced the main part of the working population, students of universities, schools, colleges, and many others to work and study online.⁸ Such statistics mean that people are more using the Internet, setting usernames, passwords, and other personal data information. In this case, the most difficult and unresolved issue remains the date transfer of a deceased person in social networks, which have not been legally regulated yet. If the legislation will allow the use of personal data in the social networks of the deceased person, then the person who has gained access to his data can use it for achieving personal goals. One of them is the personal data disclosure which

should have been kept secret. In these cases, people simply can use their financial resources for themselves for acquiring a car, property, and others. Moreover, the jurisdictional matter for the disclosure of personal data is very difficult due to the lack of a single unified norm of international law. This law is evolving by the world community of lawyers for the time being.⁹

The principles of modern inheritance law are changing because of the economic relations, becoming the world more united, and the weakening of ties between family members. Globalization and swift changes simultaneously created new types of technologies, which made it possible to transfer inheritance through social networks using electronic numbers in turn.

Digital inheritance in some cases includes several types of operations, such as authorization in a bank to gain access (password and other data, which concerns secret details of a person and restricts to know from others based on law) to use a bank plastic card, medical and social information. Another problem is associated with photographs that can be stored in personal electronic files. The succession process of the personal data, the intellectual property, and protection from intruders are not regulated. A vivid example can be the privacy policy of the Facebook (Meta) social network. If the owner of the Facebook page suddenly dies, then the network automatically sends the page of the inheritor's username and passwords to his heir.¹⁰

³ Author: A. Berlee, "Digital inheritance in Netherlands", Journal of European Consumer and Market Law (EuCML) 6/2017, pp. 256-260.

Online available at:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3082802.

⁴ Global number of internet users 2005-2019 Published by Joseph Johnson, Dec 22, 2021.

Online available at:
<https://www.statista.com/statistics/273018/number-of-internet-users-worldwide/>,

Link of the diagram (picture). Number of internet users worldwide from 2005 to 2021(in millions).

Online available at:
<https://www.statista.com/statistics/273018/number-of-internet-users-worldwide/>

⁵ Online available at:
<https://www.statista.com/statistics/273018/number-of-internet-users-worldwide/>

⁶ Daily social media usage worldwide 2012-2020 Published by Statista Research Department, Jan 28, 2022.

Online available at:
<https://www.statista.com/statistics/433871/daily-social-media-usage-worldwide/>

⁷ Online available at:
<https://www.statista.com/statistics/433871/daily-social-media-usage-worldwide/>

⁸ Harvard Business school. Working from Home during COVID19: Evidence from Time-Use Studies Thomaz Teodorovicz Raffaella Sadun Andrew L. Kun Orit Shaer, page 34-Conclusion.

Online available at:
https://www.hbs.edu/ris/Publication%20Files/21-094_d4978fbf-11ea-49aa-bb88-09d39e88a272.pdf

⁹ UNIDROID. Digital Assets and Private Law UNIDROID 2021. Working Group Study LXXXII – W.G.4 – Doc. 2 Fourth session (hybrid) English only Rome, 2 – 4 November 2021.

¹⁰ What will happen to my Facebook (Meta) account if I pass away?

Online available at:
<https://www.facebook.com/help/103897939701143>



INHERITANCE OF CRYPTOCURRENCIES. TRANSFER METHODS

One of the ways of transferring cryptocurrency is to open a safe deposit box in the bank and put it into a "cold wallet (This is an electronic wallet to keep the cryptocurrency. In order to store bitcoins, the owner has to buy an electronic wallet)".¹¹ It could be a "Ledger Nano" wallet, similar devices, or just a piece of paper containing information about access to cryptocurrency. Then, the owner needs to indicate the heir's personal data in the bank safe deposit box without specifying the contents of the bank safe. This approach is absolutely safe, keeps the personal data of the cryptocurrency from revealing to others, and provides a high level of anonymity. The testator just has to tell to the heirs the code to open the Ledger, otherwise, it will be impossible to take the digital inheritance from a cold wallet.

If a person does not trust to keep their digital assets in the banking account, making encryption in the electronic storage will be the most admirable way (for example, Secret Disk). After encrypting the number of the wallet by putting the key, transferring to this storage is carried out. Meanwhile, an instruction concerning transferring the data to a third party may be prescribed in this way. For instance, the repository's owner of such a digital will is obliged to transfer the data to a third party whether the text of the will directly follow it, transferring the encrypted data specified on the will. However, this method involves the presence of an intermediary together with the Internet. For this reason, this method is a little bit riskier than making a cold wallet in a bank account.

Another method of succeeding the cryptocurrencies is to store documents in a notarial office. The notary accepts for storing information in a written format about accessing the cryptocurrency wallet after passing away of the testator, the digital data of which will automatically transfer to the corresponding heir. But the problem is to find a notary whom the testator can absolutely trust and believe. It is not a secret that even a notary can break an agreement illegally without noticing the appointed heir or third person.

THE CRYPTOCURRENCY ON THE EXCHANGE AND INHERITANCE

¹¹ The title of the article is "Electronic Wallets: Past, Present and Future". A means to authentication and payment for device-independent electronic payment instructions.

Online available at:
https://www.gpayments.com/documents/GPayments_e_Wallet_Whitepaper.pdf

Users could trade in the cryptocurrency exchange to trade with crypto assets, tokens, and with other digital resources. Simultaneously, everything is stored in a cold wallet provided by the cryptocurrency exchange, where the users could control their digital assets. Indeed, there are 2 big cryptocurrency exchanges in the world:

1. Binance;¹²
2. Coinbase.¹³

Binance is an online exchange

The terms of the Binance exchange are not friendly concerning to succeed the digital assets of users. Binance prohibits transferring an heir's assets to third parties. If a transfer is detected by the Binance exchange company, it can automatically block it.¹⁴ Nevertheless, it has positive sides as:

- Users can transfer their rights to the Binance account and must obtain the written agreement, and consent of the exchange even if the user's desire concerning transfer arises from the terms of the Binance exchange. It means that when a user wants to transfer an account by inheritance, then he needs to get the consent of the exchange;
- Simultaneously, it is not clear to get inherited the heir's account by a court procedure. Particularly, the exchange is obliged to suspend the operation of the account, block funds or block the account based on the court's decision or when government officials require it over the dispute forever. But, if the exchange obeys the requirements of the government, then it presumably will be obliged to comply with the court decision according to the transfer of the account. However, there is no available information, which concerns transferring the account to the heir by the court's decision.

Based on these facts, it is completely unknown how it will be ended or decided concerning inheriting cryptocurrency. Therefore, it is more precise and secure when a testator transfers its assets before passing away. Otherwise, there is a possibility that they will remain somewhere in the blockchain and the blockchain system automatically transfers the cryptocurrency and uses it for its purpose after a couple of years. Now, international law practice concerning digital inheritance is null and void.

Coinbase is an online exchange

¹² Online available at: <https://www.binance.com/en>

¹³ Online available at: <https://www.coinbase.com/>

¹⁴ The terms of use of the online cryptocurrency exchange "Binance".

Online available at: <https://www.binance.com/en/terms>



On the other hand, Coinbase¹⁵ has included the possibility of transferring cryptocurrency as a part of an inheritance or will by an heir and it helps taking access to the deceased's account. In this case, an heir has to contact Coinbase and explain the issue. After applying to the Coinbase exchange, an heir may be asked to provide the following documents:

1. Certificate of death;
2. Will or certificate concerning the right to succeed
3. Identity card of the heir;
4. Letter (in a written format) signed by the heir indicating what should be done with the deceased's Coinbase account balance (for instance, transferring all funds or cryptocurrencies to the heir's account).

Coinbase user agreement terms¹⁶ are friendly to succeed the digital assets. It considers that:

- Coinbase is obliged to transfer the account with its digital assets to the relevant government if an heir does not make any activity to take or use an account of the deceased for several years;
- Coinbase provides for user's legal protection through court proceedings. The relationship with the account holder is governed by English law and any disputes between parties are solved in the English courts by default.¹⁷ Meanwhile, if an heir is an ordinary user, he/she has a right to use Coinbase in his/her own country's courts and can apply and use his/her own country's consumer protection law.

We can conclude from this paragraph that when a dispute concerning digital inheritance arises with the Coinbase exchange, it will be possible to file a lawsuit in an Uzbek court and oblige Coinbase to transfer the account to the heir if we regulate the succession process of a digital inheritance in Uzbekistan.

Google

¹⁵ How do I gain access to a deceased family member's Coinbase account?

Online available at:

<https://help.coinbase.com/en/coinbase/managing-my-account/other/how-do-i-gain-access-to-a-deceased-family-members-coinbase-account>

¹⁶ Coinbase User Agreement.

Online available at:

https://www.coinbase.com/legal/user_agreement/kenya

[a](#)

¹⁷ *Ibid.* Article 13.21 Governing Law.

Online available at:

https://www.coinbase.com/legal/user_agreement/kenya

[a](#)

¹⁸ Online available at:

<https://support.google.com/accounts/answer/3036546?hl=en>

We can use the "Inactive Account Manage"¹⁸ service and choose a specific person who will be granted access to the data (specified in your account in case of extending to use it). If a user is an heir and wants to access the deceased's email but the testator did not use this service upon request to Google¹⁹ with evidence that the former owner properly disposed of the account, the request is also likely to be fulfilled – an heir will get access to the account.²⁰

However, if any particularly valuable materials are stored on someone's Google account including e-mail or cloud storage, then he needs to take care of the fate of the account in order to avoid losing them in advance.²¹

Facebook

Facebook has the most detailed and thorough approach to the issue of the account fate after the owner's death among all social networks. In general, Facebook offers two options – remove the page or appoint a custodian. In the case of deleting the page, it will be enough for the heirs to contact the technical support of the social network with a request and attach a death certificate to the appeal and if the testator is provided with the option to delete the account in their personal account, it is subject to closing and subsequent deactivation by Facebook moderators.

When choosing the second option with the appointment of a custodian, Facebook sets a requirement concerning that a custodian must be over 18 years old. Also, when choosing a custodian, you can set what data he will have access to after the death of the account owner and what rights he will get as the ability to delete or update a page photo, and publish posts, etcetera. However, the custodian will not be able to get access to managing your friend's list and see the content of your Messenger conversation story.

¹⁹ Online available at:

<https://support.google.com/accounts/troubleshooter/6357590?hl=en>

²⁰ Inherited permissions Direct vs Inherited Permissions.

Online available at:

<https://support.google.com/marketingplatform/answer/9220864?hl=en>

²¹ Google privacy policy. Modified on December 18, 2017.

Online available at:

https://static.googleusercontent.com/media/www.google.com/ru/intl/en/policies/privacy/google_privacy_policy_en.pdf



Facebook offers the custodian two options. The first is the most obvious one – just deleting the account. In this case, the algorithm of actions is similar to deleting the account by the heirs of the deceased.

Second, transferring the account to the so-called “commemorative” status.²² You can implement it by yourself or appoint a custodian who will be able to set such status for your account when you are passed away.

The Custodian could manage the commemorative account in terms of selecting people who could leave commemorative posts under the deceased's account and control the visibility of posts.

If the owner of the account does not choose a custodian during his lifetime but his account is memorialized in the future, then all the content that the deceased owner shared (for example, photos, publications) will be visible to those people with whom the deceased person originally shared this content. It is not possible to remove such content in most cases unless the heirs have a court order directing Facebook to disclose or remove the deceased's certain content.

Instagram

Even though Instagram is actually owned by Facebook, the function of determining what will happen with an account during the owner's lifetime is not currently regulated. Instagram offers the same option similar to Facebook as removing the page or awarding it a memorable status.²³

However, the commemorative status function on Instagram does not imply notification of the assignment of such a status to the account of subscribers and other persons who visited the page of the deceased, unlike Facebook. The memorable status only prevents outsiders from entering the account and limits the functionality in terms of deleting followers' likes and marks on photos left by the deceased.

The ways of transferring the digital assets to an heir

When we are talking about a digital asset, a question appears concerning finding the most efficient transfer of digital assets so that heirs do not lose access to them due to various reasons including the unexpected death of the owner.

In total, there are three feasible solutions for organizing access to any digital assets and accounts in

the digital space: a password manager (for example, Keychain Access), email, and a phone number.²⁴

If we categorize these 3 methods based on their importance and the need for restoring access to accounts, then the password manager will be the most secure way. Because it allows to access any account whose data is stored in the password database including an email account without resorting the passport recovery function. Also, some password managers suggest the ability to save master codes and passphrases needed to access applications and crypto wallets and save a graphic password image a text password from various devices or individual applications with files stored on these devices. Therefore, it is possible to provide easy access to all accounts and digital assets which are accessed using a login-password pair or master codes by properly storing the login data for the password manager. As previously noted, the most feasible solution for inheriting digital property can be resorted to using a bank cell or transferring a document with input data to a notary office to store.

A second method is a phone number. By using the phone number, users can get direct access to social networks (Facebook, Instagram, Telegram, WhatsApp, Viber, etc.), various private chats, and groups. Additionally, users can restore access to accounts in social networks, personal accounts in online stores, websites, and email boxes where it is possible to connect the phone number to a specific account by using it.

Meanwhile, the mobile phone is one of the ways of authentication for accessing those accounts which require a two-step authorization process to increase the security. These security services exist in Google, Public Services and the MFC service My Documents.

The process for transferring the right to use the deceased's mobile phone number is established by the company rules of mobile operators, which allow the transfer of a phone number to heirs upon presentation of the necessary documents. It is possible to transfer a phone number by an heir in Uzbekistan. But to succeed the number, the heir must confirm that he is the family member of the deceased.

Another step in two-way authentication is email, which allows entering social networks, personal

²² Online available at: <https://www.facebook.com/help/www/1506822589577997/>

²³ Can you inherit an Instagram account? Online available at: <https://www.talksonlaw.com/blog/can-you-inherit-an-instagram-account>

²⁴ The author is Natalie Banta Layner. The title of the article is “Inherit the Cloud: The Role of Private Contracts in Distributing or Deleting Digital assets at Death. Published on 8th February, 2015. Online available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2561871



accounts in online stores, various online services, and other profiles. Actually, it is located on the third step of our suggested list to use. Because accession can be restored if the holder concerned access to a mobile phone but this access to a mobile phone using mail cannot be restored.²⁵ The most verified way to transfer a login, password from an electronic box is to store it in a deposit box or transfer it to a notary office for storage.

Inheriting any type of property including digital assets requires preliminary preparation and studying the possible mechanisms for transferring these types of properties.

Practice of digitalization of the inheritance law in European Union countries

An internationally unified system relating to the control of digital data, and the property has not been created. One of the biggest problems with digitalization is the Internet, social networks, and other digital technologies, which are the private entities subject and they have their privacy policy to keep secret the personal information of the social network users, regardless of the inheritance law process. In order to make one unified system to solve the digitalization, all states and countries must act cooperatively. Even if the majority part of countries could create a unified legal system of the digital inheritance law, then there will be more problems with implementation in practice. Because other countries' jurisdictions also should permit to regulate these acts accordingly.

However, some states have already begun establishing legal regulations or laws concerning to digitalize the inheritance process despite the practical and technical difficulties. The research of some European Union and the United States of America practices is the most advanced one.

The term digital asset is difficult to clearly define but it includes email, audiovisual content, and documents.²⁶ In the USA, the Oregon state laws regulating the digital inheritance, assets refer to "text, images, multimedia information or personal property stored in a digital format whether stored on a server, computer and on

other electronic devices which currently exist or may exist regardless of the device ownership where the digital assets are stored.²⁷ Briefly said, the digital inheritance and assets contain all information of the passed away person on the internet.

The practice of the European Union fails to consider the unique law regulating the digital inheritance law because of the different approaches, backgrounds, and outlooks of the countries. EU practice defines digital inheritance as a copied material under the Copyright, Designs and Patents Acts of 1988. The notion of protection in EU law does not extend to a deceased person.

• Estonian practice of digital inheritance

The Estonian Law of Succession Act (ELSA)²⁸ and Estonia's General Part of the Civil Code Act (GPCCA)²⁹ regulates the digital inheritance law in Estonia. These laws permit to succeed digital inheritance in Estonia whether the law confirms or not. Also, the heir has a right to enter into all negotiations of the predecessor, who succeed his inheritance and is obliged to pay debts, ownership, and rights. It demonstrates that Estonia does not have the legal rule which makes barriers to succeed the inheritance, the universal succession encompasses all types of inheritance. Even the most personal property of the deceased transfers to an heir upon death such as letters, diaries, emails, private messages on social media and social networking sites, provided that they are stored on a hard drive or USB disk. In other words, if these private items are still stored on a computer upon the demise of the individual, ownership and rights to them automatically transfer to the heir.³⁰

• Netherland's practice of digital inheritance

The Burgerlijk Wetboek, WB – The Civil Code of (Netherlands) provides that any type of property can be succeed, specifically, the digital inheritance in the Netherlands. There are not any restrictions to transfer the digital assets by an heir. Property can be acquired in one of two ways in Dutch law: by general or particular

²⁵ The author is Laura McCarthy. The title of the article is "Digital assets and intestacy".

Online available at:

http://www.bu.edu/jostl/files/2015/12/McCARTHY_NO_TE_FINAL-web.pdf

²⁶ Reid, B. (2017). Legal Life After Death: Publicity, Physical, and Digital Assets. *Southern Journal of Business & Ethics*.

²⁷ *Ibid*.

²⁸ Entered into force 01.02.2021.

Online available at:

<https://www.riigiteataja.ee/en/eli/ee/514012021002/consolide>

²⁹ Online available at:

<http://extwprlegs1.fao.org/docs/pdf/est182058ENG.pdf>

³⁰ Tallinn University of Technology, School of Business and Governance Department of law. Kristen-Alex Kolk DIGITAL INHERITANCE IN THE EUROPEAN UNION Bachelor's thesis Programme HAJB, specialization European Union Law. Supervisor: Tanel Kerikmäe, PhD. Published in 2020, Tallinn.



title.³¹ Succession is an example of acquisition by general title, whereas acquisition based on a transfer is one of the most common forms of acquisition by a particular title.³² Netherlands digital inheritance law much similar with Estonian law, it actually does not require any wills or written contracts concerning permission from the testator unless the contract does not differently state. The rights and obligations arising from the contract determine whether the heir succeeds the licenses or legatees. Because certain digital services are provided by licensing, for example, media streaming services such as Spotify³³ or Netflix.³⁴ Taking a license is not only required for downloading music, videos, photos, games, etc., but also for software. The Civil Code of Netherlands regulation considers that personal rights are given when a person was born and ends when he passes away, which means when a person dies, then his rights also end. Nevertheless, article 13 of the Netherlands Constitution³⁵ still considers the protection of electronic communication. According to article 13, part 2 of the Netherlands Constitution, the privacy of the telephone and telegraph shall not be violated except in the cases laid down by the Act of Parliament, by or with the authorization of those designated for the purpose by Act of Parliament.

Data protection and privacy law after passing away

Indeed, there are not any specific rules regulating the succession of digital inheritance. Therefore, the succession process of digital inheritance with material things is similar. Naturally, digital inheritance could be very personal and important. When the heir takes a chance to succeed and gets access to the personal account of the testator, then, he would probably reveal the information which actually must be kept in secret

from others. Many people can think that this gives access to personal chats, and messages, but it also considers the information in email, donations or other personal information relating to health. It also can reveal sexual information or political preferences. Therefore, data protection concerning email information is considerable and substantial.

The right to privacy, keeping in secret the personal information

The right to privacy actually ends when the person passes away, which means that this right is not inheritable. However, the right to privacy may persist in some cases, for example, the right to bodily integrity. This right is protected on the Constitutional level as the right to protection of private communication embodied in article 13 of the Netherlands.

Solutions of Dutch Law to get access to an online account

While there has been fairly little attention paid to the legal implications of a digital inheritance in scholarly literature,³⁶ the matter has been featured on numerous occasions in the newspaper³⁷ and professional magazines for notaries for example.³⁸ These discussions mainly provide practical solutions to the succession process than considering the legal background of the topic. The process of succession of the digital accounts by writing a will and the Royal Dutch Association of Civil-law Notaries has initiated the 'digital vault' program where people could store their personal data.³⁹ The advantages of these solutions will definitely give a general overview to the heir, how he can get access to the blocked or closed down a social account. Meanwhile, when the heir wants to get to the account, it can require the documents confirming that he is an heir as the birth certificate or ID card (password), even the birth

³¹ The Civil Code Book of Netherlands, art. 80, part 1.

³² *Ibid*, art. 80, part 3.

³³ Author: A. Berlee, "Digital Inheritance in the Netherlands", Journal of European Consumer and Market Law (EuCML) 6/2017, pp. 256-260.

Online available at:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3082802Certain%20digital%20services%20are%20provided%20by%20way%20of%20a%20license,%20for%20example,%20media%20streaming%20services%20such%20as%20Spotify

³⁴ *Ibid*.

³⁵ The Constitution of the Kingdom of the Netherlands 2018. Ministry of Interior and Kingdom Relations, article 13, part 2.

³⁶ With Van der Geld as the notable exception, who has published on the topic on numerous occasions. See also L.A.G.M. van der Geld, 'De executeur in een

nalatenschap met bitcoins en andere 'digitale bezittingen'

(2014) Tijdschrift voor Erfrecht 122.

³⁷ For example, 'Digitale erfenis is juridisch doolhof; Directeur Netwerk Notarissen: Regelgeving nodig' De Telegraaf (16 April 2013) A. Haverkamp, 'Online doodgaan is nog een hele kunst' BN/De Stem (21 September 2016) 20. For example, in 2015 on Monuta; Online available at:

<https://www.youtube.com/watch?v=10Xx6QAWsy4>, accessed 14 November 2017.

³⁸ P. Steeman, 'Digitaal voortleven - Testament voor online profielen' (2010) Notariaat Magazine, F.M.H. Hoens, 'Wat te doen met de digitale nalatenschap?' (2010) Estate Tip Review.

³⁹ Lex van Almelo, 'Digitale dienstverlening in stroomversnelling' (2014) 10 Notariaat Magazine 8.



certificate of the deceased. For instance, the Facebook social network has its own policy to regulate a deceased person's account.⁴⁰

The questions are surrounding around the digital inheritance law relate to the several areas of the law. Succession law generally permits to succeed the deceased person's digital inheritance. The Intellectual Property Law and Law of Obligations concern the possibility of this succession.

- **Poland practice of digital inheritance**

Poland practice concerning digital inheritance also established the main rules. It has concerned the conflicts and issues on this matter and different approaches to solve them.⁴¹ Succession of the inheritance is enshrined in the fourth Book of the Civil Code of Poland.⁴² According to Section One of the Civil Code, all the patrimonial rights and duties of the deceased have the civil law character.⁴³

Digital inheritance in Poland as many other European countries consider mostly the succession process of social networks and digital assets, which include the monetary value and personal data. Succession of social networks or other personal data accounts or digital assets are not restricted in Poland unless it takes responsibility, privacy policy of companies, entrepreneurs or marker values. The problem occurs when it covers the intellectual property rules, original written works, or e-money (bitcoins). Naturally, even these items are also inheritable and they are not legally prohibited anywhere.

Intellectual private law in Poland fails to consider the special norms of succession or usage of the copyrighted materials. The requirements of succession are similar with other types of inheritable objects. However, a different approach concerns the contract law when the owner passes away. Because online accounts and users

sign the online agreements, which consider the personal procedure. Revealing the personal data or assets of the deceased can be prohibited while signing this agreement.

- **Italian practice of digital inheritance**

Italy is trying to develop the legal framework of the digital inheritance law and legally regulate this procedure.⁴⁴ EU's General Data Protection Regulation (GDPR)⁴⁵ framework is taken as a basis to create this law and this legislative reform is called the Legislative Decree Number 101 of 2018 (LD101).⁴⁶ Article 2 of this decree concerns the digital inheritance, which states that a person who acts to protect the inheritance or a family member of the deceased, then, he can succeed the rights of the deceased person. But it cannot be succeeded, if this right is legally abandoned by a will. These types of protection prevent revealing personal data, digital data in emails and social networking sites.

Italian law provides that digital inheritance falls within the concept of universal succession. Indeed, it means that the digital inheritance law legally can be succeeded. Nevertheless, the concept of succeeding in the digital inheritance in Italy is much limited when the agreement is bound with it. It can restrict the succession of the deceased inheritance to some extent. If there are not any restrictions, then, heirs can get access to the deceased's social accounts. The problem arises when different people can get an inheritance of the deceased. This part of the digital inheritance law must be developed and researched further in Italy. Since it makes a problematic situation when a succession of the social platform has to be divided. For instance, a son may express the willingness to close an account and erase the collected data against the will of a different member of the family. The new provisions

⁴⁰ Online available at: <https://perma.cc/DQ9L-86CT>

⁴¹ Grochowski, M. (2019). Inheritance of the Social Media Accounts in Poland. *European Review of Private Law/Revue Européenne de Droit Privé/Europäische Zeitschrift Für Privatrecht*, 27(5), 1195–1206.

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⁴⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ (*Official Journal of the European Union*) L 119/1.

⁴⁶ Decreto legislativo 10 agosto 2018, n. 101: 'Disposizioni per l'adeguamento della normativa nazionale alle disposizioni del regolamento (UE) 2016/679 del Parlamento europeo e del Consiglio, del 27 aprile 2016, relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati e che abroga la direttiva 95/46/CE' (regolamento generale sulla protezione dei dati) (GU (Gazzetta ufficiale) Serie Generale n. 205 del 4.9.2018).



are silent on this issue.⁴⁷ The only one solution to this dilemma is to solve it on a case-by-case basis by balancing the different interests of both or all sides.

Moreover, the Legislative Decree 101 of 2018 includes in the list of persons entitled to exercise the GDPR rights of the deceased a person whom the deceased has appointed to protect her interests as an agent.⁴⁸ This regulation pursues two aims. The first is to broaden a legacy contact in the event of death with a deceased person. The second is to broaden the security of the digital assets of the deceased and develop testamentary freedom when the deceased passed away.⁴⁹ It definitely revokes to enhance private autonomy. On the first issue, scholars have referred to the '*mandato ad mortem exequendum*', an agency agreement the effects of which shall arise upon the death of the 'principal' (the data subject).⁵⁰ In the literature, this kind of agency is considered compliant, on the one hand, with the prohibition of succession pacts provided by article 458 of the Italian Civil Code.⁵¹ On the other hand, with the fiduciary feature of the agency.⁵² The application of the agent gives to protect the deceased's personal information from third parties. The person even does not know that he is appointed as an agent, he may get recognized with these rights after the death of the testator or the agent can be restricted from doing certain actions based on the contract.

• **Croatian practice of digital inheritance**

The legal regulation of Croatia considers absolutely a different approach compared with previously discussed countries of the European Union. The main

law regulating the inheritance law is Croatia's Inheritance Act (IA).

Instead of revealing the succession process of digital inheritance, this law considers the regulation of tangible assets. Generally, the succession law in Croatia states that digital assets are non-inheritable.⁵³ The Croatia law-makers consider that succeeding the digital assets may reveal the personal information or become the subject of hacking. But the Croatian law actually fails to sanction the universal succession. Recently, many discussions have been organized to change, develop or succeed the digital inheritance, but the lack of the legislation puts under threat the bank accounts, identity theft, and weakening the protection of the assets. Therefore, in Croatia does not exist the law concerning the process of succession the digital assets.

Most people consider that the heir should make decision whether to succeed or not in the digital inheritance. But, presumed consent of the heir (who is in an intestate position) without the deceased is not the clear and proper decision.

CONCLUSION

The modern regulation of inheritance law evolved over a long period of time. The structure and composition of digital inheritance law is still not regulated but countries already have begun turning their legal written submissions by using electronic devices. It means that digitalization partially will remove not only jurisprudence but any type of profession. Now,

⁴⁷ Authors: Francesco Paolo Patti and Francesca Bartolini. The title of the paper is "Digital inheritance and post mortem data protection: The Italian reform". European Review of Private Law (ERPL), Forthcoming Bocconi Legal Studies Research Paper No. 3397974, 12 pages. Published on 03 June, 2019.

⁴⁸ Art. 2 *terdecies*, para 1, Legislative Decree no 101 of 2018.

⁴⁹ In recent years, Italian law of succession in the recent years has seemed to pay greater attention to the testamentary freedom. See, on the specific issue of disinheritance the comparative overview by F. BARTOLINI & F.P. PATTI, 'The freedom to disinherit children', ZEuP (Zeitschrift für Europäisches Privatrecht) 2018, p 428.

⁵⁰ G. MARINO, *ibid*, at 197 qualifies this act of private autonomy as a unilateral act (a substantial authorization); whereas V. BARBA, 'Interessi post mortem tra testamento e altri atti di ultima volontà', Riv. dir. civ. (Rivista di diritto civile) 2017, p (319) at 343 gathers it into the category of unilateral acts mortis causa other than will. Other examples of acts of

entrustment usually qualified as agency post mortem exequendum are provided by G. RESTA, Dir. inf. 2014, at 919. For a general overview on will substitutes in Italian law, see G. CHRISTANDL, 'Will-Substitutes in Italy', in A. Braun & A. Röthel (eds), Passing Wealth on Death. Will-Substitutes in Comparative Perspective (Oxford: Hart Publishing, 2016) p (131) at 147.

⁵¹ Such compliance follows the non-patrimonial nature of the assets at stake, as art. 458 Italian Civil Code only prohibits patrimonial attributions through succession agreements: cf D. ACHILLE, Il divieto dei patti accessori. Contributo allo studio dell'autonomia privata nella successione futura (Napoli: Jovene, 2012).

⁵² Which could imply that its effects are to cease upon the death of the principal. See, among others, C. CAMARDI, Dir. inf. 2018, at 92.

⁵³ Tallinn University of Technology, School of Business and Governance Department of law. Kristen-Alex Kolk. Digital inheritance in the European Union Bachelor's thesis Programm HAJB, specialization European Union Law. Supervisor: Tanel Kerikmäe, PhD. Published in 2020, Tallinn.



we will turn discussing the practice of EU countries in the field of digital inheritance.

Indeed, there is no unique regulation of digital inheritance in the EU. Several countries already have begun working on the law regulating it, especially, Germany and the United Kingdom, but their work is not finished or fully published. Anywhere, all countries must take into consideration the General Data Protection Regulation 2016/679 of the European Parliament and the Council⁵⁴ in all stages while creating this regulation over the digital inheritance in EU territory. Because it is fundamental and mandatory for all member countries of the European Union. The different views in EU countries demonstrate that the law regulating digital property is far away from adopting.

Nevertheless, the practice of the EU countries plays an important role in the further development of the digital inheritance law, data protection, and data theft. Because the majority part of the work has finished. Just the consent of the EU nations should agree to develop it. By working together, they can accelerate the process of adopting the unified law of digital inheritance, which would serve as a model law for other countries including Uzbekistan. This law will provide an understanding of the basics when creating the cyber normative legal acts and its further updating.

It is evident that even EU countries, far east countries, USA, UNIDROID and others still fully could not regulate this process. They have searched the digital inheritance process a lot and they could find answers in some extend.

Therefore, we should continue investigating this process without fully creating the legal regime for digital inheritance. Because developed countries and International Financial Institutions are still investigating this inheritance, regulating this procedure.

Nevertheless, adopting laws regulating this process is needed. They are acts as:

- "On Digital Rights";
- "On Digital Financial Assets";
- Establishing in the Civil Code of Uzbekistan an article about a digital property narrowly;
- Establishing in the Criminal Code of Uzbekistan an article concerning criminal punishment for digital assets theft or fraud.

Nevertheless, we should not hurry up and slow down regulating this process. It is not a secret that the internet, digital devices and technologies are affecting to our life more and more.

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