

A Comprehensive Study on Scope and Challenges in Digital Inheritance

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ABSTRACT

We are living our life online more and more nowadays. We access internet banking, investments online and into communication with our family and friends through various social media and other means over the internet. In this context it is becoming more and more important that what happens to our digital existence after our death. In the process of digital inheritance, digital media is handed over to the beneficiaries in the form of rights and digital assets understanding the rights that exist with the beneficiaries after a person's death. As the digital inheritance concept is quite fresh, substantial legal systems are yet to be established to deal with matters after our death. It is for that reason the websites who govern the act of the users. It is clear that a comprehensive legal arrangement is necessary to address this important issue of digital inheritance and hopefully this will be dealt with by the various Governments across the world in due course. This paper explains the concept of Digital Inheritance and explores the various options social media services provide for managing a deceased user's data.[1] An effort is also made to suggest that Digital Will may be a choice to address this problem.

Keywords : Digital Inheritance, Digital Assets, Digital Will, Digital Legacy

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I. INTRODUCTION

When someone passes away, they may have more than just physical possessions or property. Their trail extends into cyber space as well. Their being there on social media, investment sites, and other locations on the internet, may have some financial value, present or future. Family members and attorneys are left with abundant email messages, social media accounts, and

other digital remains that may have considerable personal or financial value. But what happens when loved ones or executors have the required passwords, but have no clear authority to access or manage the deceased's accounts? This is an important issue of digital inheritance in the 21st century.

Succession rules have always determined who will, in what way, inherit decedent's property. When there

are only tangible items to inherit, there are no significant problems and if there were any in the past, they were settled a long time ago. However, a new type of assets – digital assets – have emerged and neither their owners nor legislators know what to do with them in terms of succession. A lot of these assets are stored on on-line accounts, so, after one considers internet service providers (ISPs), who decide what rights a person has over his/her account and its content, the situation becomes even more complicated. Humans have accumulated more information in the past two years than in all prior human civilization and a clear majority of that information is in a digital form. Also, utility providers, phone and internet companies, banks and credit cards have nowadays moved into a digital domain and most of them even offer incentives if their customers go paperless, both because it is cheaper and better for the environment. Most newspapers are now being published online, shopping is done on the Internet, people communicate through e-mails or social media. Today, photos, music, and videos are predominantly in a digital form. So, the majority of what was once tangible is now digitized. Digital assets are absolutely new and the assets constantly change, and nobody exactly knows what this term encompasses since there are a lot of different definitions of these assets. Digital assets are intangible media information stored in computers and other technologies related to computers. The access to this information can be mainly using a computer, storage drive, smart phone, internet or server by a third party like ISP. They include e-mail accounts, blogs, social networking sites, personal webpages, documents, videos or photo storage sites and it is likely that this list will be expanded soon. However, not many people think about what will happen to these items after they die, let alone make plans for it. These assets, their ownership, and succession should be legally regulated because today most of us cannot even imagine what other types of digital assets will be created soon.

Nevertheless, the current law dealing with the inheritance of digital assets is sparse and this problem is intensified if a person who owns digital assets dies automatically, since a lot of very important digital assets are controlled solely by various ISPs, their relationship with account holders also needs to be considered.

Now the time has come to think about the access of the departed person's digital footprint and how far into cyberspace their presence reaches. It's very important to include our online accounts during the afterlife planning process. Failure to plan ahead may prevent loved ones, friends, and even attorneys from accessing or recovering photos, videos, or even accessing online accounts. This could also direct towards more daring crimes, such as post-mortem identity theft or fraud.

The privacy problem is rather interesting. On the one hand, all of us have our little secrets, and to summarize, when most people die, the first of their last wishes is to have their online history deleted or, at least, not have it fall into the wrong hands. In case the social media profiles of individuals who have deceased is left unmonitored, they become open to cybercrimes like identity theft, trolling and several similar frauds by hackers. It is a known fact that there is nothing known as privacy after death. Now what if a person dies unexpectedly and the legal heirs were forced to resort to some unethical means to recover his digital data, including having to hire a hacker.

The law, however, is quiet on this issue not just in India but even abroad. Several US provinces are pondering on the issue that whether families can access someone's digital belongings after they pass away. Laws concerning digital legacy have taken a while to take shape, even in the U.S. Delaware was the first state to come up with a Fiduciary Access to

Digital Assets and Digital Accounts Act, which allows families to inherit digital assets just like they would physical ones. And the other states are yet to fully catch up. As in India, there are no such legislation and it seems far away. In such a situation, planning a digital will to assign a legal inheritor to take over your digital existence is the only and best alternative. In the present paper the authors have made a systematic study on various issues in Digital Inheritance in Indian Context and also in the entire globe.

II. DIGITAL INHERITANCE

There are numerous reasons why digital assets should pass on to decedent's heirs. First of all, many digital assets have real economic value. Contents on a blog may be valuable to heirs even after blog owner dies; manuscripts or musical compositions uploaded on social media sites may have real-world monetary value; characters for on-line computer games also might be worth a considerable amount of money. Domain names have economic value too, eBay accounts generate money, photos, videos or messages shared on a celebrity's social profile can be valuable after a celebrity die. If artists upload their art to various sites (Amazon, iTunes etc.), another problem arises if these accounts are un-inheritable – heirs will inherit copyright but will not be able to control account content distribution, because they would need to access the account to control its content. So, if heirs are not permitted to access manuscripts posted on Amazon or music posted on iTunes, they are unable to publish decedent's unpublished work. Digital inheritance is also promoting individuals' creation and labour; encourages productiveness and exploration, but it also builds upon existing virtual economy. Furthermore, social media is nowadays used as a mechanism to cope with the loss for decedent's family and friends. Nowadays it is quite a common phenomenon that after a person's demise

the family and friends post their emotions and feelings of social media which has become a central point for persons coping with the loss of loved ones. Decedent's friends and family sometimes even set up new online locations, like memorial Web sites or Facebook pages that serve as an emotional outlet. Likewise, after a sudden death of a loved one, family members might find answers and reach closure by having access to decedent's e-mail and social media profiles. There are fewer and fewer tangible items, written or otherwise recorded, which contain information about our day-to-day lives. Today they are mostly in a digital form.. Most of these digital assets do not have economic value, but they could be extremely emotionally valuable to heirs, especially family members. Otherwise, substantial portions of people's lives possibly will be lost forever after they die. This might be very hard for surviving family members, but in some cases, it might impact others as well – fans, historians, public in general, because, some digital assets that belong to ordinary people might be of no financial value, but when it comes to celebrities, scientists, presidents etc., even their mundane digital assets might be worth a lot of money. An additional benefit of digital inheritance is the fact that information stored on e-mail and social media may provide valuable estate and other information about decedent's property, bank and utility accounts, social media accounts, subscriptions, business etc., both known and unknown. If heirs cannot inherit and access them, that might lead to serious obstacles to inheritance in general. However, there are some that disagree, claiming that access to an account is not at all crucial for easing the burden of estate administration in most cases, since there is no concrete evidence to support claims that access to deceased's online accounts (especially e-mail accounts) makes any significant difference in estate administration. Another reason for these accounts to be inheritable is if a decedent had an Internet business. Unless heirs can access these accounts

postmortem, the business might suffer severely – heirs will not know who the customers are and how to contact them. Digital assets also present archives for correspondence which has always offered an insight into various, sometimes historically important, events. Since today correspondence is, often, carried out via e-mails, if nobody inherits those e-mails, some important facts could be lost forever. Many commentators agree that digital inheritance can help prevent identity theft, as well. Until authorities' databases are updated regarding someone's death, his/her identity can be stolen. Unless heirs have access to decedent's on-line accounts, they will have a hard time protecting his/her identity. Inheritance of digital assets is also important in order to prevent content theft, since, if heirs are unable to access decedent's blog, for example, either because they are unaware of its existence or do not have instructions or ways to access it, they might be unable to prevent blog contents to be stolen. Another advantage of inheriting digital assets is the prevention of losses to the estate. Some digital assets may lose their value if they are not accessed and managed for too long. For example, a decedent might have had website generating income, but in case nobody knows about it or cannot access it, its value can diminish quickly. Also, electronic bills might keep coming and unless heirs know about them or have access to them, they will stay unpaid and penalties will accumulate.

III. DIGITAL WILL

We have never thought about the future of our emails, or who will take ownership of our videos, photos, chats, on sites like Facebook, Twitter, YouTube and LinkedIn if we die without preparing a will?

Further, who will have the possession of our mobile banking, online banking and application passwords,

in such a case? The only option is to have a Digital Will.

A digital will can be defined as a legal process of defending and hand over our digital assets like intellectual property, emails, passwords, data, or online businesses, the same way someone would solicit physical assets like property and cash for the next of kin.

The digital assets are handed over to the next of kin or close intimate of a person by means of a deed, accordingly signed by the person handing over the assets and directives for the person to either make use of the possessions or store them securely similar to a digital locker which can be accessed online.

If it is needed to transfer civil rights to belongings like a website or a domain name, it is sensible to justify these in the official will. Following are some steps to build a digital plan:

(i) Record Digital Footprint

Produce a list of all the websites having accounts, together with email accounts, photo storage, social media, brokerage accounts, blogs and digital accounts that are linked to the bank account.

(ii) Plan Comprehensive Instructions

Clearly mention what should happen to each account. For example, you may not want your social media page closed, but you desire your photo albums shared with family and friends.

(iii) Appoint a Digital Solicitor

Appoint person to execute the wishes after the demise. Let the executor be aware of the digital will in advance. They must be familiar with the to find the document when the time arrives. Be sure to name your solicitor/executor in the digital will. Also name an alternate executor for some unforeseen situation where the main executor is not able to serve.

(iv) Store the Document in a Secured Place

A will is helpful only if it can be found when needed. If it is stored on a secured device, ensure that the device can be accessed after passing away. Sign the digital will and store it along with other important private and personal papers.

Ramesh Vaidyanathan, managing partner at Indian commercial law firm Advaya Legal states that the concept of a digital will is not currently recognised by the legislations in our country. Wills are specifically excluded in the Indian Information Technology Act, 2000. The enforcement and execution of the will is governed by the Indian Succession Act, 1925 as there is no such law to accept the Digital Will in India. Hence the successor may have to request the concerned service provider such as Google or Facebook for access. However, deceased's bank account cannot be operated as it is a criminal offence and illegal.

IV. Options of inheritance by some service providers

GOOGLE

According to the support centre of **Google**, it allows to **submit a request concerning a deceased user's account**. It gives options to Close the account of a deceased user / Obtain data from a deceased user's account / Submit a request for funds from a deceased user's account. Google Support stats that many people die without having any apparent directives about how to handle their online accounts. They work with immediate family members to shut the account of a departed person where appropriate. They offer the contents of the user's account in certain circumstances. According to Google, their primary responsibility is to keep the information secure, safe, and private. They state that they cannot provide passwords or other login details. Only after a cautious review, the decision to allow a request about the account of a deceased user are entertained.

FACEBOOK

Facebook gives options to either assign a legacy contact to look after the memorialized account or have the account permanently deleted from Facebook.

If the account is chosen not to be permanently deleted, it will be memorialized if Facebook come to know of the demise.

Memorialized accounts are a platform for friends and family to share memories after a person has passed away. The word "Remembering" will be shown next to the person's name on their profile and according to the the privacy settings, friends may share memories on the memorialized timeline. Contents the person shared (example: photos, posts) and is visible to the viewers with whom it was shared. But under no circumstances, someone can log into a memorialized account.

A legacy contact is someone assigned by the owner of the account to look after it if it is memorialized. Such a person can pin a tribute post to the profile, accept friend requests on behalf of a memorialized account and change the profile picture and cover photo. If the memorialized account has space for tributes, the person is authorised to take decision on access rights for various visitors.

Pages with a single admin for a memorialized account will be deleted on receiving a legitimate request. Family members and friends of the deceased may also request for deletion of the account.

MICROSOFT

A Next of Kin request can be submitted for Email accounts (Hotmail, Live, MSN or Outlook). This lets the users to choose the fate of the account after their demise. They can either close the account or keep it active. Family and friends will get access to the account, but Microsoft will send them the account's data. Other Microsoft accounts like OneDrive or Skype don't yet have a formal policy (or one that's publicly posted) around the issue of deceased users.

While most of the service providers have options to setup the privacy settings of an account in one's absence, but the alternatives provided by each of them vary widely and are not very clear and decisive. The most unpleasant dilemma is that, if the details of the account is not set up accordingly, it will be very complicated for the next to kin or the family and friends gain access to such accounts in absence of any concrete inheritance laws for such digital contents.

V. Planning the digital legacy

Google: Up to 10 trusted contacts can be added, who will receive an email about the bequeaths contents on a Google service if the account is left unused between three and 18 months.

Facebook: A legacy contact may be appointed to manage the deceased's profile after death.

Instagram: An option to memorialise an account is provided, which cannot be logged in or changed. Any person can provide a link to a news article or obituary reporting the death in order to memorialise an account.

Twitter: A form with information on the deceased, along with the death certificate may be submitted to deactivate the profile. This is the only option provided by Twitter.

LinkedIn: A notification with regard to someone's demise can be submitted by solicitors, colleagues or friends of the deceased in order to close their account and the profile being removed.

iTunes: Films, Music files and television series cannot be bequeathed as these contents are licensed and not owned.

VI. CONCLUSION

This is a new and unknown aspect for the lawyers who handle succession. But the rapid expansion in the digital assets have left very little scope for them to update on these issues. In this digital age, more and more families and estate lawyers are realizing the confusion left behind by a deceased person. Digital assets are intangible and hence can not be directly handles by various laws related to succession of physical property, intellectual property and contracts. There is a high possibility that digital inheritance infringes the privacy law. Except some specific legislative changes, succession law will have to make necessary adjustments for the regulatory agreements related to digital assets which are quite complex in nature. It should involve all the stake holders like the account holder, the families and other close associates. Other beneficiaries and the service providers should also be taken into consideration while making the changes and the new laws. The matter becomes more complex as the society is an important stake holder and hence the succession of digital assets must be considerate to the sentiments of the society. Specific laws related to digital assets may have to be implemented in very near future as there is a significant amount confusion and uncertainty related to digital assets because of their technical issues.

According to the legal experts, a more well thought-out and structured legislation is the need of the hour to govern the use of e-space and technology. With the promotion of the use of social media, e-governance, e-learning and technology in all the segments, it becomes imperative that Digital Inheritance is a burning issue and must be seriously investigated by the Governments of all countries.

The significant aspect for us to think about the memories in social media is that to make sure that they transferred the next generation without much hassle as most of the time these contents password protected or controlled by terms of service of the

service providers which in most of the cases are difficult to understand for a common user.

In the meantime, people should plan for the future and leave clear instructions for what they want to happen to their digital assets after they are no more. At an individual level, one should meticulously plan the destiny of the digital contents after his or her demise. There may be some important digital contents very relevant, required and of sentimental value to the next to-kin and, family and friends. As per the policy of each service providers, the settings must be put in place. Although, digital will is another option, its acceptability in the court of law is still not very clear in most of the countries and/or states.

VII. REFERENCES

- [1] Digital Inheritance – Protecting your online assets and memories By Lindsey Bohanna, Solicitor and Head of Probate, Wills and Trusts at Coley & Tilley Solicitors 7th November 2016.
- [2] What You Should Know about Digital Inheritance, Yogesh Sapkale.
- [3] Planning your digital afterlife, Beryl Menezes, <https://www.livemint.com>
- [4] <https://support.google.com/accounts/troubleshooter/6357590?hl=en>
- [5] Jones, Steve. 2004. 404 not found: The Internet and the afterlife." *OMEGA – Journal of Death and Dying*, 49(1), 83–88.
- [6] Sherlock, Alexandra. 2013. Larger than life: Digital resurrection and the re-enchantment of society. *The Information Society*, 29(3), 164–176.
- [7] Petrelli, Daniela, & Whittaker, Steve. 2010. Family memories in the home: contrasting physical and digital mementos. *Personal and Ubiquitous Computing*, 14(2), 153–169.
- [8] Melia, Mike. 2013. What happens to our digital lives when we die? (Pbs.org), [online].

Available at:
<http://www.pbs.org/newshour/rundown/what-happens-to-our-online-lives-when-we-die/>

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