

# INHERITANCE OF DIGITAL ASSETS: ANALYZING THE CONCEPT OF DIGITAL INHERITANCE ON SOCIAL MEDIA PLATFORMS

## Cómo citar este artículo [Chicago]:

Owais Farooqui, Mohammad, Bhavna Sharma, and Dhawal Gupta. "Inheritance of Digital Assets: Analyzing the Concept of Digital Inheritance on Social Media Platforms." *Novum Jus* 16, No. 3 (2022): 413-435.

<https://doi.org/10.14718/10.14718/NovumJus.2022.16.3.15>

Mohammad Owais Farooqui  
Bhavna Sharma  
Dhawal Gupta





# INHERITANCE OF DIGITAL ASSETS: ANALYZING THE CONCEPT OF DIGITAL INHERITANCE ON SOCIAL MEDIA PLATFORMS

MOHAMMAD OWAIS FAROOQUI

UNIVERSITY OF SHARJAH

BHAVNA SHARMA

RML NATIONAL LAW UNIVERSITY

DHAWAL GUPTA

MINISTRY OF ELECTRONICS & INFORMATION

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## *Abstract*

We are moving toward a technologically driven world where the traditional way of looking at assets merely from a physical perspective is slowly evolving to include digital assets. With our extreme indulgence in internet activities, we end up creating a heap of digital assets without realizing the risk associated with its privacy and ownership after death. We share our personal pictures, videos, thoughts, and beliefs through daily posts on social media platforms. All these files are a type of digital assets with social and emotional value, but neither the law nor the social media platforms take strong steps for preserving them and ensuring their inheritance after the user's death. There is no universally accepted definition of digital assets and hence the concept of digital asset inheritance is in vain. This paper analyzes the posthumous rights of a social media user. It also explores the laws available in the US and India that protect the digital assets and examines the rules and regulations adopted by some of the most important social media platforms for the inheritance of the digital assets. Recommendations and suggestions for the practical implementation of digital inheritance are provided.

**Keywords:** digital assets, digital inheritance, digital death, posthumous digital rights, social media.

**The authors:** Mohammad Owais Farooqui. Assistant Professor, Department of Public Law, College of Law, University of Sharjah, Sharjah, 27272, United Arab Emirates; E-mail: mfarooqui@sharjah.ac.ae. ORCID ID: <https://orcid.org/0000-0003-0154-802X>

Bhavna Sharma. PhD Scholar, RML National Law University, Lucknow, India; E-mail: bhavnadu2017@gmail.com

Dhawal Gupta. Scientist E, Cyber Law Division, Ministry of Electronics & Information, Government of India, India; E-mail: Dhawal.gupta@gmail.com

**Received:** Aug 5, 2022; **Evaluated:** Aug 24, 2022; **Accepted** Sept. 13, 2022

# HERENCIA DE ACTIVOS DIGITALES: ANÁLISIS DEL CONCEPTO DE HERENCIA DIGITAL EN PLATAFORMAS DE REDES SOCIALES

MOHAMMAD OWAIS FAROOQUI

UNIVERSITY OF SHARJAH

BHAVNA SHARMA

RML NATIONAL LAW UNIVERSITY

DHAWAL GUPTA

MINISTRY OF ELECTRONICS & INFORMATION

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## **Resumen:**

Estamos avanzando hacia un mundo impulsado por la tecnología en el que la forma tradicional de ver los activos exclusivamente desde una perspectiva física está evolucionando lentamente para incluir los activos digitales. Dada nuestra extrema indulgencia respecto a las actividades que suceden en internet, creamos un cúmulo de activos digitales sin darnos cuenta del riesgo asociado a su privacidad y propiedad después de la muerte. Compartimos nuestras fotos personales, videos, pensamientos y creencias a través de publicaciones diarias en las plataformas de las redes sociales. Todos estos archivos son un tipo de activos digitales con valor social y emocional, pero ni la ley ni las plataformas de redes sociales toman medidas para preservarlos y asegurar su herencia tras la muerte del usuario. No existe una definición universalmente aceptada de activos digitales y, por lo tanto, el concepto de *herencia de activos digitales* es difuso. Este artículo analiza los derechos póstumos de un usuario en redes sociales. Asimismo, explora las leyes vigentes en Estados Unidos e India que protegen los activos digitales, al tiempo que examina las normas y los reglamentos adoptados por algunas de las plataformas de redes sociales más importantes en términos de herencia de este tipo de activos. Por último, se enuncian recomendaciones y sugerencias para la aplicación práctica de la herencia digital.

**Palabras clave:** activos digitales, herencia digital, muerte digital, derechos digitales póstumos, redes sociales.

**Los autores:** Mohammad Owais Farooqui. Profesor Adjunto, Departamento de Derecho Público, Facultad de Derecho, Universidad de Sharjah, Sharjah, 27272, Emiratos Árabes Unidos. Correo electrónico: mfarooqui@sharjah.ac.ae. ORCID: <https://orcid.org/0000-0003-0154-802X>

Bhavna Sharma. Becario doctoral, RML National Law University, Lucknow, India. Correo electrónico: bhavnadu2017@gmail.com

Dhawal Gupta. Científico, División de Derecho Cibernético, Ministerio de Electrónica e Información, Gobierno de la India, India. Correo electrónico: Dhawal.gupta@gmail.com

**Recibido:** 05 de agosto de 2022; **evaluado:** 24 de agosto de 2022; **aceptado:** 13 de septiembre de 2022

## Introduction

Apart from living in a physical world, we are living in another world, i.e., the cyber world, where the way of doing things has changed and has made our lives faster, easier, and more convenient. From cashless transactions, e-commerce businesses, communication, education, work, entertainment, everything is seamless. However, at the same time, we have become extremely reliant on these high-tech mechanisms to the point where it can be said that technology is controlling and leading our lives, whereas we, the “humans”, are the ones who developed technology. It’s time that we accept the present situation and make ourselves ready for the future and prepare ourselves to handle this hi-tech globalization with care and precautions.

The first and foremost issue that prevails is that the meaning and interpretation of different ‘terms’ have expanded according to their presence in cyberspace. One such word is “assets”. In general, assets can be defined as a resource that has monetary value and is owned by an individual or an entity. The United States’ Generally Accepted Accounting Principles (GAAP) defined assets as “*probable future economic benefits obtained or controlled by a particular entity as a result of past transactions or events*”. Here we are referring to physical assets, for example, land, property, machinery, garlands, and any other type of tangible property with monetary value. However, with the advent of technology, the term ‘asset’ has broadened its scope and now also has a digital component. It is no longer confined to its physical characteristics and to its monetary value, having a greater meaning.

When it comes to defining the term digital assets, various contradictions and doubts arise regarding its meaning, nature, and scope. The literal meaning of “digital assets” implies that they are assets that have monetary value and are available in digital format. This comes out to be a very narrow and vague definition. The meaning of the term “assets” is linked with the monetary aspect in the physical world, but this is not the case of digital assets. In the dictionary, “digital assets” are defined as any data that is collected, stored, or organized in a digital form.<sup>1</sup> For example, digital photos, videos, music files, digital currencies, e-documents, etc.

This shows that the digital revolution brought physical assets and digital assets on a similar footing. A digital file is an asset because of its reusability and long-lasting characteristics. Digital assets can be used not only by the owner but by others as

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<sup>1</sup> “Digital Asset Management”, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/digital-asset-management> (accessed December 29, 2021).

well. The same traits are found in a physical asset.<sup>2</sup> Hence, there should not be any dispute in recognizing digital files as digital assets and in ascribing legal rights to digital assets similar to those of physical assets.

Now the question arises whether digital assets are tangible or intangible. If we talk about tangible assets, they include all the physical objects such as cars, buildings, machinery, etc. On the other hand, intangible assets are intellectual property, goodwill, patents, copyright. Though some characteristics of digital assets overlap with those of intangible assets. But it can't be said bluntly that digital assets are intangible assets. A digital asset is a different type of asset altogether because it has its own meaning and characteristics. It has a social, emotional, and financial value.

Considering these three aspects of digital assets, they can be categorized as:

- a. *Digital assets with monetary value* – These are digital assets created for money-making purposes or assets which handle or store data of a person's financial assets. These can be further split into digital assets with significant monetary value, such as YouTube channels, or social media accounts or handles with large numbers of followers which earn money from the company. These accounts or handles can be termed as “monetized accounts or handles”.<sup>3</sup>
- b. *Digital assets with social value* – They include the social media profiles of an individual or any other digital identity on online platforms.
- c. *Digital assets with emotional value* – These are the digital assets linked to the sentiments of an individual.

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<sup>2</sup> Toygar, Alp, C.E. Taipei Rohm Jr., and Jake Zhu, “A New Asset Type: Digital Assets,” *Journal of International Technology and Information Management* 22: no. 4, <https://scholarworks.lib.csusb.edu/jitim/vol22/iss4/7> (accessed November 28, 2021).

<sup>3</sup> Jeb Workman, “How Valuable are your Digital Assets?,” *Roche Legal*, <https://www.rochelegal.co.uk/news/how-valuable-are-your-digital-assets/> (accessed December 30, 2021).

The table below shows the various types of digital assets<sup>4</sup>.

Category	Relevant Data	Examples
Digital assets with monetary value	Cryptocurrency, online banking apps, online payment accounts, digital contracts, digital gifts, online shopping platforms, Demat accounts, social media channels and handles, business websites	Bitcoins, Ether, Dogecoin, Imobile, YONOSbi, PayTM, Paypal, Mynta, flipkart, gift cards, monetised youtube channels, business accounts, companies' websites, etc.
Digital assets with social value	Social media accounts, login data, dating apps, email accounts.	Accounts in Google, Facebook, Instagram, LinkedIn, Whatsapp, OkCupid, Tinder, etc.
Digital assets with emotional value	Uploaded media content, music files, e-books, photos, videos, message history.	iTunes, Kindle, Wynk music, Spotify, Whatsapp history, etc.
Others (not suitably falling under the three mentioned categories)	Hardware, software, online licences and other possessions, graphics, video games, digital signatures, etc.	Android, Linux, Adobe photoshop, Construct 3, Counterstrike, Red Dead, etc.

## US and Indian Laws on Digital Assets

Not many countries have attempted to legally define the term “digital assets” and enact laws concerning their inheritance. Even though some have tried, they have limited the definition to financial aspects, as in the case of digital currencies. The United States has attempted to regulate digital assets. The Revised Uniform Fiduciary Access to Digital Assets Act of 2015 (Herein referred to as RUFADAA) is a comprehensive legislation that provides guidelines for regulating digital assets. It defines digital assets as “an electronic record in which an individual has a right or interest”.<sup>5</sup> In the definition, the term ‘electronic’ means anything which relates to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.<sup>6</sup> The term ‘record’ means “information that is inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form”.<sup>7</sup> The term ‘information’ includes data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.<sup>8</sup> In India, the law that regulates cyberspace is the Information Technology Act of 2000, which doesn’t define or discuss digital assets.

<sup>4</sup> “Digital legacy”, Ionos, <https://www.ionos.com/digitalguide/websites/digital-law/digital-legacy/> (accessed January 16, 2022).

<sup>5</sup> The Revised Uniform Fiduciary Access to Digital Assets Act, 2015, s 2(10).

<sup>6</sup> The Revised Uniform Fiduciary Access to Digital Assets Act, 2015, s 2(12).

<sup>7</sup> The Revised Uniform Fiduciary Access to Digital Assets Act, 2015, s 2(22).

<sup>8</sup> The Revised Uniform Fiduciary Access to Digital Assets Act, 2015, s 2(15)

After analysing the literal, general, and legal definition and understanding of the term “digital assets”, it can be said that it needs to be refined, reshaped, and reascertained. Even the legal recognition of digital assets and inheritance rights over digital assets is called for as presently the digital assets are highly uncontrolled, unregulated, and heavily misused. Because a person has more digital assets than physical assets, his digital assets should be as protected as his physical assets.

## Methodology

### US and India Regulatory Approach to Digital Inheritance

The major purpose behind legally recognizing and defining the term digital assets is to protect the right or ownership over these assets and subsequently process their inheritance after the right holder’s or owner’s death. Inheritance means receiving any right, property, or title by succession or will as a deceased person’s heir. We have well-established inheritance laws for physical assets but what about the inheritance of digital assets?

Every second, internet users are leaving their digital footprints on the cyberspace. Currently, there are 4.66 billion internet users across the world.<sup>9</sup> In India, there are 749 million internet users, and they are expected to grow to 900 million by 2025.<sup>10</sup> These internet users spend most of their time on social media platforms, gaming platforms, entertainment websites, e-mailing, and others for personal and official purposes and hence, they are constantly producing multiple digital assets of different types. For example, on social media platforms, we share a lot of personal information, pictures, videos, thoughts, and opinions, we connect to strangers, share our contact details and once we die, everything will be left behind. Another instance is when someone purchases digital currency or is a digital content creator on a YouTube channel and earns money from it. What will happen to these digital currencies and to the YouTube channel once the person dies?

Here, a person’s social and monetary digital assets are involved and are left intestate after the person’s death. As there is no regulation dealing with digital assets, the researchers ask the following questions:

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<sup>9</sup> Joseph Johnson, “Worldwide Digital Population as of January 2021”, Statista. <https://www.statista.com/statistics>.

<sup>10</sup> Sandhya Keelery, “Number of Internet Users in India 2010-2040”, [www.statista.com/statistics/255146/number-of-internet-users-in-india/](http://www.statista.com/statistics/255146/number-of-internet-users-in-india/) (accessed January 17, 2022).

1. Will these assets be left as they are on the internet platform?
2. Can a legal heir inherit these assets?
3. Do we have any laws to regulate the inheritance of digital assets?

All these questions are unanswered and need a solution. To protect the interest of these internet users on their digital assets after their death, laws or legal regulation are required to lay down the rules for the inheritance of digital assets, and thus evolve to a concept of digital inheritance.

Basically, digital inheritance refers to the transfer of a deceased rights over his digital assets to his legal heir. It is the transfer of ownership over digital assets.<sup>11</sup> In other words, digital inheritance is the passing over the digital assets to a designated or undesignated beneficiary after the death of a person.<sup>12</sup> It is the legacy over all the electronic data that the internet users have left behind in cyberspace.

Majorly, there are two essential conditions for digital inheritance. Firstly, the non-physical presence of the assets, because for the assets to fall as the subject matter of digital inheritance, they should not have a physical presence. The person should only have a digital possession. Secondly, digital assets are held by an intermediary. In the case of digital assets, as they are virtually available, they are always held by an intermediary. The intermediaries are the ones who hold and store the digital assets and the right of inheritance shall flow from the intermediaries only. Without the approval of the intermediaries, the rights over digital assets can't be transferred.<sup>13</sup>

A legal framework is required for the mandatory enforcement of the right of digital inheritance. In India, the act that regulates internet activities is the Information Technology Act of 2000, which was introduced with the major objective of facilitating e-commerce and e-governance and providing legal validity to the electronic records and digital signatures. This act didn't include any regulation or recognition of digital assets and their inheritance.<sup>14</sup>

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<sup>11</sup> Heather Conway, and Sheena Grattan (2017). "The 'New' New Property: Dealing with Digital Assets on Death", in *Modern Studies in Property Law*, ed. H. Conway, and R. Hickey, vol. 9, 1<sup>st</sup> ed. (Oxford, Hart Publishing) 99-115.

<sup>12</sup> Julia Kharitonova, "Digital assets and digital inheritance", *Law & Digital Technologies* (2021): 22.

<sup>13</sup> Shahid Jamal Tubrazy, "The Concept of Digital Inheritance in Cyberspace", (2014), [www.academia.edu/8908291/The\\_Concept\\_of\\_Digital\\_Inheritance\\_in\\_Cyberspace](http://www.academia.edu/8908291/The_Concept_of_Digital_Inheritance_in_Cyberspace) (accessed January 15, 2022).

<sup>14</sup> The Information Technology Act, 2000, Preamble.

In the United States, the RUFADAA (2015) lays down the elementary principles of digital assets inheritance. The Act was introduced by the Uniform Law Commission as a guide for the different states in the US to adopt their own laws on this subject matter. It provides a legal gateway for the fiduciaries to access and manage the digital assets of a dead or incapacitated person. Also, it protects the privacy of the owner or custodian of the digital assets. As per this Act, it is obligatory for the fiduciary to disclose the contents of electronic communications, i.e., the digital assets, to the executor. The executor has the right to access the deceased person's digital assets, but for this he has to get the approval of the court, providing an explanation about the winding up of the digital estates. In the case of a custodian, when the fiduciary doesn't grant access to the digital assets through a will or power of attorney, he has to consult the terms of service of the agreement regarding said assets. The custodian has the power to ask for court orders for accessing the digital assets. It can also restrict access to digital assets only for "reasonably necessary" purposes essential for the winding up of the estate. It can also request certain fees for the services it provides.<sup>15</sup> All in all, the RUFADAA tried to protect the interest of the fiduciary, owner, and custodian of the digital assets. Presently, many of the states have acted upon this Act and adopted it with certain modifications, while others are still in process of making the law.

## Results and Discussion

### Analysis of the Posthumous Rights Laid down by the Social Media Intermediaries for their Users

The social media intermediaries play an important role in the protection of the digital assets and the corresponding rights of their users before and after their death. On a social media platform, the digital assets can have a more social and emotional value than a financial one. The digital assets of social media platforms can be photos, videos, audio, documents, links, messages, contact lists, and any other information shared on them. The laws in India and the US have not perfectly established the rights of a person over its digital assets and what happens with them after his or her death.

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<sup>15</sup> Betsy Simmons, "The Revised Uniform Fiduciary Access to Digital Assets Act", <https://www.nolo.com/legal-encyclopedia/ufadaa.html> (accessed January 20, 2022).

These days we actively use social media platforms to share our thoughts, post pictures and videos, interact with people, and exchange personal messages, thereby creating a huge amount of social media digital assets.

Let us discuss the rules followed by some of the most significant social media intermediaries regarding how they handle the deceased user's account after their death. They are responsible for protecting the digital assets of a person as all the information that we share on the intermediary's platforms is stored and processed by them.

## **Facebook**

Facebook provides for the memorialization of a deceased person's account. Facebook's 'Help Centre'<sup>16</sup> page provides the link for requesting the memorialization of a profile and explains what happens once a profile is memorialized.

In a memorialized account, the deceased's friends and family can share their memories. Any person close to the deceased can inform Facebook about the demise and get the account memorialized. Once the account is memorialized, no one can log in to the deceased account. Facebook doesn't provide the login details of the deceased account to anyone as a matter of privacy. Every memorialized account will be tagged by the word 'Remembering' next to the deceased person's name on the profile. All the content such as photos, posts, videos, or any other media shared by the deceased shall remain as it is on the profile. The memorialized account will not further appear in the search or as a friend suggestion on Facebook.<sup>17</sup>

The Facebook user can seek the permanent deletion of his Facebook account by choosing the option "delete account after you pass away". Hence, when Facebook is informed about the death of its user and he has already chosen this option, his account will be deleted accordingly.

Another option provided by Facebook is the designation of a legacy contact. A legacy contact is a person chosen by the Facebook user to manage his account after his death. A legacy contact can accept friend requests on behalf of the deceased in the

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<sup>16</sup> "Request Memorialization", Help Centre", Facebook, <https://www.facebook.com/help/requestmemorialization> (accessed January 21, 2022).

<sup>17</sup> "What Will Happen to my Facebook Account if I Pass Away?", Help Centre, Facebook, <https://www.facebook.com/help/103897939701143> (accessed January 21, 2022).

memorialized account. He can also post and change profile pictures. Though he still can't log in to deceased account, read messages or remove or add new friends.<sup>18</sup>

## Twitter

Twitter doesn't provide for the memorialization of an account like Facebook. It only provides the option of deleting the account after the death of its user and for this one has to directly contact the provider.<sup>19</sup> The contact form is provided in the privacy policy and after it is submitted the deletion process is initiated and it may take up to 6 months.

## Instagram

As Instagram is part of Facebook, it also has a similar concept of memorialization of the account after the death of the user. On the Help Centre page of Instagram,<sup>20</sup> two options are available for the deceased person's account. One is memorializing the account and the other is the removal of the account. Once Instagram receives a request for memorializing the account, they act accordingly and prevent such an account from further appearing on Instagram, to avoid hurting the sentiments of the loved ones. Whoever requests for the memorialization of the account must attach valid proof of death of the person, such as an obituary, a death certificate, or any other valid proof. Instagram abstains from providing the login details of the deceased to secure privacy. In the case of the account removal, only the verified immediate family member can request it, providing proof of his/her relationship with the deceased, such as the birth certificate, the death certificate, or any other proof mentioning that he/she is the lawful representative of the deceased person.

## Google (Gmail, YouTube)

Google has different guidelines for a deceased person's account. It provides the option of designating an inactive account manager, which grants this person the right to use a google account if the user is inactive for a certain period.<sup>21</sup>

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<sup>18</sup> "What is a Legacy Contact and what Can they Do with my Facebook Account?", Help Centre, Facebook, <https://www.facebook.com/help/1568013990080948>, (accessed January 21, 2022).

<sup>19</sup> "Privacy Policy", Twitter, <https://twitter.com/en/privacy>.

<sup>20</sup> "How do I Report a Deceased Person's Account on Instagram?", Instagram, Instagram Help Centre, <https://www.facebook.com/help/instagram/264154560391256> (accessed January 21, 2022).

<sup>21</sup> "About Inactive Account Manager", Support, Google, <https://support.google.com/accounts/answer/3036546?hl=en> (accessed January 21, 2022).

If an account is not used for some time, it is declared inactive until any further action is taken. Before declaring an account inactive, Google examines a few signals such as the last sign in using Gmail or android. It also sends multiple warning messages regarding the inactivity of the account.

If the account is declared inactive, the contacts of this user will receive a notification about it. But the google user must choose this option previously. He can also choose to share his data with his trusted contacts. In this case, the email mentioning the inactive status of the account will also include a list of the data, as well as a link to download it. The shareable data can be from Google drive, Gmail, YouTube, blogger, etc. Google also gives the option to cancel a deceased relative's account by filling a contact form<sup>22</sup> available on their support page.

## **LinkedIn**

LinkedIn provides two options. One is removing the account and the other is memorializing the account after the user's death. Any person who has authority on behalf of a deceased can request LinkedIn to implement one of the two options. If someone is not authorized to act on behalf of a deceased but only knows of their passing, they can report the news to LinkedIn and this account will be hidden.<sup>23</sup> For submitting a request, the information required is user's name, user's profile link, the relationship shared with the user, user's email address, date of death, and link of the obituary.

To directly request the memorialization or removal of the account, acting on the authority of a deceased person, the documents required are a copy of the deceased's death certificate and any legal document authorizing the requestor to act on behalf of the deceased person. Such legal documents can be a letter of administration, a letter of testamentary, a letter of representation, or any other court order appointing the requestor as an authority or representative of a deceased person.<sup>24</sup>

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<sup>22</sup> "Submit a request regarding a deceased user's account", Support Page, Google, <https://support.google.com/accounts/troubleshooter/6357590> (accessed January 22, 2022).

<sup>23</sup> "Deceased LinkedIn Member", LinkedIn, <https://www.linkedin.com/help/linkedin/answer/2842/deceased-linkedin-member?lang=en> (accessed January 22, 2022).

<sup>24</sup> Ibid.

## Recommendations and Suggestions for the Implementation of the Right to Digital Inheritance

### Recognition of the Digital or Electronic Will

A will is a legal document drawn up by a person in which he lays down his wish regarding how he wants his property to be distributed after his death. It is basically a testament that contains the will of a person on the management of his property after his death. Whereas a digital will can be defined as a document that instructs the deceased's near ones on how to manage the digital presence and assets after his death.<sup>25</sup> Digital assets majorly consist of information, such as logins and passwords, digital currencies, e-wallets, images and videos, emails, etc., that requires protection or procurement after its user's death. A digital will is like a traditional will, only that instead of dealing with the movable and immovable property, it deals with digital property.

The Indian Succession Act of 1925 defines a will as “*the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.*”<sup>26</sup> The problem here is that the word “property” does not include digital assets in its definition. So, the legacy of digital assets has no legal support in India. Hence, it is necessary, firstly, to expand the definition of property to include digital property, and secondly, to recognize the digital will as the way of implementing the right of inheritance of digital assets. The Information Technology Act of 2000 is not applicable on “will”.<sup>27</sup> There is no legal recourse for the inheritance of digital assets through a digital will. Hence, the recognition of the digital will for the inheritance of digital assets is highly recommended.

### Amendment to the Present Laws in India

To give a legal binding to the inheritance of digital assets, amendments to the Indian Information Technology Act of 2000 and the Indian Succession Act of 1956 are required. Primarily the term digital asset needs to be defined under the Information Technology Act, as well as the right to inherit digital assets. Defining digital assets is itself a challenge for lawmakers because of its broad meaning and because the

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<sup>25</sup> Sonakshi Babbar, “Why you Should Have a Digital Will”, <https://www.intheblack.com/articles/2018/06/01/why-have-digital-will> (accessed January 24, 2021).

<sup>26</sup> The Indian Succession Act, 1925, S. 2(h).

<sup>27</sup> The Information Technology Act, 2000, S.1(4).

right of inheritance for each type of digital asset will vary depending on the value attached to it, i.e., emotional, social, or financial. Critical and in-depth analysis is needed to accomplish this task and the opinion of the stakeholders should also be considered.

## **Using Digital Assets Management Systems**

A Digital Assets Management System (DAMS) is a computer application used for protecting and managing the digital assets of an individual or an entity. The major function of DAMS is to systematically keep the digital assets on a single platform and facilitate the access to them. The cataloguing function is the basic element of DAMS. It manages the workflow of all the digital assets related to its creation, approval, life, archival, and removal. It also acts as a security system for digital assets, ensuring that there are no data breaches and illegal and non-authoritative access.<sup>28</sup>

## **Digital Estate Planning**

Another way of implementing digital inheritance is to scheme out a digital estate plan. This is an informal way of protecting digital assets. For this, a person can be appointed as a digital estate planner who will keep a regular backup of all the login IDs, passwords, online accounts, financial digital assets, social media profiles, etc. All the information can be stored in an electronic document. Digital estate planning can be of various types such as password management, social media management, crypto management. The holder of the digital assets can share his intention as to whom he wants to transfer the rights over his digital assets and how much of the rights is to be bequeathed.<sup>29</sup>

## **Digital Preservation**

Digital preservation is the essence of digital inheritance. Digital preservation implies opting for processes and software and hardware tools for conserving the digital assets to maintain the continuous digital heritage and the access to the digital assets as long as they are required. The Digital Preservation Coalition defined digital preservation as “the series of managed activities necessary to ensure continued

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<sup>28</sup> Tobias Blanke. *Digital Asset Ecosystems: Rethinking Crowds and Clouds*. (Oxford: Chandos Publishing, 2014).

<sup>29</sup> Michael J. Polk, “Be Right Back: Black Mirror and the Importance of Digital Estate Planning”, *South Carolina Lawyer* 31, no. 1 (2019): 52-57.

access to digital material for as long as necessary”.<sup>30</sup> The prime fear concerning digital assets is the loss of its accessibility and any unauthorized access. Digital preservation protects data from counterfeit encroachment and secures data from theft and loss.<sup>31</sup> The methods that may be chosen for digital preservation are, firstly, shifting all the digital assets from one type of storage or format to a new one. This is called migration. Secondly, using emulation, i.e., reproduction of digital data. This can be done by creating a computer environment where different computer systems act in a similar pattern through which digital resources are originated. Thirdly, application of the mark languages method which uses tags to categorize different digital documents such as images, videos, sensitive documents, and any other tags the user wants to create.<sup>32</sup>

## Mandatory Submission of a Digital Inheritance Document

The social media platforms should make it mandatory for every social media user to prepare a digital inheritance document and submit it to the platform, before accepting them as a full user of their platform. Social media platforms can restrict certain activities such as uploading pictures, videos, etc. until the user submits its digital inheritance will. This mandatory requirement would ensure the digital inheritance process and protect the digital assets of the social media user.

## Digital Rights Management

Digital inheritance can also be ensured using Digital Rights Management (DRM). The idea behind using DRM technologies is to protect the intellectual property rights of digital content. It is a technology protection tool used to manage the distribution of the access rights of digital assets.<sup>33</sup> The owner of the digital assets can decide its own digital asset access policies and agreements. It can include access, restrictions, and conditions for his digital assets. This can be done by putting restrictions on point of viewing, copying, and sharing of content. Licensing agreements can also

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<sup>30</sup> “Digital Preservation Handbook”, Digital Preservation Coalition (2008), <https://www.dpconline.org/docs/digital-preservation-handbook> (accessed January 24, 2022).

<sup>31</sup> UNESCO, “Concept of Digital Preservation”, <https://en.unesco.org/themes/information-preservation/digital-heritage/concept-digital-preservation> (accessed January 28 2022).

<sup>32</sup> Akhlak Ahmad and Swadesh Sharma, “Sustainable Digital Preservation and Access of Heritage Knowledge in India”, *DESIDOC Journal of Library & Information Technology* 40, no. 5 (2020): 321-325, <https://publications.drdo.gov.in/ojs/index.php/djlit/article/view/15822>.

<sup>33</sup> “Fact Sheet: Digital Rights Management and have to do: Technical Protection Measures”, Fact Sheets, Office of the Privacy Commissioner of Canada, November 2006, [https://web.archive.org/web/20160414002554/http://www.priv.gc.ca/resource/fs-fi/02\\_05\\_d\\_32\\_e.asp](https://web.archive.org/web/20160414002554/http://www.priv.gc.ca/resource/fs-fi/02_05_d_32_e.asp)

be a part of DRM, i.e., authorizing the use of digital assets.<sup>34</sup> This tool is extensively used by entertainment sector entities to protect their digital content as they heavily create content and all of it is available on internet platforms.<sup>35</sup>

## **Expressed Rights and Duties Regarding Bequeathing Digital Assets on Social Media Platforms<sup>36</sup>**

After the death of the social media account holder, confusion arises regarding the rights and duties of the heirs of the deceased on whether they will bequeath only the contents of the social media account or be able to access the whole account. As digital inheritance involves either the inheritance of digital content on a social media account or access to the whole account and the right to operate it, everything should be clearly defined to avoid the exploitation of data. Broadly, profiles on social media platforms allow two things, firstly, a space to collect photos, videos, and all other digital content, and secondly, a platform for sharing thoughts, opinions, and comments. In doing so, the social media account holder is creating digital content of personal interest, which implies a right over it, as everything on the social media platform is built on his emotional values. After the death of the account holder, his social identity ends, and it can't be transferred further. The inheritance of the social media account does not empower the heir to operate the account in the same way as the original account holder did, hence it is necessary to lay down all the choices of the social media account holder regarding how he wants his account and content managed to avoid any exploitation.<sup>37</sup>

## **Conclusions**

It's time to accept that we are living in a digital world and to perceive everything keeping in mind its digital presence, including our assets. The bounteous presence of digital assets in cyberspace is a universal concept now. It has forced us to shift from our traditional view of assets as physical entities, to accept a newer form of assets, i.e., the digital assets. One of the domains where digital assets are found abundantly is the social media platforms, which are very popular nowadays.

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<sup>34</sup> "Digital Rights Management Systems and Copy Protection Schemes", Electronic Frontier Foundation, <https://web.archive.org/web/20110209160908/http://w2.eff.org/IP/DRM/> (accessed January 24, 2022).

<sup>35</sup> "QuickPlay Distributes TV Over Mobile Wi-Fi", MediaDaily News, November 2009, <https://www.mediapost.com/publications/article/117244/quickplay-distributes-tv-over-mobile-wi-fi.html>.

<sup>36</sup> "Inheritance of the Social Media Accounts in Poland", *European Review of Private Law* 5 (2019): 1195–1206.

<sup>37</sup> Pavel Szulewski, "Smierc 2.0", *Non Omnis Moriar*, (Wrocław: Oficyn Prawnicza, 2015), 743; Lukasz Gozdziasek, "Likwidacja tożsamosci", *Non Omnis Moriar* (Wrocław: Oficyn Prawnicza, 2015), 304–306.

However, a worrisome situation arises after the death of an owner of digital assets, because all his digital assets are left with a corporate/artificial person, viz., social media company. His social reputation, his personal communications, all the pictures and videos he posted on such social media platform are at stake.

Another unavoidable fact is that cyberspace has no boundaries, it can't be mapped out. International and uniform laws or treaties are needed to regulate digital assets and their inheritance in this jurisdiction-free space. The regulations should be made at a global level taking into account each countries' requirements and perspective.

Hence, to tackle the exploitation of digital assets and secure their transfer to the legal heir, immediate measures should be taken by the stakeholders, especially governments and social media platforms, to protect the digital assets of the dead person. Two things should be kept in mind while making laws for the inheritance of digital assets on social media platforms. First, the right of the legal heirs to inherit the digital assets of the deceased person on social media platforms and, second, the right to privacy of the dead person. With this, we can create a global and secure cyberspace that protects the digital assets and the rights of its users.

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