

DIGITAL ASSETS AND INHERITANCE LAW: LEGAL VACUUM OR NEW PARADIGM

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Abstract: The rapid advancement of digital technologies has led to the emergence of a unique category of property, digital assets, which encompasses a broad range of rights and values stored or created in electronic form. Traditional inheritance law, rooted in the concept of tangible and clearly defined property, faces increasing challenges when applied to the transfer of digital assets upon death. Despite the growing prevalence of digital property in everyday life, many legal systems, including that of Serbia, still lack clear and comprehensive regulation governing the inheritance of digital assets. This paper examines whether existing legal frameworks reflect a true normative gap or if the law is undergoing a paradigmatic shift, necessitating a redefinition of ownership and succession in the digital age. An additional complexity arises from the growing relevance of digital evidence, data that can serve as proof of ownership, access, or transactions involving digital property. Although digital evidence has become increasingly common in judicial proceedings, its admissibility and evidentiary weight in inheritance cases remain underexplored. The dematerialized and decentralized nature of many digital assets complicates both their legal classification and evidentiary verification. These issues highlight the urgent need for legislative and doctrinal responses that recognize the distinctive features of digital assets and the forms of proof associated with them. By adopting a critical and forward-looking perspective, the paper aims to emphasize the need for legal adaptation to modern technological realities and contribute to the broader academic discourse on digital inheritance.

Keywords: *digital assets, inheritance law, legal vacuum, digital legacy, digital evidence, legal paradigm.*

Field: Social Sciences

1. INTRODUCTION

In today's digital era, the rapid development of technology has given rise to a new category of property, digital assets. These include social media accounts, crypto currencies, digital wallets, emails, subscriptions to digital platforms, electronic art - such as NFTs (Kuleto 2022), and cloud-stored data. Although intangible and often decentralized, such assets carry real economic, emotional, and legal value. According to reports from international financial institutions, the market value of digital assets, particularly crypto-assets, continues to grow exponentially, while digital legacies, such as social media profiles, are increasingly becoming the subject of inheritance claims. Despite this technological evolution, legal systems, whether based on civil law or common law traditions, are still grappling with how to regulate the inheritance of digital assets. In many jurisdictions, succession laws do not explicitly recognize digital property as a distinct part of the estate, which results in legal uncertainty and practical difficulties for heirs. Additionally, access to digital accounts after a person's death is often governed by user agreements with digital service providers, placing such matters outside traditional inheritance law and into the realm of contract law and corporate policy. This emerging area raises broader philosophical and legal questions about how we define ownership, access, control, and privacy in the digital environment. It also brings into focus the challenges surrounding the legal validity and evidentiary value of digital documents in probate proceedings, particularly when tangible records are absent. Terms such as digital wills, digital estate management, and virtual executors have yet to be fully implemented into legal systems, even though current practices are beginning to reflect these concepts in informal ways.

Given these complex developments, there is a growing need to examine the legal status of digital assets within the framework of inheritance law. The aim of this paper is to analyze existing legal gaps and explore potential avenues for adapting legal norms to the realities of the digital age. It also seeks to determine whether we are facing a temporary legal vacuum, or witnessing the emergence of a new legal paradigm that will fundamentally reshape the future of succession law.

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2. THE CONCEPT AND TYPES OF DIGITAL ASSETS

Digital assets represent a modern category of property that has emerged from the growing digitization of various aspects of human activity. This form of intangible property exists exclusively in electronic format and can be owned, used, or transferred via digital technologies. From a legal perspective, digital assets still lack a universally accepted definition, which poses challenges for their regulation, especially within the framework of traditional inheritance law (Stojšić Dabetić, Mirković 2024: p. 669). A broad classification of digital assets divides them into personal and economic categories. Personal digital assets include items that may not have monetary value but hold emotional significance for the owner, such as emails, private photographs and videos, digital journals, social media posts, and personal blogs. In contrast, economic digital assets encompass those with actual or potential financial value, such as cryptocurrencies (e.g., Bitcoin, Ethereum), digital wallets, e-commerce accounts (e.g., Amazon, eBay), domain names, virtual items in online games, and monetized digital content like YouTube channels, websites, and software applications. One key characteristic of digital assets is their intangible nature, unlike traditional movable or immovable property, digital assets do not exist in physical form. Their value and usability depend on access to electronic devices, online platforms, and authentication credentials (usernames, passwords, encryption keys). Furthermore, the lines between ownership and usage rights are often blurred, since many platforms operate based on user license agreements rather than transferable ownership. The growing relevance of digital assets is further reinforced by the expanding use of the internet and information technologies in daily life. Increasingly, individuals include digital property in their estate plans, expressing wishes for specific content to be preserved, transferred, or deleted after death. This trend raises complex legal questions involving inheritance rights, privacy protection, and legal certainty.

The initial stages of digital asset development were marked by a noticeable absence of regulatory intervention. This lack of legal response could be attributed to the limited market activity and the general caution regarding premature regulatory involvement in a still-evolving field. However, the rapid expansion of the digital asset market, both in terms of user participation and economic value, has led to a growing need for legal engagement. As various forms of digital assets have begun to mirror the economic functions of traditional financial instruments, legislators in many jurisdictions have responded by applying existing legal frameworks, particularly those related to securities, electronic commerce, and payment services, to certain aspects of digital assets. While this approach offers a flexible starting point, it also reveals clear limitations. The growing complexity and diversity of digital property have highlighted the need for tailored legal solutions. Consequently, several countries have initiated reforms to expand the application of existing laws or to introduce new legislation that specifically addresses ownership, transferability, and inheritance of digital assets. This evolution signals a broader shift toward the recognition of digital assets as legitimate and distinct categories of property, deserving of coherent and comprehensive legal treatment (Babović 2023: p. 451-452). The rapid development of technology has a direct impact on legal systems, particularly in the area of property rights and digital ownership. As new technologies emerge and evolve, traditional legal frameworks face increasing challenges in addressing intangible assets that exist solely in digital form, such as software, databases, online accounts, cryptocurrency, and other types of digital resources. In response, intellectual property law has undergone important adaptations: copyright law has extended protection to computer programs and databases, while patent law has evolved to recognize innovations in biotechnology and business methods. Digital assets often go beyond the scope of intellectual property rights alone, they frequently involve licensing agreements, access credentials, and market substitutes. As such, digital assets represent a shift in how we conceptualize ownership and value, requiring new legal definitions and regulatory approaches that reflect their unique nature in the digital environment (Feliu 2024: p. 305).

3. INHERITANCE OF DIGITAL ASSETS AS A CONTEMPORARY LEGAL CHALLENGE

The inheritance of digital assets represents one of the most complex issues in modern inheritance law, as traditional legal concepts are increasingly confronted with the technological reality in which assets are no longer solely physical or tangible. Digital property, whether of personal or economic nature, demands a new legal approach to understanding ownership, access, transferability, and the preservation of rights after the death of the user. Its intangible nature and reliance on technical factors, such as passwords, user accounts, and licensing agreements, pose significant challenges for lawmakers, legal professionals, heirs, and digital service providers alike. A fundamental issue lies in the lack of a unified definition and legal classification of digital assets (Mirković 2023: p. 22). In many jurisdictions, digital property is not yet distinctly recognized within the framework of inheritance law. This legal gap complicates probate pro-

ceedings, as such assets are often neither inventoried nor valued as part of the deceased's estate. Furthermore, the absence of clear access to the deceased's data frequently leaves heirs unable to exercise their rights, particularly when they lack the necessary authentication credentials. An additional layer of complexity arises from the legal status of user accounts and digital content, which are often governed by licensing agreements rather than property rights. In many cases, the deceased may not have held actual ownership of the digital asset, but merely a limited license to use it. This severely restricts the transfer of such assets to heirs. Many platforms, such as social media sites or cloud storage providers (e.g., Google, Apple, Facebook), explicitly state in their terms of service that accounts are non-transferable, thereby denying heirs access or control. Issues of privacy and data protection are also deeply intertwined with digital inheritance. Digital assets often contain private information, personal correspondence, or sensitive media, creating potential conflict between the heirs' right to manage the estate and the privacy rights of third parties. Moreover, the deceased may not have wished for certain digital content to be disclosed after death. In the absence of legally binding directives, heirs may act at their own discretion, raising the risk of misuse or breaches of the deceased's dignity.

This area is further complicated by the territorial fragmentation of legal norms. Since most digital platforms operate globally, various legal systems may come into play, depending on where the account is registered, where the servers are located, or where the user resided (Stojšić Dabetić, Mirković 2024: p. 126). Such complexity creates legal uncertainty and hinders effective international probate procedures. Given these challenges, there is a growing call for legal reform to explicitly recognize digital assets as part of the decedent's estate. This would involve establishing clear rules for their identification, valuation, access, and distribution among heirs. Increasing attention is also being paid to digital estate planning, a proactive approach whereby individuals, while still alive, decide how their digital property should be handled after death. This may include sharing access credentials with trusted individuals, drafting a digital will, or utilizing built-in tools offered by certain platforms (such as Google's "Inactive Account Manager" or Facebook's "Legacy Contact").

Traditionally, legal theory holds that the right to privacy, along with other personal rights, ceases upon a person's death. In contemporary legal scholarship, this notion is generally accepted. However, ongoing debates concerning the posthumous protection of certain personal attributes, such as reputation, dignity, identity, or name, have prompted reconsideration of how these interests are safeguarded after death. Rather than suggesting these rights survive their original holder, many legal theorists advocate for a distinct form of protection known as the right to reverence or respect for the deceased. This right is typically granted to individuals who shared a close bond with the deceased, often family members or emotionally significant persons, though it does not necessarily coincide with the circle of legal heirs. This classical understanding of the non-transferability of personal rights is being challenged by the digital era. With the growing importance of digital assets, not only during a person's lifetime but also after their death, legal systems are now confronted with new dilemmas concerning privacy and data protection. Digital legacy often includes content that relates not only to the deceased but also to third parties, both living and deceased, who were connected to them privately or professionally. Allowing access to such content, including emails, social media accounts, or message histories, raises concerns about breaching the privacy of both the deceased and those with whom they interacted. The complexity of this issue is further deepened by the fact that access to digital accounts after death is predominantly governed by the service providers' terms and conditions. These policies vary significantly between platforms and are often not clearly communicated to users or their heirs, which creates uncertainty and hinders the consistent protection of privacy. Within this fragmented legal landscape, ensuring the post-mortem protection of digital identity and personal data calls for thoughtful regulatory measures, ones that strike a balance between the interests of heirs in managing the estate and the deceased's right to dignity and privacy. In contemporary legal literature, the concept of post-mortem privacy refers to an individual's right to retain a certain degree of control over how their personal identity, dignity, confidential information, memories, and personal integrity are treated after death. However, the prevailing view in most legal systems denies the possibility of managing one's property post mortem, as such rights are generally considered to cease upon the death of the rights holder (Čolaković 2023: p. 178-179).

In Serbia, the issue of digital inheritance remains insufficiently regulated within the current legal framework. Existing inheritance laws are primarily tailored to tangible and financial assets, with no explicit provisions recognizing digital property as part of a decedent's estate. As a result, digital assets, such as email accounts, cloud storage, social media profiles, cryptocurrencies, and digital media libraries, fall into a legal grey zone. The Serbian Law on Inheritance does not define digital assets as a separate category, nor does it provide specific rules for accessing or distributing them among heirs. However, a significant step toward the regulation of digital assets in the Republic of Serbia was made with the adoption of the

Law on Digital Assets in 2020. The enactment of this law can be viewed as part of a broader national strategy aimed at fostering the development of the digital economy and information technologies. While the law primarily addresses issues related to digital tokens, virtual currencies, and associated financial aspects, its existence reflects a growing awareness of the need to regulate digital property. In light of this trend, it is reasonable to expect that the matter of digital inheritance will become an increasingly important topic in future legislative initiatives, with the aim of ensuring legal certainty for heirs and protecting the rights of all relevant stakeholders in the digital environment (Mihajlović 2021: p. 597). In practice, this legal gap creates significant uncertainty. Heirs often encounter obstacles in identifying, valuing, and managing the digital legacy of the deceased. Moreover, service providers may refuse to grant access to user accounts, citing contractual terms, data protection regulations, or the lack of appropriate documentation. Serbian courts have yet to develop consistent jurisprudence in this area, and there are no binding administrative procedures to guide heirs or notaries in handling digital estates. Consequently, many families are left without legal remedies or clear procedures for claiming rights over digital content or online accounts.

In contrast, several jurisdictions have already taken steps toward regulating digital inheritance. For example, in the United States, the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) provides a legal mechanism for fiduciaries and heirs to access digital assets, subject to user consent and platform-specific settings. This act allows individuals to determine, through wills or digital planning tools, who may access their digital property after death. Also, this act gives access to online accounts even if the owner loses the ability to manage the account (Sheridan 2020: p. 369). In the European Union, the General Data Protection Regulation (GDPR) indirectly influences the management of digital legacies by protecting personal data even after death in some member states. However, approaches vary across countries (Kharitonova 2021: p. 13). Germany, for instance, has recognized in its court practice that digital accounts, like e-mail or social media profiles, can be inherited under the same rules that apply to tangible property. In 2018, the German Federal Court of Justice ruled that parents could access their deceased daughter's Facebook account, affirming that digital content is subject to inheritance. In accordance with the court's decision, the parents were prohibited from actively managing the account of their deceased child, thereby establishing a legally binding standard regarding the treatment of social media accounts after a user's death (Dominice, Haux 2020: p. 252). In France, the Law for a Digital Republic (2016) allows individuals to specify instructions regarding the management of their digital data posthumously, granting citizens greater control over their digital identities. Users may designate a person to oversee their online accounts or request the deletion or preservation of their digital information (Proust 2016).

These international examples highlight the importance of adopting legal solutions that reflect the growing role of digital assets in everyday life. Until such reforms are enacted, legal practitioners and notaries must rely on general principles of inheritance law, contractual interpretation, and the goodwill of service providers, none of which guarantees legal certainty or predictability.

4. CONCLUSION

The digital age has fundamentally transformed our understanding of property, privacy, and inheritance, creating a pressing need to redefine legal concepts in order to meet the challenges posed by the digital realm. Although digital assets are becoming an increasingly significant part of an individual's estate, most legal systems, including Serbia's, have yet to establish adequate regulations in this field. The absence of clear legal norms hampers the realization of inheritance rights and leaves numerous legal gaps that may result in the violation of both the deceased's and the heirs' rights.

Nevertheless, important developments have occurred. The adoption of the Law on Digital Assets in the Republic of Serbia marks a meaningful step toward establishing a legal foundation for the regulation of digital rights and obligations, thereby opening the possibility for digital assets to be addressed in the context of inheritance in the future. Examples from foreign jurisprudence, especially cases in which courts recognized the right of heirs to access digital accounts, illustrate the direction in which the domestic legal framework may evolve.

It is therefore essential that legal theory and practice, in cooperation with technology companies and lawmakers, work toward the creation of a comprehensive and coherent system of digital inheritance, one that respects the testator's wishes, upholds the rights of heirs, and safeguards the privacy of all parties involved. Only such an approach can ensure legal certainty and the protection of digital legacies in line with contemporary social and technological developments

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