

DIGITALIZATION IN INHERITANCE LAW

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Abstract

Digitalization is entering every direction, changing the human position. Even traditional paper currencies are becoming electronic. In this article, we will discuss the impact of digitization on the order and policy of inheritance, the ways of regulating these legal relations. Social media policy and EU practice already relate to some approaches to regulating this process, but do not fully cover it. However, the Republic of Uzbekistan is trying to establish normative documents of digital heritage.

The article also talks about proposals for digitalization of the inheritance law process in Uzbekistan through the adoption of a number of regulatory documents and ways to regulate this process.

Keywords: *Digital inheritance, electronic will, inheritance contract, Big Data, Social Network, Digital Data, practice of states, digital property.*

INTRODUCTION

The GDP of many countries around the world benefit financially from social media, and this is worth noting. Researchers such as Carl J Ohman and David Watson have estimated that at least 1.4 billion users will die by 2100 if Facebook stops attracting new users starting in 2018.¹ However, the financial benefits that come The Digital Afterlife Industry (hereinafter referred to as DIA) is estimated to be worth \$16-18 billion per year in the US and £2 billion in the UK in 2018.² We can estimate how much this money will be around the world in 2050, and in some countries it may even triple. In fact, there are no national regulatory bodies, regulations or standards that service providers must follow when managing the deceased's information. Even in Australia, there are no laws or regulations that impose requirements to reduce the risk of data after death.³

¹Authors: Carl J Ohman and David Watson. The article is titled "Are the Dead Taking Over Facebook? An Online Big Data Approach to the Future of Death" Page 1 "Abstract, Published January-June 2019.

Available online at: <https://journals.sagepub.com/doi/10.1177/2053951719842540>

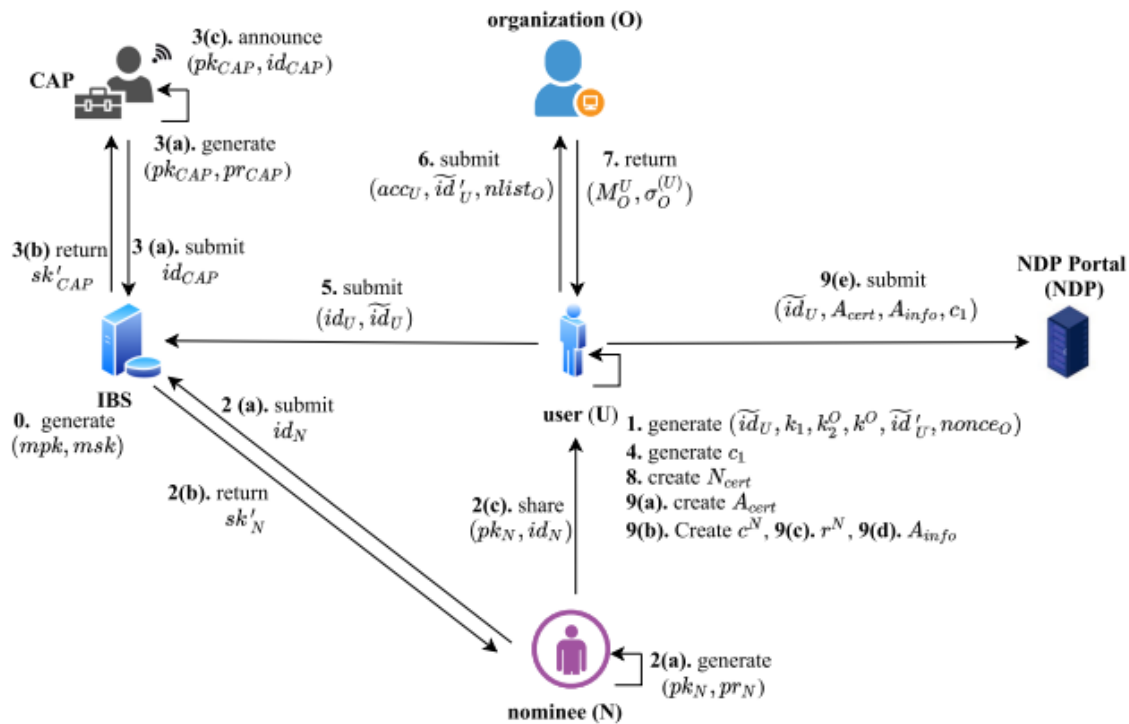
²The authors of the book are Michael Arnold, Martin Gibbs, Tamara Kohn, James Mee and Björn Nansen. The title of the book is "Death and Digital Media", the first edition was published in 2017.

Available online at: <https://www.taylorfrancis.com/books/mono/10.4324/9781315688749/death-digital-media-michael-arnold-martin-gibbs-tamara-kohn-james-mee-bjorn-nansen>

³Scolyer-Gray, P., Shaghghi, A., Ashenden, D.: Digging your own digital grave: how should you manage the data you leave behind?

Available online at: <https://theconversation.com/digging-your-own-digital-grave-how-should-you-manage-the-data-you-leave-behind-143755>, about Australia is given here: <https://hallandwilcox.com.au/thinking/what-happens-to-your-digital-wealth-on-death-and-incapacity/>

Although these are unsolved questions, researchers⁴ proposed a digital asset inheritance system project for successful inheritance. Such an asset transfer model is called digital asset inheritance. They have proposed some approaches, but they still haven't been able to figure out how this system works. However, IT technology, digitization will be the most effective tool to manage or realize one's dream. Even scientists are making an artificial heart now, which means that if humans can create an artificial heart, they will be immortal until the human brain rots. We can assume that human bodies will be made up of digital technologies like robots.



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This diagram shows how a predicted digital asset inheritance system works. In fact, they involve four steps: Step 1 - Enrollment, Step 2 - Create Nomination Certificate, Step 3 - Maintain Legacy Information, Step 4 - Update Candidate Information in each organization and +delete. This procedure is closely related to algorithmic calculations. The authors claim that their project's digital asset inheritance protocol is secure enough to protect assets from any threat.

Effectiveness and types of electronic wills.

The development of electronic devices will certainly affect the change in the legal relationship between people through their excessive use in every corner of life. At the same time, the establishment of new types of currencies in electronic and digital formats that cannot be touched by hand is also having an impact. At the same time, the US has a great impact on digitization by creating various electronic wills:

- offline electronic wills;
- online electronic wills;
- qualified custodian electronic wills.⁶

Offline electronic wills are traditionally typed on a computer and stored on a hard drive. They have

⁴By Ram Govind Singh, Ananya Shrivastava and Sushmita Rooj. The title of the article was published on April 30, 2022, "A Digital Asset Inheritance Model for Postmortem Online Identity Transfer".

Available online at: [Digital Asset Inheritance Model for Conveying Online Identity After Death \(springer.com\)](https://www.springer.com/journal/11082/10/1)

⁵Right here. Copied from the article. Fig. 1 Pictorial description of the asset management protocol n1.

⁶Harvard Law Review. Cyber Law/Internet. What is an "Electronic Will"? Development in law.

Available online at: <https://harvardlawreview.org/2018/04/what-is-an-electronic-will/>

never printed or uploaded a web survey. On the other hand, online electronic wills are stored in social accounts such as the Cloud, Google Docs, etc. The last type of electronic will is considered when the company becomes the custodian and it regulates, controls, creates and executes and stores the will of the testator.

US Case Law Governing Electronic Wills and Their Use.

When a probate case comes to trial, judges must answer two questions:

1. Whether the heir intends to execute the will or not;
2. If the heir wants to succeed, then on what conditions.

Succession of wills must be valid, in writing, signed and witnessed by more than one person.⁷Traditionally, the inheritance process requires strict rules that must be established in accordance with the law. However, the criticism of scientists and professors against these strict rules forced them to change. In 1970, Professor John H. Langbein stated that formalities were not necessary to establish that the testator really wished to succeed to his inheritance, which essentially represented the purpose of the formalities of the Wills Act.⁸After a long time, the courts began to analyze in depth the cases governing the execution of wills, rather than appeals to the law on the execution of wills.⁹Currently, almost all states require written wills, a tangible document in addition to an electronic will.

It is unlikely that the need for electronic wills will increase in the coming years. Professors Gerry Beyer and Claire Hargrove identified seven barriers to the decline in the use of electronic wills:¹⁰

- Technical barriers such as lack of software that provides adequate authentication;
- Social barriers such as reluctance of lawyers to help create electronic wills;
- Economic barriers such as the cost of introducing new technology;
- Motivational barriers such as not recognizing the potential benefits of electronic wills;
- Obsolescence barriers arising from changes in technology and; general resistance to change.

In recent decades, rapid changes in digital world services, cloud services, e-services and social networks make it clear that people are becoming more and more addicted to using the internet due to its convenience. In 2011, 35 percent of American adults owned a smartphone, but that percentage nearly doubled to 68 percent in 2015.¹¹

A comparison of social networking sites is also useful: Twitter was recently founded in 2007¹² and the number of Facebook users was about 58 million.¹³Currently, the users of these two major social networking companies have reached 2 billion users respectively.¹⁴

⁷Author Gökalp Y. Gürer. The title of the article is "No paper? No problem: Applying electronic wills through California's "harmless error" rule. University of California, Davis, published 2016.

⁸Langbein, supra note 16, at 489; See also Hurer, supra note 18, at 1965–66.

⁹ee, e.g., *Martina v. Elrod*, 748 SE2d 412, 414 (Ga. 2013) ("The substantial compliance doctrine, although it tolerates "variations in the manner of expression" used to satisfy the statutory requirements, nevertheless requires actual compliance does" on all matters of substance." (Gen. Elec. Credit Corp. v. Brooks, 249 SE2d 596, 602 (Ga. 1978))); *Smith v. Smith*, 348 SW3d 63, 63 (Ky. App. 2011) (holding that the doctrine of substantive compliance cannot be used if the will is signed by only one witness and two are normally required).

¹⁰Beyer & Hargrove, supra note 26, at 890–96. The title of the article is: "The Digital Will: Is It Time for Wills to Join the Digital Revolution?". Published in February 2009. By Gerry W. Beyer of Texas Tech University.

¹¹Monica Anderson, Technology Device Ownership: 2015, PEW RES. CTR. (October 29, 2015),

Available online at:<http://www.pewinternet.org/2015/10/29/technology-device-ownership-2015/>,<https://perma.cc/AP3X-7ESX>.

¹²Twitter was launched on March 21, 2006. Amanda McArthur, The True History of Twitter, in Brief, LIFEWIRE (7 Nov. 2017), Available online at:<https://www.lifewire.com/history-of-twitter-3288854>, <https://perma.cc/U3RU-M7AW>

¹³Ami Sedgi, Facebook: 10 years of the social network, in numbers, THE GUARDIAN: DATABLOG (Feb. 4, 2014, 9:38 AM), Available online at:<https://www.theguardian.com/news/datablog/2014/feb/04/facebook-in-numbers-statistics>, <https://perma.cc/5HYH-TE37>

¹⁴Kathleen Tchaikovsky, Mark Zuckerberg: 2 billion users mean Facebook's 'responsibility is expanding', FORBES (June 27, 2017, 1:37 PM),<https://www.forbes.com/sites/kathleenchaykowski/2017/06/27/facebook-officially-hits-2-billion-users>, <https://perma.cc/GPJ4-EHC8>

However, the barriers identified above by Beyer and Hargrove—motivational, social, technical, and other barriers—seem to be silent. Despite these facts, people are more reluctant to exercise regularly than any other activity in various aspects of their lives.

Practice shows that the use of the Internet is growing rapidly without any interruptions. At the same time, the share of users increases.

With the rise of electronic devices and internet connections, testators are more likely to store papers, even vital documents containing personal information, on such devices or services, and they want those documents to be legally binding. they can wait.

Innovations promoted or promoted by commercial corporations, such as websites that allow testators to prepare wills cheaply and easily,¹⁵ Statutes allowing private firms to serve as qualified custodians of e-wills, services that help create certified digital signatures, and e-notaries mean that the private sector is working to make e-wills a reality. Such advances help overcome the technological, economic, and obsolescence barriers outlined by Beyer and Hargrove—they ensure that electronic wills are inexpensive to prepare, probate, and available after the testator's death.

In order for electronic wills to function, only courts and legislators need to adopt a methodical approach to their regulation and interpretation. This chapter attempts to provide an initial framework that might be useful for such a project. For hundreds of years, the procedures for making and executing wills have not changed significantly;¹⁶Courts and legislators must now understand the concerns that may arise in the context of electronic wills. As a result, this chapter has divided the broad term "electronic will" into three types of fact patterns expected to emerge in the field. Offline, online, and qualified custodian e-wills are susceptible to common e-wills related to fraud and obsolescence, but each category has its own set of factors for courts and legislators to address. Finally, courts and legislators must decide how best to enhance testators' freedom of disposition, regardless of how they choose to construct their wills.

A legacy contract in the digital age.

Civil rights face the challenges of the digital age. Some legal problems in civil law have not been resolved to date and it is necessary to regulate them legally. Nevertheless, the government of Uzbekistan actively participates in the capital market through its state-owned enterprises and banks, which issue, own, manage and provide intermediary services in the financial market.¹⁷it really helps to develop civil law to some extent.

Inheritance law is a part of civil law and it also has a number of legal problems. For example, when inheriting cryptocurrency or deciding what to do with the owner's social account after his death. In particular, new types of legal institutions, such as inheritance contracts, are affected by digitization. In this regard, the dilemma is how effective regulation and enforcement practices should be regulated.

An inheritance contract is considered a contract, the terms of which determine the scope of the heir and the procedure for transferring the rights to the property of the testator after his death.¹⁸Analysis of the definition and legal norms allows us to understand that the main purpose of introducing the structure of the inheritance contract is to give the bequeather and potential heirs the opportunity to officially inherit certain rights and obligations that belong to each person defined in the contract. another. Obviously, the main problem here will be the actions of the potential heir in favor of the testator in exchange for guarantees of inheritance in the near future.

¹⁵See, for example, LEGALZOOM,<https://www.legalzoom.com/sem/homepage/>,<https://perma.cc/ZB7H-932E>

¹⁶See Caldwell, *supra* note 5, at 467.

¹⁷Authors: Said Ghulomov, Otabek Narziev, Sadokat Safoeva, Jahangir Joraev. Article title: "The role of the state in the development of the stock market in Uzbekistan", published in the American Journal of Political Science Law and Criminology on June 18, 2021.

¹⁸Section V, Law of Inheritance, Chapter 66. General rules on inheritance.
Available online at:<https://lex.uz/docs/180550>

It should be noted that this type of contract is convenient for the implementation of the life support of the testators. Because it is more effective from the moment it is signed rather than a will. Also, an inheritance agreement is more convenient for older testators than a life support agreement with a dependent, where ownership of the real estate does not remain with the lessee. According to the contract of inheritance, the right of ownership (authority of confirmation) remains entirely with the bequeather.

Nevertheless, there is a problem of establishing the relationship of the inheritance contract with the relevant categories. Accordingly, the contract and the will. Unfortunately, the Civil Code of the Republic of Uzbekistan does not take into account the norms determining the ratio of legal force of the will and inheritance contract. There are serious problems related to the subject composition, content, regulation of the inheritance contract and the consequences of its violation.

Legal researchers in the field of inheritance law analyzed the structure of the inheritance contract in different legal regimes and came to the unsatisfactory conclusion that "the testator's level of connection is so weak and the heir's risk level is so high." In fact, he makes a will with a clause on compensation for damages in case of annulment.¹⁹Therefore, the more beneficial the inheritance contract is to the testator, the more likely the heirs will take the risk.

On the other hand, the lack of protection for vulnerable participants in circulation, especially those who are at risk of diversion due to age or health, is criticized. There is a position that this aspect is not taken into account enough by our legislators in situations where fraudsters take advantage of the over-credibility of elderly people who have not been able to adapt to the conditions of the market economy and persuade them to conclude certain transactions.

Inheritance agreement establishes excellent conditions only for the elderly. The testator has the right to withdraw from the contract and can freely dispose of the property, but the other party (or other parties) to the contract is simultaneously responsible for the maintenance of the testator. In the Civil Code of the Republic of Uzbekistan, the uniqueness of the inheritance contract is particularly evident in comparison with similar events in other countries. For example, according to German law, the parties are strictly bound by the contract and the inheritance contract can only be canceled in exceptional cases.²⁰At the same time, there is the problem of insufficient protection of the future heir. Having assessed all the risks, the heir can refuse to enter into a contract with the testator. Consequently, there are often substantial evidence-based doubts about whether the inheritance contract is actually used. The potential positive effect of the inheritance contract for the testator is balanced by his reluctance to enter into it with potential heirs. This means that the practice of concluding inheritance contracts and the complete absence of a court decision on this issue means that it is still too early to talk about the main meaning of the inheritance contract.

Inheritance contract is only effective in some cases. For example, it applies to the case of inheritance of economic assets and other properties used in business activities.

An inheritance contract can be concluded with the purpose when the inheritor starts to develop the use of the registered digital account (social network account) for commercial purposes. In this case, several economic and legal aspects are solved at once: the testator not only introduces the potential heir of the contract, but also transfers the necessary information such as keys, passwords, usernames, etc. At the same time, if the testator decides to find another heir, he can change the necessary information (password, key, etc.), but then the heir will compensate the testator for the damage caused by the termination of the contract or failure to comply with the requirements of the heir. can sue for. contract. One way or another,

Now the theory and law enforcement practice are looking for mechanisms to improve legislation.

¹⁹The title of the article is "International Heritage Law - Avoiding Jurisdictional Conflicts". Authors Walter Haberling and Alexandra Schneider. MLL Meyerlustenberger Lachenal Froriep Ltd. Switzerland, published on February 22, 2018.

Available online at: <https://www.lexology.com/library/detail.aspx?g=eff04523-1946-42d9-b026-cdd85288e5f1>

²⁰Kroiß, L. Vorsorge für den Erbfall durch Ahd, Erbvertrag und Schenkung / L. Kroiß. - Munich. - Beech. - 2019. - 52 p.

However, entrepreneurship and business practice should find the most effective answer to the application for the specific relationship of the inheritance contract. Results should be based on recommendations from citizens and advocates. It is assumed that the legal norms in which the inheritance contract can solve certain practical problems are entrepreneurship, including inheritance rights regarding corporate rules, as well as digitization.

Currently, the world is trying to determine the specific characteristics of heritage property and the right of heirs to access them, the process of digitization of society and the rights of inheritance are discussing the problems related to it. Consequently, crypto-currency and digital rights are increasingly considered in practice as objects of property relations. Therefore, they should be included in the property. The problem of access to such objects inevitably arises, what exactly the testator owns is clearly defined. These problems can be overcome with the help of an inheritance contract, in which the parties have the opportunity to determine the list of objects of inheritance (including those that exist in digital form), as well as the order of their transfer.

Thus, the effectiveness of digitization of the inheritance contract can be expressed in two ways. First, the definition of these hereditary objects may be known to a limited circle of people due to their digital nature of origin and existence: a cryptocurrency, a social network account, or an account in a game. In the inheritance contract, such objects are not only listed, but also clearly described. Second, it is a description of the procedure for transferring objects that exist in "digital" form (for example, the procedure for accessing a "key" to bitcoins). Therefore, the testator can put the key in a safe with access to it after his death.

An inheritance contract is a complex construction that has not been tested in practice. Its use is often illogical, and it is often easier and more logical for the parties to choose constructions that are more familiar to practice - a will or a dependent life provision. However, a succession agreement can be effective and should be used by the parties where the constructions recognized in practice do not allow the parties to achieve their intended goals. The above-mentioned applies to cases of inheritance of digital assets and other objects, whose legal regime is complex due to its specific nature and related to digitization. However, the capital market is an indispensable tool for economic development.²¹

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