



DEATH IN THE DIGITAL AGE: CHALLENGES OF ASSET PROTECTION

Gudiseva Raga Harshita*

ABSTRACT

As there is a Technological Boom in the modern day, the usage of technology gradually became a part of our lives. Each and every individual has at least one social media account due to societal pressure. The utilization of technology or social media can be both beneficial and dangerous. As the handling or utilization the social media is increasing, crimes that are done by misusing this technology are also increasing. Not only the accounts of the people who are alive but the accounts of the deceased persons are also targeted leading to the commission of new cybercrimes. This article deals with what digital assets are and their inheritance, how these are attacked after the death of the person, Inheritance Laws, and actions or measures to prevent the commission of such crimes. Real-life examples and cases related to these crimes are also discussed in this article. As these types of cybercrimes are arising there is a need to bring awareness among the people, so that people can be more careful with the digital assets of the deceased. The governments of various countries have to legislate and make the laws stricter on this aspect. Only a few countries in the world have laws relating to digital inheritance and some are taking steps in developing and implementing digital inheritance laws.

INTRODUCTION

In present days, the digital assets are widely used. According to the Oxford Dictionary, the word digital means, “connected with the use of computer technology, especially the internet”¹ and according to the dictionary the word asset means, “a thing of value, especially property, that a person or company owns, which can be used or sold to pay debts”². So Digital Asset can be referred to as a thing that is in digital form and has a value that can be used by people and can be sold and bought by people for their financial needs. The tax definition of a digital asset is any digital representation of value recorded on a cryptographically secured, distributed

*BBA LLB, SECOND YEAR, SASTRA UNIVERSITY.

¹ Oxford Learner’s Dictionaries <<https://www.oxfordlearnersdictionaries.com/>> accessed 12 January 2025

² *Ibid*

ledger (blockchain) or similar technology.³ Digital Assets include photos, documents, e-mails, social media accounts, videos and audio, stock, cloud storage, cryptocurrencies, and other financial digital assets like bank accounts, securities, etc.

The importance of digital assets is increasing in the present day. When there is a need, people refer to the e-library or e-books which are also considered digital assets and can be accessed quickly without having more time consumption and are cost-effective. As digital assets can also be considered as income and investment, their importance is growing. Along with the growing importance of digital assets, concerns regarding the misuse of these assets after the death of people are also arising. The digital assets of the deceased are targeted and there can be fraud, theft, and abuse of these digital assets. This can raise legal and ethical concerns. Since this new cybercrime raises questions about the security of the digital assets of the dead, there is a need for legal clarity in this dimension. This article focuses on the risks, measures, and approaches that can be used to protect the digital assets of the dead.

DIGITAL ASSETS AND THEIR POSTHUMOUS RISK

As the digital assets are Social [WhatsApp, Facebook, and other social media accounts], Financial [crypto currency, stocks, investments, online bank accounts, and others], Intellectual property [e-books, songs, videos], etc, they all are connected with the technology. As technology is the constant operating body of these digital assets, they are subjected to abuse. As the digital assets of the dead are not used or observed, they can be easily attacked. The exploitation of digital assets can be of various types. They are:

Identity theft – where the scammers use the personal information of the deceased to get benefits, loans, credit, etc.

Hacking – where the hackers get unauthorized access to the data of the deceased.

Recently, a new type of hacking came to light, where the hackers are keeping track of deceased persons through online memorials, etc. They act as the relatives and friends of the deceased and send e-mails and messages to the relatives of the deceased and scam them for money. They

³ Internal Revenue Service <<https://www.irs.gov/businesses/small-businesses-self-employed/digital-assets>> accessed 12 January 2025

are called ghost hackers and hacking done by ghost hackers is called ghost hacking. In this way, the accounts of the deceased are attacked and misused by scammers by different methods.

Due to this misuse of the assets of the dead, the family members of the deceased will be in distress. The family members would be already in grief and when these types of misuse of the assets take place the family has to suffer the consequences after the assets are misused.

There are real-life cases where the digital assets of the deceased are misused. One example is where the account of a late employee of a company is targeted by hackers. The Sophos Rapid Response team has just written up a recent case study of a network attack that involved the account of a sysadmin who had died three months before⁴. Eventually, this attack has ended in the ransomware. They have used the Nemty ransomware technique. Even worse, when Sophos Rapid Response began investigating, having been called in almost immediately after the ransomware attack, they realized that the crooks had already had access to the network for a full month.

In this way, the digital assets of the deceased are fraudulently used.

EXISTING LAWS DEALING WITH DIGITAL ASSETS AND DIGITAL INHERITANCE AND THE LEGAL CHALLENGES FACED

Laws relating to digital assets and digital inheritance are evolving. Different countries have their own laws that deal with digital inheritance. Digital Inheritance refers to the transfer of the ownership of the digital assets to the legal heirs upon the death of a person. It is similar to the inheritance of physical properties. While the crimes regarding digital assets are increasing, there is an obligation on the governments of different countries to regulate laws on this issue.

In India, there are no laws relating to digital inheritance. The Uniform Law Commission of the United States has enacted Revised Uniform Fiduciary Access to Digital Assets Act [RUFADAA], 2015. The RUFADAA allows the fiduciary or executor to access and manage the digital assets of the deceased. Revised UFADAA provides the legal authority for a fiduciary to manage digital assets in accordance with the user's estate plan⁵. It ensures the private

⁴ Sophos News, "Ghost hack – criminals use deceased employee's account to wreak havoc"<<https://news.sophos.com/en-us/2021/01/26/ghost-hack-criminals-use-deceased-employees-account-to-wreak-havoc/>>

⁵ Uniform Law Commission, "THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT (2015)"

communication of the user is safe unless the user has consented to the revelation of the communication. After the introduction of RUFADAA, there is some guidance and clarity to the digital asset owners about the access of the digital assets to the fiduciary after their death. The social media platforms [like Facebook, Instagram, etc] have their own terms and conditions of service. These terms and conditions of service also may be taken into consideration for giving access to the account of the deceased to third parties.

As these laws are recently being developed, there are challenges that seem to be inevitable. There is a lack of consistency in making the laws regarding this matter and this inconsistency needs to be removed.

There are a few cases that dealt with digital inheritance issues. The first case is *Ajemian vs Yahoo!*⁶ where the deceased has a Yahoo! e-mail account. The siblings of the deceased filed a case for gaining access to his account. Yahoo's contention was it cannot disclose the information as per the Stored Communications Act [SCA]. The Supreme Court of Massachusetts observed that Yahoo! can disclose the e-mail to the siblings of Ajemian and the disclosure is not barred from the SCA.

Another case is where the inheritance of the digital social media account of Facebook of a deceased 15-year-old is given to her parents. In this case, the German Federal Court held that the digital accounts are inheritable. It held that "the user agreement between Facebook and the deceased is a contract that passed to the heirs by operation of law according to section 1922, para. 1 of the German Civil Code. It held that the parents, therefore, have a right to access the account and its digital content". It also held that "honouring the plaintiffs' request would not violate data protection laws, because the EU General Data Protection Regulation (GDPR) does not apply to the personal data of deceased persons".

These are the cases where the question of law relating to the access and inheritance of the digital asset or account was raised.

<https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=00d8a069-472b-d54b-edfb-c170261c9c1b&forceDialog=0> accessed 13 January 2025

⁶ *Ajemian vs Yahoo!* 83 Mass. App. Ct. 565

ETHICAL CONCERNS

When the digital assets of the deceased are accessed by the family member, the question of privacy will arise. There may be ethical concerns about using the accounts or assets without the prior permission of the deceased. If the family members have full access to the accounts, it may become problematic and there will be a violation of privacy of the deceased. Sometimes this may be a violation of privacy laws of some countries. Accessing the account without having proper credentials may create account lockouts and if any sensitive matter is leaked, it may affect the reputation of the deceased person.

Through various 'Chatbots', artificial intelligence [AI] is creating avatars of the deceased. These chatbots also are used for interacting with the dead. AI is constantly creating digital personas of the dead. The usage of these chatbots is increasing and will increase in the future. It may offer comfort to the grieving individual but it is dangerous also. The individual may overly depend on it and the information may be misused. In this case, also the privacy of the deceased is in question. The laws that manage these interactions are not developed.

Due to this digital immortality, there will be ethical concerns which will arise. By creating boundaries on what assets to be accessed etc., the families should try to balance their emotions and the privacy of the deceased individual.

MEASURES TO PREVENT ABUSE OF DIGITAL ASSETS

Some measures can be followed to prevent the misuse of digital assets of the deceased.

Estate planning: The digital assets of the deceased can be preserved by estate planning. Estate planning helps in upholding digital assets and can prevent abuse of digital assets.

Including digital assets in Digital Will: People should include digital assets in their will. Through wills, digital assets can be inherited by the heirs without legal complications.

Creating Inventory: Make a list of digital assets and the passwords of one's account.

Digital Executors: Appointing a digital executor to manage the digital assets after the death of the person.

Laws: The countries should take steps to make laws on this issue, such as the Revised Uniform Fiduciary Access to Digital Assets Act [RUFADAA].

Blockchain technology: Blockchain Technology can be used to secure the digital assets of a person for no further misuse by any malicious individuals.

The terms and conditions of the social media account should also be read carefully.

There is a need to create awareness among people about digital literacy and the crimes concerning digital assets and how to safeguard digital assets after death. Schools, NGOs, and Colleges should also help in bringing awareness to the people, and guides and books that help people to understand digital literacy should be made available. Ethical digital frameworks using Artificial Intelligence should be developed for using the information of the deceased person.

These are some ways in which the abuse of digital assets of an individual can be preserved after the person's death.

CONCLUSION

Our daily lives are intertwined with digital platforms and technology. Due to the lack of legal and technological safeguards, digital assets have been exposed and this can lead to the misuse of these assets. These challenges create the importance of having digital laws. The protection of these assets is not only an attempt to protect the privacy of the individual but also to preserve the identities of the individual. The schools, policymakers, etc should play an active role, as their participation can have an impact on safeguarding digital assets after the death of a person. By incorporating active measures, the digital assets of future generations can be secured.