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THE LEGAL NATURE OF SUCCESSIONAL DIGITAL ASSETS: THE NECESSITY OF RECOGNIZING THE "DIGITAL FIDUCIARY" IN CIVIL LAW

Dan Denisa- Nicola

University of Medicine, Pharmacy,

Science and Technology "George Emil Palade"

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Abstract

Modern wealth is rapidly dematerializing into digital assets like cryptocurrencies and social media accounts, creating a profound disconnect between "lex digitalis" and traditional inheritance laws rooted in Roman principles. This gap results in a "cryptographic impasse," where mathematical locks can override judicial authority, as demonstrated by the QuadrigaCX case where $190 million became permanently inaccessible due to a missing private key. While cryptocurrencies are generally treated as intangible movable property in the EU and Romania, social media accounts are often governed by intuitu personae contracts that mandate account deletion upon death, depriving heirs of both financial value and personal memories.

Jurisprudential models vary, with German courts treating social media accounts as inheritable "digital diaries," while U.S. law under RUFADAA provides fiduciaries limited access based on explicit consent. In Romania, the lack of established jurisprudence for "digital family memorabilia" creates uncertainty regarding access to personal data like iCloud photos, which are often strictly non-transferable under service provider terms. Currently, unless a user proactively utilizes features like Apple's "Digital Legacy," legal heirs face significant barriers in reclaiming digital estates.

To resolve these challenges, the author proposes recognizing the "digital fiduciary" and enacting mandatory legislative clauses that align digital service terms with civil code provisions on "family memories". Implementing a system where users nominatively select data for transmission or destruction would balance the deceased's right to privacy with the heirs' interest in preserving a legacy. Without such reforms, future generations risk losing both the financial wealth locked in blockchains and the emotional history of the digital era

INTRODUCTION

What do we consider a patrimony these days? For millennia, wealth meant land, gold, real estate, and physical chattels. Nowadays, society has increasingly dematerialized physical vaults, and we have started to give importance to digital ones. We have entered the era of digital estate, comprising cryptocurrencies, Non-Fungible Tokens, and monetized online accounts, as well as archives of personal data.

While the nature of property has evolved quickly the skeleton governing its transfer upon death remains deeply rooted in Roman law principles which were designed for the physical world, not a digital one. This disconnection creates legal uncertainty.

Cryptocurrencies, like Bitcoin or Ethereum, as well as NFTs, represent a paradigm when we are thinking about them like a property; they are bearer assets secured by cryptography, where possession is synonymous with knowledge of a private key. If a bank account can be transferred by a court decision, in some situations, a crypto-wallet is indifferent to judicial authority; without a key, the value is inaccessible. On the other hand, social media accounts and email archives represent a hybrid category of assets, a part property rights, the other part personality rights. They are not managed by national laws, but by private contractual agreements that, in most cases, require deletion of accounts postmortem to protect privacy. [1]

Thereupon, a barrier intervenes in inheritance because of the conflict of laws. The national laws of inheritance, which state the principle of universal succession, which refers to the fact that a patrimony is transferred as a universality, with all rights and obligations, these cannot be separated, and the blockchain and the contracts of Big Tech, which frequently have different provisions from the national laws.

To better understand the importance of this topic, we are going to see the QadrigaCX case. Gerald Cotton, the CEO of Canada`s biggest cryptocurrency exchange, died suddenly while traveling in India. Even if the death was tragic, the consequence was catastrophic.[2]

Gerald Cotton was the only possessor of the cryptographic passwords necessary to access the platform`s wallets. Accordingly, a value of approximately 190.000.000 dollars of the client`s assets was permanently inaccessible. Despite the fact that there were legal heirs, as well as court decisions, the assets could not be legally seized but mathematically destroyed.[3]

This case illustrates a dark legal reality in which blockchain and encrypted data, the code is the law, and no state authority can beat that.

1. THE LEGAL NATURE OF DIGITAL ASSETS

First is important to understand what legal nature digital assets have and what this means. The term of digital asset, in general, means any information or data that exists in digital format, which has a value and someone has the right to use it. We have three conditions to fulfil, for a

[1] Carlton Fields (2019, May) *Discovering Crypto assets: ANFTs Journey into the Unknown* https://www.carltonfields.com/insights/publications/2019/discovering-cryptoassets-a-journey-into-the-unknow accesed on 08.02.2026, accesed on 09.02.2026, at 14:30.
[2] Ontario Securities Commission (2020) *Executive Summary QuadrigaCX* https://www.osc.ca/quadrigacxreport/ accesed on 09.02.2026 at 16:00.
[3] Ibidem.

simple file to become an asset: it must be digital, it has to be identifiable, and it must have an owner to claim its value.[4]

It is essential to establish the importance of this concept because it dictates the regime of inheritance. If we consider a digital asset as a right, from the civil law point of view, the asset will be part of the estate by operation of the law. On the other hand, if the digital asset is a contractual right, its transmission from the defunct depends on the Terms of Service and whether the contract is deemed intuit personae.

1.1. The definition of digital assets from the European Union`s point of view

Specifically, the European Union have their own definition of the concepts that represent digital assets. As an effect, all the countries that are part of European Union, have these definitions for what can be part of a digital asset: *”crypto-asset means a digital representation of a value or of a right that can be transferred and stored electronically, using distributed ledger technology or similar technology”*, *”asset-referenced token means a type of crypto-asset that is not an e-money token and that purports to maintain a stable value by referencing another value or right or a combination thereof, including one or more official currencies”*, *”e-money token means a type of crypto-asset that purports to maintain a stable value by referencing the value of one official currency”*, *”utility token means a type of crypto-asset that is only intended to provide access to a good or a service that is supplied by its user”*.[5]

When it comes to social media accounts, the European Union does not provide any regulations, besides the GDPR, which does not include any specific provisions about what happens to the memories from those accounts and with the monetization of those accounts. After analysis, we conclude that the social media account will be deleted, according to Terms of Service, and those who come to the inheritance will be left with no memories from those accounts and will be deprived of their patrimonial assets, so practically their rights disappear.

1.2. The definition of digital assets from the USA`s point of view

Just like the European Union, the USA has its own meaning of what a digital asset is. In the USA, a digital asset means *”all CBDCs, regardless of the technology used, and to other*

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[4] Investopedia (2025, August) *What Are Digital Assets? Definition, Types, and Their Importance* https://www.investopedia.com/terms/d/digital-asset-frameincludehappenswork.asp, accessed on 09.02.2026 at 17:30.

[5] Regulation (EU) 2023/1114 of the European parliament and the council, 31 may 2023, on markets in crypto-assets.

representations of value, financial assets and instruments, or claims that are used to make payments or investments, or to transmit or exchange funds or the equivalent thereof, that are issued or represented in digital form through the use of distributed ledger technology. For example, digital assets include cryptocurrencies, stablecoins, and CBDCs. Regardless of the label used, a digital asset may be, among other things, a security, a commodity, a derivative, or other financial product. Digital assets may be exchanged across digital asset trading platforms, including centralized and decentralized finance platforms, or through peer-to-peer technologies", the term of cryptocurrencies refers to *"a digital asset, which may be a medium of exchange, for which generation or ownership records are supported through a distributed ledger technology that relies on cryptography, such as a blockchain"* and to understand these definitions better we have to see what a CBDC is, so we will find this also in USA legislation. *"The term "central bank digital currency" or "CBDC" refers to a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the central bank[6]."*

Compared to the EU`s regulation, SUA has a specific regulation for the inheritance of social media accounts. In traditional law, the executor of inheritance has the right to enter the deceased`s home and read the letters to manage the estate, and the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) extends this principle into the digital realm, but with a safeguard, recognizing that digital assets have a much higher privacy component than physical goods. As a result an executor has no authority over the content of electronic communication, unless the deceased person explicitly consented to disclosure, also an executor can get access to other type of digital asset, but he or she must petition the court and explain why the asset is needed to wrap up the estate, if a fiduciary does not have explicit permissions trough a will, trust or power of attorney, custodians can look the Terms of Services agreements to determine whether to comply with request for access to deceased person`s account. Custodians may not provide access to deleted assets or joint accounts.[7]

1.3. The definition of digital assets in Romania and their nature

In Romania, considering that regulations apply directly to the legislation of European Union member states, we will address the same definitions regarding digital assets. Therefore,

[6] Executive order 14067 - Ensuring Responsible Development of Digital Assets.
[7] NOLO *The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)*, available at: https://www.nolo.com/legal-encyclopedia/ufadaa.html accessed on 11.02.2026 at 10:00.

we will consider that cryptocurrencies, NFT`s, and crypto-assets have the nature of intangible movable assets, in accordance with national legislation. [8] Given the nature of these assets, they will be included in the deceased`s succession estate at the time of the death. [9]

Regarding the inclusion of social media accounts in the deceased`s estate, these cannot be classified as assets; consequently, they will disappear upon the holder`s death, in accordance with the Terms of Service.

2. SUCCESSION LAW VERSUS "LEX DIGITALIS" IN ROMANIAN LEGISLATION

First and foremost, we must analyse the meaning of the Universal Succession Principle as a cornerstone of the Civil law system when it comes to inheritance. To establish the meaning of this principle, we must corroborate Article 953 of the Romanian Civil Code, which provides that *"Inheritance is the transmission of the estate of a deceased natural person to one or more living persons"*, with Article 31 paragraph 1 of the Romanian Civil Code, which states that *"Any natural or legal person is holder of a patrimony that includes all rights and duties that can be valued in money and belong to them"*. Thus, the Universal Succession Principle refers to the fact that heirs assume all rights and obligations of the defunct, except for those rights considered intuit personae, leading to the conclusion that agreement regarding the Terms of Service for social media accounts is intuit personae.

2.1. The principle of pacta sunt servanda

The principle of the Binding Force of the Contract is enshrined in an expressive formulation by Article 1270 paragraph 1 of the Romanian Civil Code, which provides *"A validly concluded contract has the force of law between the contracting parties"*. The conclusion of the contract produces, first and foremost, an obligational effect, which consists of generating rights and obligations. Secondly, the contract produces what has been termed the coercive effect, which pertains to the requirement for the contract's execution.[10]

[8] Law no. 287/2009 on the Civil Code, published in the Official Gazette of Romania on 10 of June 2010.
[9] G. Boroi, *Fișe de drept civil (Civil Law Sheets),* 7th Edition, Hamangiu Publishing, Bucharest 2022, p. 230.
[10] L. Pop, I.F. Popa, S.I. Vidu, *Drept Civil. Obligațiile* (*Civil Law, Obligations),* 2nd Edition, Universul Juridic Publishing, Bucharest 2020, p. 74.

Therefore, when a user creates a digital account, they agree to a contract of adhesion. The action of accepting the Terms of Service is practically a signature to the services contract. These types of contracts are governed by the principle of pacta sunt servanda, but in the digital realm.

For example, we have Apple accounts, which stipulate non-transferability in the event of death, Apple being considered to have one of the strictest Terms of Service regarding the non-transferability of data upon death. Apple accounts also encompass iCloud accounts, which are mostly used as storage spaces for photos, documents, and other personal information. As a result of accepting the Terms of Service, the person`s heirs will no longer have access to their photos, and consequently, to the memories they shared with them. It is true that such an account is not closed automatically, as a request must be submitted by a third party. However, if the heirs did not know the account details to access it, a court of law would not be able to rule in their favour, because it would contradict the contract concluded between the deceased and the service provider.

”D. No Rights of Survivorship. Except as permitted by Digital Legacy and unless otherwise provided by law, you agree to the non-transferability of your Account and that any rights to your Apple Account or the content of your Account terminate upon your death. Upon receipt of a copy of a death certificate, your Account may be terminated, and all the content within your Account will be deleted”.[11]

However, a few years ago, Apple introduced a program called Digital Legacy, in which, through an addendum to the Terms of Service, you provide a person with an access key that allows them to access your data after your death. Even though this option exists, most people are unaware of it. Moreover, most people do not even know that their account is non-transferable after death. *”A Legacy Contact is someone you choose to have access to the data in your Apple account after your death. (...) Adding a Legacy Contact is the easiest and most secure way to give someone you trust access to the data you stored in your Apple account after you pass away”*.[12]

Similar to Apple accounts, Xiaomi accounts have the same policy. *”2.5. No Right of Survivorship. All Xiaomi Accounts and their content are non-transferable, and any rights to*

[11]Apple (2025, September), *iCloud Terms and Conditions,* available at: https://www.apple.com/legal/internet-services/icloud/ro/terms.html accessed on 14.02.2026, at 15:00.
[12] Apple (2026, February) *How to add a Legacy Contact for your Apple Account*, available at: https://support.apple.com/ro-ro/102631 accessed on 16.02.2026, at 19:00.

Xiaomi Accounts terminate upon the death of the account holder. To close the account, we require a copy of the account holder`s death certificate".[13]

Similarly, Facebook, Instagram and LinkedIn, although these accounts do not close automatically because the platform must be notified by a third party, they offer the option to permanently delete the account after its holder`s death, instead of converting into a memorialized account. In this case, it is the user`s choice, while they are alive, whether they want their account to be deleted after their death or to be converted into a memorialized account.[14]

2.2. The cryptographic impasse

While in the case of social media accounts, the obstacles are imposed by the contracts we sign at the moment of creating the account we use, in the case of cryptocurrencies, the issue is much more delicate and at the same time much more difficult. The reason is so complicated is that, in the case of cryptocurrencies, their locking is achieved mathematically, a problem much more difficult to solve than finding passwords.

In the case of cryptocurrencies, we will have to address two different scenarios. First of all, we will talk about digital wallets, such as Binance, Kraken and Revolut. In these cases, the company actually holds the private keys and practically acts like a bank. In this case, it is easy for the heirs to recover the cryptocurrencies because Romanian legislation recognises the asset as intangible movable property, which is part of the estate. In most cases, by presenting the certificate of heirship and transmitting it to the platform holding the cryptocurrencies, the latter will transfer the cryptocurrencies to the account or accounts of the heirs, in accordance with Term of Service that the platform has.[15] Furthermore, if the platform unjustifiably refuses to transfer the data to you or demands additional documents that you cannot obtain, you have the option of filing a civil lawsuit as a recourse. In this case, a court ruling can compel the platform to transfer the cryptocurrency to you.

The second scenario is the one that will give us more headaches. This is the situation of cryptocurrencies that are locked in the blockchain. To put it simply, in this situation, the deceased kept their cryptocurrencies in a personal wallet, such as a hardware stick like Ledger

[13] Xiaomi, *Terms of using Xiaomi Cloud,* available at: https://i.mi.com/useragreement?lang=ro&region=RO accessed on 17.02.2026 at 12:00.
[14] Facebook, *What happens to your Facebook account if you pass away,* available at: https://www.facebook.com/help/103897939701143 accessed on 18.02.2026 at 13:00.
[15] Binance (2024, April), *How to Use the "Inheritance Appeal" Feature on Binance,* available at: https://www.binance.com/en/support/faq/detail/89413ec723d94a1d8fb038e3e1130e0a accesed on 20.02.2026 at 18:00.

or Trezor, or an application like MetaMask, and the deceased held the private keys or the recovery phrase themselves. If the deceased did not leave the recovery phase, which consists of 12 or 24 words, written or saved anywhere, these cryptocurrencies are considered permanently lost. Here we find ourselves in a completely atypical situation. Although legally you can file a lawsuit to claim your rights as an heir to the asset, the court can only give you proof that you are the owner of that asset but cannot help you to obtain it. This problem arises from the fact that the court has no way of finding out the recovery phrase. In conclusion, we can say that here we find ourselves in a situation where mathematics is above the power of law, at least until we find a solution to this problem.

3. JURISPRUDENCE AND INTERNATIONAL SOLUTIONS

Although we consider this topic to be very current, we must take into account that both social media accounts and cryptocurrencies already have longevity, having been launched over 10 years ago. Therefore, we note that certain countries have already faced some of the problems we mentioned, and so they have found certain solutions.

3.1. The German jurisprudential model: The Facebook Case

In 2012, a girl of German origin was brutally hit by a subway train in Berlin, resulting in the girl's death. Following this, the authorities were unsure whether the girl`s death was a murder or a suicide, as the circumstances did not clearly indicate. As these circumstances were unknown, the girl`s parents tried to log into her Facebook account in order to identify from her messages with her friends whether or not it was a suicide, or if there were any indications of such a thing. Although the girl`s mother knew her password, before she could manage to log in, a third party reported that the girl was deceased, and thus Facebook transformed her account into a memorialized account. When an account is converted into a memorial page, access to the user`s data is impossible, even with the login credentials. [16]

Consequently, the girl`s parents instituted legal proceedings against Facebook, wherein they requested access to her messages in order to ascertain the truth regarding her death. In its reasoning, the court established that, pursuant to Article 1922 of the German Civil Code, the social media account is inherited in its entirety and constitutes part of the deceased`s estate. The

[16] Library of Congress Germany: *„Federal Court of Justice Rules Digital Social Media Accounts Inheritable”* https://www.loc.gov/item/global-legal-monitor/2018-09-07/germany-federal-court-of-justice-rules-digital-social-media-accounts-inheritable/ accessed on 22.02.2026 at 17:00.

judges justified this succession by drawing a parallel to the fact that an individual`s physical letters and diaries are also inherited; the nature of the medium does not alter the rules of succession. In the court`s view, neither the contractual terms nor the nature of the contract precludes inheritability. The regulations regarding memorial pages do not form a part of the general terms and conditions. Furthermore, the court held that even if they were incorporated into the general terms and conditions, they would be deemed invalid, as they unreasonably disadvantage the other contract party. Furthermore, the Federal Court of Justice ruled to the same effect that the GDPR permits the transmission of such data to heirs in the event of a legitimate interest.[17]

Subsequent to the Federal Court of Justice issuing its decision and compelling Facebook to make the data available to the parents, Facebook provided the data on a USB drive which it transmitted to the parents. This USB drive contained a voluminous PDF document comprising all the girl`s messages. As a consequence of this action by Facebook, the parents initiated further legal proceedings against the company, thereby securing the right to log into the account in the customary manner. The sole restriction imposed was the prohibition against transmitting messages[18] from the account.

3.2. The New Zealand jurisprudential model: Cryptopia Case

Although this case is not strictly limited to the inheritance of cryptocurrencies, it establishes their legal nature as interpreted by the judicial courts of New Zealand.

Following a cyberattack on Cryptopia's company, it entered bankruptcy proceedings, thereby giving rise to several legal issues. Primarily, the company`s creditors sought to recover their funds; on the other hand, considering that this platform functioned merely as a digital wallet, the cryptocurrency owners demanded the restitution of their crypto-assets. Lastly, the company`s appointed liquidators were uncertain as how to administer the cryptocurrencies held in various accounts on behalf of specific account holders.[19] Therefore, the true stake of the litigation was determining *"Who is appropriating the residual funds?"*.

Upon examination of the case file, the High Court of New Zealand ascertained that although the company possessed the private keys, it maintained an internal database explicitly

[17] Bundesgerichtshof, Urteil vom 12. Juli 2018 – III ZR 183/17.
[18] Bundesgerichtshof (BGH), Beschluss vom 27. August 2020 - III ZB 30/20.
[19] Russel McVeagh (2020, April), *Insolvency case recognises trusts over cryptocurrency in Ruscoe v Cryptopia* available at: https://www.russellmcveagh.com/insights-news/insolvency-case-recognises-trusts-over-cryptocurrency-in-ruscoe-v-cryptopia/ accessed on 24.02.2026 at 12:00.

stipulating the value of cryptocurrencies allocated to each user. Consequently, it was established that Cryptopia was not the legal owner of the cryptocurrencies but essentially acted merely as their custodian. As a result of this ruling, it was determined that the company`s creditors could not attach the 170 million New Zealand dollars, and these assets had to be returned to their rightful owners. [20]

Through this judgment, the High Court of New Zealand established that cryptocurrencies constitute a part of an individual`s estate. *”On the question whether any or all of the digital assets held by the liquidators constitute “property” as defined in s 2 of the Companies Act, the answer is yes, all of the digital assets constitute “property””*[21]*,* this automatically implies that they can be included in a testamentary disposition and subsequently transferred to the heirs in the event of succession. Absent this recognition of the proprietary status of cryptocurrencies, they would have ceased to exist upon the demise of their owner.

4. LEGISLATIVE CHALLENGES: THE IMPLEMENTATION OF DIGITAL SUCCESSION

Considering that we have previously analysed various case law from different jurisdictions and their perspective to digital inheritance, we shall now turn our attention to Romania. We have already established that under Romanian law, the inheritance of cryptocurrencies is recognized, as they fall within the legal category of intangible movable property. Consequently, this matter is readily resolved within the context of succession procedure involving cryptocurrencies, with the notable exception of instances where the assets remain locked within the blockchain. In such scenarios, we currently lack viable legal remedies, although it is imperative to identify practical solutions to this impediment. At present, the legal issue concerning the freezing of cryptocurrency assets constitutes a transnational challenge rather than a strictly national one, thereby necessitating a unfiled regulatory resolution at a supranational level. Nevertheless, an immediate remedy is to notify citizens of the impediments their succession in the title may face if assets are retained in blockchain.

[20] Available at: https://www.grantthornton.co.nz/globalassets/1.-member-firms/new-zealand/pdfs/cryptopia/civ-2019-409-000544---ruscoe-and-moore-v-cryptopia-limited-in-liquidation.judgmentpdf, accessed on 24.02.2026 at 12:26.

[21] High Court of New Zealand, Russell Moore v. CRYPTOPIA LIMITED (in liquidation), available at: https://www.grantthornton.co.nz/globalassets/1.-member-firms/new-zealand/pdfs/cryptopia/civ-2019-409-000544---ruscoe-and-moore-v-cryptopia-limited-in-liquidation.pdf, accessed on 24.02.2026 at 12:47.

Regarding the inheritance of social media accounts or accounts containing various photos and documents, such as iCloud accounts, legislative intervention is undoubtedly a viable course of action. Through Romanian legislation, mandatory clauses could be enacted for compulsory inclusion within Terms of Service or Terms and Conditions agreements. These legislative norms concerning the inheritance of such accounts should encompass the succession of photographs as family keepsakes and be associated with the *"family memories"* provided for under Articles 1141 and 1142 of the Romanian Civil Code. Currently, these articles only provide for correspondence, documents, photographs, and *"any other assets of particular moral significance to the respective family"* [22] without distinguishing between digital or physical format.

Nevertheless, at present, Romania lacks established jurisprudence regarding the inheritance of such rights. Consequently, it remains unclear how a court of law would recognise these assets and whether it would subsume them under the existing legal provisions. For instance, it is uncertain whether it would be categorised as assets constituting *"family memorabilia"* as in Articles 1141 and 1142 of the Romanian Civil Code, a classification that could enable a court to compel a major corporation to grant heirs access to the deceased\`s photos and correspondence as well as documents, similar to the Facebook case in Germany.

CONCLUSIONS

Nowadays, we are witnessing a dematerialization of wealth, shifting from physical assets to digital ones. Consequently, traditional rules deeply rooted in Roman law, which have been preserved to this day, may no longer hold the same significance in the future. The argument for the diminishing relevance of these Roman law principles lies in the fact that such rules were conceived for a physical world and are now outpaced by digital reality, thereby generating legal uncertainty.

Regarding the inheritance of cryptocurrencies, we shall consider them to possess strictly patrimonial relevance; thus, their transmission to heirs is essential and inherently non-prejudicial to the deceased. However, the inheritance of digital accounts raises a further complication: the conflict between the deceased\`s right to privacy and heirs' desire to preserve family memories. These days, our most intimate devices are smartphones, laptops, tablets, as they contain messages, photographs and even medical records that we regard as deeply private.

[22] Law no. 287/2009 on the Civil Code, published in the Official Gazette of Romania on 10 of June 2010.

As a result, it would be necessary to implement a limitation on heirs' access to the deceased`s accounts, which the user should be able to exercise during their lifetime. For instance, an individual should have the capacity to nominatively select the specific elements they intend to transmit to their successors, while the remainder could be destroyed or retained for a demand period, according to the user`s discretion.

It is imperative that we no longer ignore the digital reality in the future. Absent swift and effective legislative regulation that officially recognises the devolution of digital estates, the population risks losing not only wealth locked within the blockchain but also an emotional legacy, and indeed, the digital history of future generations.

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