SUMMARY

Notarial Academy of the Commission for European Affairs (CAE) of the International Union of Notaries (UINL)

“Digital death”

What happens to digital assets and data upon death

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INTRODUCTION

1 The choice of the **theme** of the Academy held in Turin on 20 November 2025 stems from a commonplace observation:

2 “Our succession law was created for tangible assets. Today we also have to deal with Instagram, cryptocurrencies and the photos of our pets in the cloud”. In other words, we must ask ourselves what happens to our electronic correspondence, our social media profiles, our digital photo albums, our private messages, our personal documents archived in the cloud, our web search history, our contact lists, not forgetting our most intimate conversations.

3 A study by the *Oxford Internet Institute* estimated in 2019 that by 2070 the number of accounts belonging to deceased persons would exceed that of living users on social networks. By way of example, it is estimated that around 8,000 Facebook account holders die every day.

4 We therefore tried to understand how to find our way in this new world which, although virtual, requires legal protection, because as notaries we are the first who have to provide solutions to our clients.

5 We therefore started from a **“down-to-earth” example** to make everyone understand that **we** are not **talking** about distant questions, but about **the present**.

6 Let us imagine that Brigitte Mardot, a French citizen residing in Turin, and therefore in Italy, dies leaving a substantial digital estate, namely:

7 - An account in **bitcoins** of significant value,

8 - **email** accounts, including her personal correspondence with the actor Alain Deloin

9 - Excellent **playlists** on Spotify

10 - A **digital film library** ;

11 - **Family photos on iCloud** ;

12 - Her **Instagram profile, with 1 million followers**, which generated regular income through advertising partnerships.

13 What **answers can we give** to this case?

14 To do so, we must first **examine** the various problems and then try to provide a solution to them.

15 We should start from the principle that today's theme, **digital inheritance**, is neither a fashion nor an exercise in style: it is the natural consequence of the fact that an ever larger part of our life **no longer** takes place in a **physical space**, but in a **digital** space.

16 Every day **we archive documents** in the cloud, we communicate through platforms, we keep photos, family memories, professional relationships, personal relationships. And, alongside this content, **new assets** are beginning to take on **economic importance**: cryptocurrencies, electronic wallets, monetised content, digital identities with public visibility or even economic value.

17 Faced with this reality, we lawyers – and in particular **we civil lawyers and notaries** – have a duty **to avoid two** opposite **errors**:

- the first, **inventing new categories from scratch**, as if the digital world were another planet;
- the second consists in **denying the problem**, as if it were enough to apply the usual rules without any adaptation.

18 The balance lies in the middle: **keeping the method**, without ignoring the novelty of the phenomenon as an inevitable consequence of the evolution of the practices, customs and needs of society.

19 The civil law tradition already offers us the conceptual tools: the concept **of the universality of succession**, the distinction between **property rights** and **personal (non-transferable) rights**, the centrality of **the will of the deceased** as the governing criterion. These principles must not be left behind: they must be **readapted** in a different context.
In other words, it is not necessary to create a new succession law, but **to apply** the **existing rules in the light of the digital environment**.

20 The first fundamental distinction – and the most important – is the one between **digital estate** and **digital identity**.

21 Assets and relationships that have an economic value, direct or indirect, may be passed on to the heirs, under the general rules of succession law.

22 **Digital identity**, by contrast, is a projection of the person and, as such, is **strictly personal** and **non-transferable**. Here the law has another function: not that of regulating transmission mortis causa, but that of **protecting the dignity** and the **memory, as well as the privacy,** of the deceased and of the persons with whom he or she was in contact.

23 The aim was therefore to try to **bring order precisely** to this frontier: **to distinguish** what **is passed on** from what is **not**, and above all to understand **how** it is passed on.

24 For, as we know, in the digital field **access cannot be taken for granted**: the content exists, but without a password, without cryptographic keys or without the cooperation of the platform, **it is not legally available**.

25 Here **law** meets **technology** and, in a certain way, **sociology and philosophy**.

DIGITAL ASSETS

26 "Digital assets" are nothing other than movable property represented in binary form, that is, by a particular type of "language" (a computational logical sequence of 0s and 1s called a "bit", from the English "binary digit") with which they are created, processed, exchanged and stored using a computer.

27 It is then necessary to distinguish the digital **content** (digital assets and digital data) – the mediate object – both from **the** "**access key**" and from the **medium** (or container) – the immediate object – in which the content is stored or kept.

28 A distinguishing method that seems, from a legal point of view, to be useful for identifying the (digital) object of the succession is the one that differentiates by nature between:

"Offline" digital assets

(digital resources located outside the network)

29 = files, software and electronic documents created and/or purchased by the deceased, such as images, audio files, videos, films, text documents, domain names, websites, blogs, etc.), regardless of the physical storage medium (hard drive, USB stick, CD-ROM, DVD, PC, smartphone or tablet, etc.) and/or virtual storage medium (cloud storage, for example Google Drive, Dropbox, iCloud, OneDrive, etc.)

"Online" digital assets

(digital resources and content available on the network)

30 = all those present on the web that are created, exchanged and processed by means of service contracts concluded with service providers through accounts (email, for example Virgilio, Libero, Yahoo, Google; social networks, for example WhatsApp, Instagram, Twitter, Facebook, TikTok; financial, for example Binance; e-commerce, for example Amazon, Ebay; electronic payment, for example PayPal, Satispay)

31 **Cryptocurrencies** (also called "virtual currencies") are digital financial assets based on distributed ledger technology and may therefore be classified as movable digital assets.

[32] They may be held directly (in which case they are kept in wallets whose access keys are the responsibility of the holder) or indirectly (through investment funds or other professional intermediaries). In the first case (direct holding), the practical problems generally concern identifying the wallet (whether it is a web wallet, a "hot wallet", a hardware wallet, a software wallet or a paper wallet) and recovering the login details; in the case of indirect holding, these digital assets form part of the estate to be divided among the heirs if they are not the subject of a specific legacy.

[33] The "**electronic document**" is the electronic document that contains the computerised representation of legally relevant acts, facts or data (Art. 1(1)(p) of Legislative Decree 82/2005, CAD). It is any content kept in electronic form, in particular text or sound, visual or audiovisual recording.

WHAT IS NOT A DIGITAL ASSET?

[34] Contrary to what is generally thought, the following do not fall within the notion of digital assets:

- The **account**, which is the sign of a simple contractual relationship between the information society service provider (Internet access provider or FAI) and the user. Under this contractual relationship, the user may benefit from a service and from a specific virtual environment (which remains the property of the provider), generally customisable, with particular content and features (the use of which is governed by the contract signed with the user). In this case, succession could take place, at most, in the **normal contractual relationship,** which is, however, not permitted by the (standard) contract concluded with the IT service provider.
- **Login details (or passwords)** which, far from being digital assets, may be classified as simple virtual keys giving access to the content (economic or non-economic) that they protect (voluntarily or necessarily), have a function of protection and identification.
- **Online accounts** are merely a virtual extension of a real account and are therefore subject to the ordinary rules of succession mortis causa.

WHICH ELEMENTS OF THE (DIGITAL) ESTATE ARE NOT SUBJECT TO SUCCESSION?

[35] The following are excluded from the succession:

- **pirated digital assets** (because of the unlawfulness of the object, even if they are protected by protection systems)
- **licensed content** because the deceased had no ownership of the copy of the licensed program. The "licence to use" is an atypical contract by which the licensor (ICT service provider) grants the licensee (user) the personal right of enjoyment (applying, by analogy, the rules on leases) of one or more copies of a program that gives access, the reading, viewing and use of digital content (free of charge or for consideration, that is, in return for a payment that may be made in a single instalment or through a periodic fee).

- **electronic signature accounts** (for example those provided by Aruba, Namirial, Infocert). This is the affixing of a handwritten signature to a document: it is an essential element of the act for determining its origin and identifying its author, and therefore for attributing legal effects to it (legal capacity and capacity to act cease on death).
- **digital identity accounts** (for example SPID), because they are characterised by elements of intimate personality that justify their extinction on the death of their holder.

WHAT ARE THE DIFFERENT SYSTEMS OF PROTECTION IN EUROPE?

Comparative legal framework

European legislation

36 Recital 27 of Regulation (EU) 2016/679 on the protection of personal data states that "the regulation does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons".

37 Few States have legislated on the matter.

38 We have tried to summarise the experiences of the countries in which the legislature or the judiciary has addressed this question, in order to analyse the different approaches.

39 Two principles alternate: that of the **right to be forgotten** and that of **the transmission of one's digital identity to third parties (such as heirs or relatives).**

The French experience

40 With Act No. 2016-1321 of 7 October 2016 for a Digital Republic, France adopted an approach similar to that of the right to be forgotten: in other words, the principle that rights over one's personal data and identity are extinguished on death applies by default; unless the deceased gave prior instructions concerning access to those data, their retention, their deletion, their disclosure, etc.

41 That is why, in the absence of advance directives from the deceased, the heirs may request very limited access to the deceased's accounts, that is, under certain conditions, for example: the access is necessary for preparing the declaration of succession or settling the succession, for deleting or updating the user account, or where they are linked to family memories.

42 It is interesting to analyse Article 85 of the French Data Protection Act (loi Informatique et Libertés), which provides for a distinction between general and specific directives:

a. General directives concern all the personal data relating to the data subject and may be registered with a digital trusted third party certified by the Commission Nationale de l'Informatique et des

Libertés (CNIL).

b. **Specific directives** concern the processing of personal data mentioned in those directives. They are registered with the **controllers** concerned. They are subject to the condition of the specific consent of the data subject, but no reference is made to the requirement of written form.

43 Another problem remains. Can the **general terms and conditions** of digital services (iCloud, social networks, etc.) limit the rights to confidentiality?

44 In France, Article 85 of the Data Protection Act specified that "any contractual clause contained in the general terms of use of a processing of personal data that limits the prerogatives granted to the person under this Article is deemed **unwritten**".

The Spanish experience

45 Under Article 96 of the LOPDDGDD and Article 2 of the Código de la Privacidad, the principle of the survival of the data subject's rights after death applies: the heirs may, by default, access the digital accounts and personal data of the deceased, unless the deceased expressly prohibited it during his or her lifetime (for example in a will).

The experience of Catalonia

46 In accordance with Art. 411-10.6 CCCat, the right to be forgotten applies by default; in other words, the principle is that of the deletion of data and personal data: in the absence of provisions expressly left by the deceased, the wish for the digital profiles to be deleted or extinguished is presumed.

The experience of Germany

47 In the absence of specific legislation, an important judicial precedent marked a decisive step for all other countries: the German Federal Court of Justice (BGH, pronounced BE-GHE-HA), in its judgment of 27 August 2020 (III ZB 30/20), held that Facebook had to grant the parents direct access to the account of their deceased daughter, while prohibiting them from actively using the account, thereby adopting the principle of the survival of the digital identity of the deceased person and treating the contractual relationship between the (deceased) user and the social network like any other asset or right included in the estate. It also added that even if the general terms of the contract signed by the deceased with the social network provided for a total and explicit principle of non-transferability, those terms would be regarded as not applicable or in any event unenforceable against the heirs.

The Portuguese experience

48 Act No. 58 of 8 August 2019, transposing Regulation (EU) 2016/679, provides that the rights of access, rectification and erasure are exercised by default by any person designated for that purpose by the deceased person or, failing that, by his or her heirs, unless the deceased expressly provided otherwise.

49 In other words, the principle of the survival of rights also applies here, together with the right of the heirs to access the digital accounts and personal data of the deceased, unless the deceased, during his or her

lifetime, expressly prohibited it or designated a person other than the heir to exercise those rights.

THE ITALIAN EXPERIENCE

50 In accordance with Article **2 terdecies** [1] of the Privacy Code, the rights referred to in Articles 15 to 22 of the Regulation relating to personal data concerning deceased persons may be exercised by any person who has **an interest of his or her own,** or who acts to **protect the data subject**, as an agent, or for **family** reasons deserving protection: all of this subject to the contrary will of the deceased, who may expressly exclude or limit the exercise of the rights by third parties by means of: (i) a written declaration, (ii) a will, (iii) instructions given during his or her lifetime to providers or by means of digital planning tools (legacy contacts, account managers in the event of death).

51 In other words, while the Italian legislature establishes on the one hand a right of transmission to the heirs, on the other hand it gives overriding weight to the will of the deceased.

52 The Privacy Code therefore provides for a broadening compared with Article 93 of the Copyright Act, which states that, for letters and correspondence, "where they are confidential in nature or refer to private life", consent to publication belongs to the spouse and the children or, failing them, to the parents; in the absence of a spouse, children and parents, to the brothers and sisters and, failing them, to the direct ascendants and descendants up to the fourth degree. The circle of persons concerned is therefore wider than that of the heirs and of those called to the succession. There seems to be no doubt that cohabitants, among others, are included, given that the rule is more concerned with factual situations (family reasons) than with legal situations.

IS IT AN ACQUISITION *IURE PROPRIO* OR *BY INHERITANCE*?

53 Three solutions are possible:

a. Part of the legal literature has observed that the provision of paragraph 2, which allows the data subject to prohibit the *post mortem* exercise of the rights referred to in paragraph 1, solely by a written declaration to the data controller, has as its **only precondition that there must necessarily be "the entry of the successors** of the deceased into the ownership of those [**rights**], that is (...) an acquisition *iure hereditario*".

b. In reality, the very fact of prohibiting "the exercise of the rights" and not the transfer of the rights would suggest the opposite, namely that those rights **already** belong to the persons designated by the rule who, consequently, could be regarded as having acquired them *iure proprio*.

c. It should be noted that the Court of Bologna, on 25 November 2021, in a tragic case concerning the suicide of a teenager and the possibility of accessing his iCloud, states "that she [the mother] is acting *also as heir* [emphasis added]". The legislative provision of Article *2-terdecies* therefore provides for a **dual track**: extraordinary standing and the "necessary" ownership of the heirs.

HOW CAN POST MORTEM DISPUTES BE PREVENTED?

54 At present, the best way of regulating post mortem digital interests seems to be the judicious use of the will, which makes it possible to:

- prohibit (and revoke or amend the prohibition of) the exercise of the right of access (Art. 15), of rectification (Art. 16) and of erasure (Art. 17), of restriction of processing (Art. 18), of objection (Art. 21) and of data portability (Art. 20) as regards personal data (Regulation (EU) 2016/679, known as the GDPR)
- assign digital assets by specific or universal title
- specify the (immediate and mediate) object of the legacy, taking care (relatio ad locum, relatio al contenuto) to identify clearly whether the testator's interest is to leave the ownership of the medium (including its content, whether economic or non-economic in nature) to the beneficiary of the disposition or whether it is to "break down" (with a different destination for the corresponding beneficiary) the digital content from the medium or from the "keys" that give access to it
- entitle the beneficiary of the disposition to exercise certain rights against the various service operators (for example Meta, Instagram, Apple, Google, etc.), allowing a partially novated succession in the contractual relationship.

SOME TESTAMENTARY CLAUSES:

55 E.g. clause 1) In accordance with Article 2-terdecies of Legislative Decree No. 101 of 10 August 2018, **I expressly authorise** [SURNAME FIRST NAME, contact details] to exercise the rights referred to in Articles 15 to 22 of Regulation (EU) 2016/679 and relating to my personal data.

56 E.g. clause 2) In accordance with Article 2-terdecies of Legislative Decree No. 101 of 10 August 2018, I expressly authorise [SURNAME, FIRST NAME, contact details] to exercise the rights of access (Art. 15) and/or rectification (Art. 16) and/or erasure (Art. 17) and/or restriction of processing (Art. 18) and/or objection (Art. 21) and/or data portability (Art. 20), referred to in Regulation (EU) 2016/679 and relating to my personal data.

57 E.g. clause 3) In accordance with Art. 2-terdecies of Legislative Decree No. 101 of 10 August 2018, **I refuse and prohibit the exercise** of the rights referred to in Articles 15 to 22 of Regulation (EU) 2016/679 and relating to my personal data.

58 E.g. clause 4) In accordance with Article 2-terdecies of Legislative Decree No. 101 of 10 August 2018, **I refuse and prohibit** the exercise of the rights of access (Article 15) and/or rectification (Article 16) and/or erasure (Article 17) and/or restriction of processing (Art. 18) and/or objection (Art. 21) and/or data portability (Art. 20), referred to in Regulation (EU) 2016/679 and relating to my personal data.

WHICH RULES APPLY WHERE THERE ARE CROSS-BORDER ELEMENTS?

59 In accordance with Art. 3(2) of Regulation (EU) No 679/2016 (GDPR), from the point of view of the "territorial" criterion, the regulation applies to the processing of personal data:

60 1. carried out in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

61 2. of data subjects who are in the Union, carried out by a controller or processor not established in the Union, where the processing activities relate to: a) the offering of goods or services to data subjects in the Union, irrespective of whether a payment of the data subject is required; or b) the monitoring of their behaviour as far as that behaviour takes place within the Union.

62 3. carried out by a controller not established in the Union, but in a place subject to the law of a Member State by virtue of public international law. *[applied in the Google Spain case, judgment of 13 May 2014 delivered in Case C-131/12 by the Court of Justice of the European Union; same principles used by the Italian courts: search engines are subject to the European directive on the protection of personal data*]

WHAT HAPPENS IN THE EVENT OF A CONFLICT BETWEEN THE HEIRS, THE AGENT AND OTHER INTERESTED PARTIES?

63 If Italian law [2] applies, Article 2 terdecies of the Privacy Code does not provide, so to speak, for any form of ranking, so it is not clear whether the will of the heirs is to be preferred to that of the other persons mentioned in the rule.

64 A possible legislative reference, together with an axiological and non-formalistic reading of the provision, should lead to a possible interpretation.

a. Article 24(3) of the Copyright Act, which provides that in the event of disagreement between the various heirs on the publication of unpublished works, "the decision is taken by the judicial authority, after consulting the public prosecutor. In all cases, the will of the deceased is respected where it is recorded in writing".

b. A case-by-case assessment is necessary, taking into account the overriding interests, which could also arise from the personality of the *deceased* (possibly a public figure).

65 The case law on Article 93 of the Copyright Act considers that: **a)** if knowledge of the writing is required for the purposes of civil or criminal proceedings, then it prevails over the will of the deceased or of his or her heirs (Cass. 19/06/2020, No. 11979; 20/09/2013, No. 21612); the private and intimate nature of correspondence constitutes "a specific limit to the right to information, and therefore also to historiographical research" (Trib. Rome, 22/05/2018).

66 Paragraph 5 of Article 2 terdecies deals with this aspect by providing that "In all cases, the prohibition may not produce effects prejudicial to **the exercise by third parties of the property rights** arising from the death of the data subject, nor to **the right to defend their interests in court**".

67 On this point, **the Italian Data Protection Authority (the Garante; measure of 26 October 2023)** accepted that access may take place, in accordance with Article 6 of the GDPR, on the basis of a legitimate interest, which must be:

- genuine,
- serious,
- not instrumental or diverted from its purpose,
- concrete and current, and not purely potential.

LIMITS ON THE RIGHT OF ACCESS

68 **Article 2 terdecies, paragraph 3, last subparagraph**, provides that "the prohibition may concern only the exercise of some of the rights referred to in the aforementioned paragraph". Is it nevertheless possible for the deceased to impose additional restrictions, for example by authorising access to his or her *social media accounts* and to the published content (for example, photos, comments, etc.), but not to the correspondence associated with them?

69 The analysis of Article 85 of the French Data Protection Act, which provides for a distinction between general and specific directives, is of interest:

a. *General directives concern all the personal data relating to the data subject and may be registered with a digital trusted third party certified by the Commission Nationale de l'Informatique et des Libertés (CNIL).*
b. ***Specific directives** concern the processing of personal data mentioned in those directives. They are registered with the **controllers** concerned. They are subject to the specific consent of the data subject, but no reference is made to the requirement of written form.*

70 The Italian Privacy Code makes no provision in this respect.

71 In the aforementioned decision of 26 October 2023, the Garante specified that the right of access may not be:

- used for speculative purposes,
- exploited to obtain intimate information about the deceased without a valid reason,
- exercised against the will of the deceased.

72 The right of access may therefore not undermine:

- the reputation of the deceased,
- the dignity of and respect for his or her memory,

- the confidentiality choices expressly made.

73 This aspect is also addressed in the judgment of **the Court of Cassation No. 17790 of 8 September 2015,** which held that:

- the right of the heir or successor in title **may not undermine the personal data of third parties**,
- access must be limited to the data strictly necessary for that purpose.

74 It therefore seems to refer to the principle of minimisation, laid down in Article 5 of the GDPR, according to which the processing of data must concern the minimum of personal data.

75 Similarly, **the Court of Cassation, in its judgment No. 39531 of 13 December 2021**, although it concerned a property relationship (an insurance contract), reaffirmed that:

- the heir may access the data relating to the contract concluded by the deceased,
- but may not obtain data concerning the health or private life of the third parties concerned,
- except with consent or unless they are indispensable for asserting a right in court (Art. 2-terdecies, para. 5).

76 Another problem remains. Can the **general terms and conditions of contracts** for digital services (iCloud, social networks, etc.) limit the rights granted by Article 2 terdecies of the Privacy Code?

77 In France, Article 85 of the Data Protection Act specified that "any contractual clause contained in the general terms of use of a processing of personal data that limits the prerogatives granted to the person under this Article is deemed **unwritten**".

78 Italian case law has stated on several occasions that **the will of the deceased prevails over the general terms of the social network** (Trib. Venice, order of 4 June 2025 (No. 5516/2025), Trib. Rome, Court of Milan, 10 February 2021).

79 One passage of the Venetian decision is particularly interesting, where it is stated that "family members may obtain access if this is consistent with the presumed will of the deceased or in the absence of a contrary will".

80 **The formal requirement of written form** is therefore **left behind**, since it is considered that the will of the deceased – albeit as regards digital services – may also be inferred from other evidence.

THE OTHER COUNTRIES SURVEYED [3]

81 In all the other countries where there is no ad hoc legislation (and they are the majority) governing what happens to the digital data/accounts (emails, social networks, cloud files, etc.) of all providers and the underlying rights of access, succession planning with the help of one's trusted notary remains fundamental: it is essential that the testator's wishes be expressed in writing so that they are respected: it is therefore necessary, *among other things*, to draw up the list of accounts, passwords and succession

instructions and to designate the person who will be responsible for "executing" your digital identity in the broad sense (on some social networks, this person is called the "legacy contact"). The personal safe (the IZIMI platform created by the Belgian notariat), for storing and managing important documents and personal data, is in this sense a very good example of the management and anticipation of digital succession.

SOLUTION TO THE PRACTICAL CASE [4]

a) Law applicable to the succession

82 Brigitte Mardot is a French citizen, but resides in Turin: Article 21 of the European Succession Regulation (Regulation (EU) No 650/2012) will therefore apply, that is, Italian law as the law of the State of habitual residence of the deceased.

b) Account in bitcoins

83 The economic value of cryptocurrencies cannot be denied, since they are capable, albeit only within the restricted community of their users, of becoming a unit of measurement for exchanges of goods and services, and may be classified as digital movable property. Moreover, they are expressly taken into account by Article 1(qq) of Legislative Decree No. 231 of 21 November 2007, on combating money laundering, which defines "virtual currency" as "the digital representation of a value, not issued or guaranteed by a central bank or a public authority, not necessarily linked to a currency that is legal tender, used as a means of exchange for the purchase of goods and services or for investment purposes, and transferred, stored and traded electronically".

84 It follows that the cryptocurrency in question may be regarded as an asset capable of being included in the succession.

c) Spotify playlist

85 The playlist could be treated as belonging to the category of "online" digital assets that are not protected by an exclusive and absolute right of ownership held by their owner: the owner is instead the holder of a "licence agreement", that is, of a contractual position that gives him or her the right to enjoy the content covered by the agreement under certain conditions and for a certain period (never exceeding his or her lifetime) in return for the payment of a periodic or one-off fee.

86 This contract is regarded by the leading legal literature (Rossello) as an atypical contract, and it is considered that the rules specific to the lease contract may apply to it, within the limits of compatibility.

87 In view of this configuration, it seems necessary to conclude that licensed digital assets are non-transferable on death, because the user acquires only a right to use them for a fixed period and, consequently, acquires no right of ownership in that respect. This asset cannot be included in the digital estate of the deceased.

d) Digital film library

88 In this respect, it should be made clear that if those films were hosted on a platform accessible by subscription, the considerations just set out for licensed digital assets would apply again.

89 If, on the contrary, the film collection can be regarded as the full and exclusive property of the deceased, who acquired ownership of it by paying the price, these would undoubtedly be offline digital assets of an economic nature, because they have an intrinsic economic value for their owner.

90 Depending on the fundamental choice made as to the ownership of the film collection, different conclusions will therefore be reached as to transferability on death, only a subjective situation that is not extinguished by death being appropriate.

91 If the aforementioned film library were to be regarded as a set of digital assets belonging to the same person and having a single purpose, Article 816 of the Italian Civil Code could apply, in the logic of succession by specific title

e) Family photos and email accounts containing personal correspondence

92 According to the legal literature and case law that have addressed the question, these assets may be regarded as “writings” of a confidential nature or relating to private life.

93 This category is not regulated by the legislature.

94 The delimitation of these concepts was therefore left to the case law which, adopting the considerations of the legal literature, specified that a writing is “confidential” where its author intends to open his or her heart to the addressee, in view of the particular relationship of trust between them, in order to convey his or her moods, feelings and opinions, whatever the context in which this occurs, that is, in order to share intimate aspects of his or her private life.

95 Act 633 of 1941 on copyright appears to apply to these assets, and in particular Article 93, so that the heirs may not dispose of them freely, but must, on the one hand, respect the sender’s right to confidentiality and, on the other hand, may not publish, reproduce or disclose anything without the consent of the close relatives of the addressee (if they are different from the heirs), who do indeed have the right to object. [5]

96 **f) Instagram profile with 1 million followers that generates regular income through partnerships and advertising.**

97 This question raises the issue of succession to the account, which may be defined as a contractual relationship between the service provider and the user for the use of a specific customisable virtual environment.

98 Unlike other digital assets, the account remains the property of the provider and its use is governed by the terms accepted at the time of registration (which often contain clauses imposing the non-transferability of the content or its mandatory deletion).

99 These circumstances may hinder, pending a court decision, the transfer of its digital content which, however, having an undeniable economic dimension, appears capable of being transferred *mortis causa*, with only the manner in which this can happen remaining to be verified in practice.

100 In the present case, the general terms of use of the social network in question state verbatim:

101 ***" 7.2 Holders of rights within the meaning of this agreement.***

102 *This agreement does not confer any rights on third parties.*

103 *The user may not transfer the obligations or rights provided for by this agreement without our consent.*

104 *Our rights and obligations may be assigned to third parties. This could happen, for example, in the event of a change of ownership (by merger, acquisition or sale of assets) or by operation of law".*

105 ***7.4 Handling of disputes.***

106 *In the event of claims or disputes relating to the use of the Service by the user as a consumer, the user and Meta agree to resolve individual disputes and claims before a competent court of the user's main country of residence that has jurisdiction in the matter. In that case, the laws of the country in question apply, irrespective of the provisions on conflict of laws.*

107 *In the event of a claim or dispute arising from the use of the Service in any other capacity, including, without limitation, access to and use of the Service for professional or commercial purposes, the user agrees that the dispute shall be decided before a competent court in Ireland and accepts the application of Irish law, irrespective of the provisions on conflict of laws.*

FINAL CONSIDERATIONS

- There is no doubt that **society** as a whole is undergoing a **profound transformation**, as is **contemporary law**, brought about not only by **globalisation**, but also by **the polycentrism of rules and its internationalisation**, marked by the **contradiction** and **indeterminacy** of the rules themselves.
- Faced with **the complexity** of social relationships and **the absence of rules** capable of governing them, **the role of the notary** as a professional who **picks up** the new demands of society, translates them into **innovative solutions** (even if they are built de iure condito), and creates flexible law (**soft law**) that then **inspires the legislature**, which, with its longer timescales, eventually legislates, is of **growing importance.**
- We can therefore only hope that the legislature will intervene to create **national**, **or even European, rules** with a common language aimed at
    - legally recognising the **digital estate** as an object of succession, guaranteeing the heirs a right of access, management and disposal, within predefined limits;

- defining the **status of digital identity** as a non-economic asset protected even after death and removed from any risk of commodification
- establishing a uniform framework of **relations between heirs and digital service providers** through obligations of cooperation, interoperability and respect for the will of the deceased
- Providing for **innovative legal instruments** (such as digital wills, IT executors and fiduciary registers of login details) to ensure that the post mortem will is actually carried out

108 Digital inheritance confronts us with a very simple truth: we will not be remembered **for the objects** we owned, but **for the traces** we left behind.

109 And those traces, today, **are not found in drawers. They are found on servers.**

110 We **notaries** are – allow me this image – the **guardians of the last locks** of those **drawers** and, in a way, of **life** itself**.**

111 The pen, the seal, the method are not tools of the past: they are tools that **are needed precisely when everything becomes volatile**, intangible, **"cloud",** and above all when we find ourselves in a period of transition and of **regulatory vacuum** that causes **uncertainty.**

112 Let us not forget one thing, however: the regulatory vacuum can be a means of giving greater prominence to the **centrality of the will of the deceased and therefore the centrality of the notary as a bridge between private autonomy and the certainty of the rule of law.**

113 As long as there is someone who **has something to bequeath** – and someone else **ready to receive it** – our **pivotal role** will remain essential.

114 Even **in the digital field**. Believe me: **above all in the digital field**.

Notes

1 Legislative Decree No. 101 of 10 August 2018, Art. 2-terdecies (Rights concerning deceased persons)

Paragraph 1. The rights referred to in Articles 15 to 22 of the regulation [Regulation (EU) 2016/679, known as the GDPR, which does not apply to deceased persons; see recital 27] [right of access (Art. 15), of rectification (Art. 16) and of erasure (Art. 17), of restriction of processing (Art. 18), of objection (Art. 21), of data portability (Art. 20)] relating to personal data concerning deceased persons may be exercised by any person who has a legitimate interest [for example, a creditor who has accidentally deleted his or her correspondence and wishes to access the deceased's mail in order to obtain the document on which the legal claim is based; a successor, heir or legatee, by reference to paragraph 5 below; Art. 620(2) of the Civil Code on the publication of the will, "any person who considers that he or she has an interest", and (5), "any person who has an interest in it"], or who acts for the protection of the data subject, as an agent [mandate post mortem exequendum; executor], or for family reasons deserving protection [non-economic interests of a moral or emotional nature].

Paragraph 2. The exercise of the rights referred to in paragraph 1 is not permitted in the cases provided for by law or where, in the context of the direct offer of information society services, the data subject has expressly prohibited it by a written declaration submitted or communicated to the controller.

Paragraph 3. The data subject's wish to prohibit the exercise of the rights referred to in paragraph 1 must be expressed unequivocally and must be specific, free and informed; the prohibition may concern the exercise of only some of the rights referred to in the aforementioned paragraph.

Paragraph 4. The data subject has the right at any time to revoke or amend the prohibition referred to in paragraphs 2 and 3 [provisions which, in part, relate to Article 587(2) of the Italian Civil Code]. "Provisions of a non-economic nature, which the law allows to be included in a will, are valid if they appear in an act having the form of a will, even in the absence of provisions of an economic nature"; Articles 587(1) and 588 of the Civil Code].

Paragraph 5. In any event, the prohibition may not produce effects prejudicial to the exercise by third parties [for example, the statutory and/or testamentary heirs] of the property rights arising from the death of the data subject, nor to the right to defend their interests in court.

2 Art. 3 DIP (Legislative Decree 218/1995): Scope of jurisdiction

Art. 9 DIP (Legislative Decree 218/1995): Non-contentious jurisdiction: national law where the measure requested concerns an Italian citizen or relationships to which Italian law is applicable

Art. 24 DIP: Personality rights: national law of the person whose rights are at issue

Art. 46 DIP: Succession on death, now replaced by Regulation (EU) No 650/2012, Articles 20-27: from the national law to the law of the State of residence

Art. 48 DIP: Form of the will

Art. 51 DIP: Possession and rights in rem: law of the place where the assets are located

Where, under the rules in force, it is the location of the assets that determines those rules, the territorial nature of digital assets escapes the common criteria for identifying the competent court and raises doubts. Procedural legal literature suggests here too a way out of the impasse by "locating" virtual assets according to the place where power over them can be exercised, and therefore the place where their owner is located. In case law, this same criterion was applied by the High Court of Justice in the decision D'Aloia v Persons Unknown and others, of 24 June 2022.

Art. 54 DIP: Rights over intangible assets: law of the State of use

Art. 57 DIP: Contractual obligations, Rome Convention of 19 June 1980 applicable under Act 975/1984

Art. 5 c.p.c.: Decisive moment for jurisdiction and competence (linked to Art. 8 DIP: Decisive moment for jurisdiction)

3 These are the United Kingdom, Andorra, Armenia, Bulgaria, Croatia, Greece, Hungary, Lithuania, Malta, North Macedonia, Slovakia, Slovenia, Serbia, Switzerland, Turkey and Ukraine.

4 Brigitte Mardot, a French citizen residing in Turin, in Italy, dies leaving a substantial digital estate, namely:

- An account in bitcoins of significant value,
- email accounts, including her personal correspondence with the actor Alain Deloin
- Excellent playlists on Spotify
- A digital film library ;
- Family photos on iCloud ;
- Her Instagram profile, with 1 million followers, which generated regular income through advertising partnerships.

5 It should be recalled that the Italian Data Protection Authority, in its decision of 26 October 2023, specified that the right of access may not be:

• used for speculative purposes,

• exploited to obtain intimate information about the deceased without a valid reason,

• exercised against the will of the deceased.

The right of access may therefore not undermine:

• the reputation of the deceased,

• the dignity of and respect for his or her memory,

• any confidentiality choices expressly made.