GUIDE

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Digital inheritance

The ten commandments of the notariat

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1 With technological change and an online life that keeps growing, the boundaries of what can be defined as an inheritance are blurring, and it now covers far more than immovable property, bank accounts, manuscripts or valuables kept in safes. There is now a genuine digital inheritance made up of data, accounts, social media content, blogs, investments managed online and many other items, which must be dealt with in advance, as one would for any other type of asset.

2 Careful planning of the rights by the person concerned allows them to be exercised after that person’s death and makes it possible to protect moral, personal and family interests as well as economic ones, avoiding costly international disputes whose outcome is uncertain.

3 Calling on an expert able to help you find your way through the complexity of the subject is the wisest choice; Italian notaries have been dealing with digital inheritance since 2007. This guide is the result of their experience and aims to raise public awareness and to answer preliminary questions on the subject.

4 1 The legal framework is uncertain and constantly changing. At present, in Italy as in Europe, there is no specific legislation. So do not count on the law taking care of it for you. It is therefore important to plan in advance the transfer of the digital inheritance, that is, all digital resources offline (for example, the 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.) and online (such as those associated with email accounts such as Virgilio, Libero, Yahoo, Google; with social media accounts, such as WhatsApp, Instagram, X, Facebook, TikTok; with financial accounts such as Binance; with e-commerce accounts such as Amazon, eBay; with electronic payment accounts such as PayPal, Satispay, etc.). This applies whatever the storage medium, whether physical (that is, PC, smartphone or tablet, hard drive, USB stick, CD-ROM, DVD, etc.) and/or virtual (cloud storage, for example Google Drive, Dropbox, iCloud, OneDrive, etc.).

5 2 Passwords are not part of the digital inheritance, but are important virtual access keys to a given item of digital content, which must be kept safe and up to date. Indeed, as is often the case, the main problem lies in recovering the login details, which may have been lost or were not passed on in time by the deceased, thereby preventing access to his or her data, except after costly, or even international, disputes.

[6] 3 You may entrust your login details (username and password) to a trusted person, giving clear instructions on what to do in the event of death: destroy all or part of the data, or hand them over to the persons you have designated. This is known as a post mortem mandate, and it is permitted under our law for digital data and resources of sentimental, family and moral value (for example, photos, images, personal videos). If you change your password, as good security practice recommends, do not forget to update your instructions. You may also dispose of your digital rights and interests by will (specifying, for example, whether or not your data may be accessed, and designating the persons authorised to access your computers, your files, etc.). A will is the most appropriate instrument in the case of digital data and resources that have economic value, but not only in that case.

[7] 4 Entrusting your passwords to someone does not mean transferring to that person, in the event of death, the resource to which they give access. The use of the passwords of absent or deceased users to access online resources, data, services and platforms should also be avoided, all the more so if you are not authorised to do so. That is why all instructions and provisions on the use of passwords must be very clear: the notary will be able to assist and advise you.

[8] 5 Pirated digital assets, licensed content (for example, content requiring payment of a subscription, such as the Office 365 package, Netflix, Spotify, etc.), electronic signature accounts (provided by Aruba, Namirial, Infocert, etc.) and digital identity accounts (SPID provided by Poste Italiane, Aruba, Infocert, Namirial, etc.) are excluded from the succession. Attention should also be paid to data held by the deceased but belonging to third parties, such as employers or clients, since in principle they must be returned to them.

[9] 6 Cryptocurrencies or virtual currencies (for example Bitcoin, Ethereum, Tether, Litecoin, Monero, Ripple, Stellar, etc.), generally kept in digital *wallets*, are genuine digital assets with economic value.

[10] 7 Beware of online bank accounts: an online account is nothing other than the virtual extension of a real account. The heirs may therefore claim what is due to them through the traditional channels.

[11] 8 Very often, Internet access providers (FAI) — that is, the companies offering access to services, spaces and platforms on the Internet — have their registered office outside national and European territory (for example in the United States, in China, etc.). This means that, in the absence of express provisions on digital succession, the only way to access the data and digital assets of a deceased relative is to bring costly and uncertain contentious proceedings, sometimes at international level.

[12] 9 Some online services, recently introduced by various FAI and provided for in the general terms of use at the time of activation, offer the possibility of creating memorial accounts, of authorising or prohibiting the disclosure of data, and of deactivating or closing the account after the user's death has been "reported". Among the best-known services is the function allowing a "legacy contact" to be designated; this person is entitled to exercise certain rights of a moral, sentimental and family nature, but is not always in a position to safeguard the interests of the deceased, in particular as regards digital resources of economic and financial value. Other services, by contrast, provide for the outright destruction of all data in the event of death, resulting in their permanent loss.

[13] 10 Italian notaries have been dealing with the issue of digital inheritance since 2007. If in doubt, call on your trusted notary to find the solution best suited to your needs, both real and digital. For more information: www.notariato.it