Cyber law and digital asset inheritance: A new concept, digital assets, and what will happen to digital assets after death?

Alp Toygar

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CYBER LAW AND DIGITAL ASSET INHERITANCE: A NEW CONCEPT, DIGITAL ASSETS, AND WHAT WILL HAPPEN TO DIGITAL ASSETS AFTER DEATH?

A Project
Presented to the Faculty of California State University, San Bernardino

In Partial Fulfillment of the Requirements for the Degree Master of Business Administration in Cyber Security

by
Alp Toygar
June 2013
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ABSTRACT

What will happen to social media accounts (Facebook, Twitter, LinkedIn etc.), online photo albums (Flickr, Picasa etc.), blogs, domain names, websites, email, accounts, smart phones or any information stored in the cloud under a name or ownership? Digital images, photos, documents, and audio/video files are considered “assets.” What will happen to these “Digital Assets” after death? Why does the public needs better cyber law and regulations, particularly related to Digital Assets? Today, the concept of Digital Asset is ambiguous and not effectively regulated by law. This necessitates improved regulations in order to protect individual’s “Digital Assets” and rights. Similar to other assets, people should be able to legally deed their “digital assets” or accounts to their beneficiaries. This study will examine and elaborate on the current status of Terms of Services (TOS) of the major digital service provider, including the benefits of regulating Digital Assets through comprehensive Cyber Law and its importance to the national and global cyber community.
ACKNOWLEDGMENTS

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Upcoming MBA students are going to find an unprecedented studying environment in the Information and Decision Science department. Same success tradition conveyed to the next MBA students.
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1.1 Introduction

What is a digital asset? A digital asset is an ownership with any kind of data in binary form stored in a computer's data storages or over the internet. "A digital asset is any item of text or media that has been formatted into a binary source that includes the right to use it" (Van Niekerk, 2006).

The definition of a "Digital Asset" needs elaboration for better understanding. Not all digital data should be considered as a "Digital Asset" and for that reason the concept needs to be analyzed in depth. In order to consider a digital data as an asset the following must be considered: 1) Must be in binary form, and 2) Ownership requirements needed. However, the aforementioned analyses still is not enough. Therefore, another analyses needed to combine with the first one in order to make the concept more clear and conceivable including "the digital asset must be reusable and contain values" (Moon, 2007).

Reusability is required for any assets. People are able to use their tangible assets such as furniture, or houses. Even intangible assets such as trademarks,
patents are reusable. The same concept should be valid for the digital asset concept. The users should be able to use their digital asset’s again and again. For example, any digital files used over the internet, such as digital pictures in a Flicker account, or pictures in a Facebook account, should be able to be used over and over again. The creator and/or user of digital files should be able to use it again and again. Reusability satisfies the users’ needs. Similar to tangible and intangible assets the digital asset is long lasting and is not consumable quickly.

Images in digital forms are also considered as digital assets, “Repositories cease to think about digital images as objects and consider them more as digital assets” (Yakel, 2004). Digital materials have long term values and are reusable similar to other asset types. In addition, the digital materials can be recognized and reusable by others, not only from the owner or creator of the digital asset’s. At this point, the concept of “Digital Asset” was born not because of the driving power of the Information Technology; the power of the “Digital Citizenry” also forced the “Digital Asset” concept come to the life.
1.2 Purpose of the Project

The purpose of this project is to determine who really owns your digital assets? (Warwick-Ching, 2012). Today digital assets have become part of life and have become embedded in the digital society for good, such as any digital form of information stored in computers, smartphones, digital media or storage in Cloud computing. Not long ago, assets were considered only tangible assets in a physical form such as cash, machinery, buildings, lands, livestock and intangible asset were considered nonphysical assets, such as any intellectual property, copyrights, patents, trademarks, trade secrets and goodwill (Best, 2010, p. 115). Starting late in the 20th century, Information Technology and the digital revolution dramatically changed our life in society. Although some considers that the digital assets are a part of the intangible assets (Goldfinger, 1997), the fact shows that fast growing, inventive and independent Information Technology makes "Digital Assets" totally unique and separate from the intangible assets. The concept of digital asset is a totally new avenue. That's why new Cyber law and regulations are needed to govern this new type of asset.
Inventive and independent Information Technology created new forms of digital world population or "Cyber Citizens." Many digital world citizens (Cyber Citizens) are generally aware and accept that "Digital Assets" are a reality. They accept also that it might have significant value, such as digital photo albums and digital music albums. Some digital accounts, for example eBay and PayPal might have some monetary value after the account owner died. Emails and social media accounts might contain important private information that closely related to users' family and friends, and these accounts could be priceless for the owners of the account and their beneficiaries. Fast developing "Cyber World" and "digital asset" concept and increasing economic and social values carries new unknowns and impediments into the digital society. Digital asset is not a local but also a global concept. Anybody can open a digital account in the comfort of their home without travelling in any part of the world via the Internet.

In the USA, all tangible and intangible assets are defined, regulated, and protected by law. However, "digital asset" is a new concept comparing to tangible and intangible assets. Legal definitions, law and regulations are currently not enough to properly define, protect, and
regulate the digital asset. For example, what will happen to digital assets after people die? Can people keep, transfer, sell or inherit their digital assets? For instance, can a relative access to a deceased relative’s emails, Facebook, Flickr, eBay, or PayPal accounts? Is there any law and regulations about the new “Digital Asset” concept? How people are going to determine the fate of their digital assets? What about smartphones, digital music files, financial data, blogs and Twitter accounts or the information in the cloud storage/s? Do people need legal regulations accessing to deceased relatives’ digital assets? And/or should digital asset owners prepare a will about their digital assets particularly? Or leave the concept into the digital service providers’ hands and expect a mercy? What are the fundamental laws and references that will help and guide the parties such as digital account service providers, digital asset owners and their beneficiaries? Where the digital asset starts and ends? Do we need a comprehensive Cyber law in order to regulate the Cyber world including the “Digital Assets?” These are some important questions waiting to answer at the moment.

Furthermore, how can a Cybercrime related to the digital assets or social media be determined? Guitton
indicated that the attribution of a digital asset can be manipulated. There is a possibility that if the Internet users legally and technically know how to manipulate the Internet’s attribution mechanism that they can commit Internet or Cybercrime.

How can people protect their digital assets, especially if the digital asset can lose monetary value because of a Cybercrime? If the concept of digital assets is a reality then how the current law and regulations can protect it? That’s why the policy makers or legislators need to enact comprehensive Cyber law that will regulate and minimize the Cybercrime.

Deterrence occurs when a potential offender refrains from or curtails criminal activity because he or she perceives some threat of a legal punishment for contrary behavior and fears that punishment (Gibbs, 1985, p. 87).

Trying to deter the cyber criminals with only using or interpreting current ambiguous laws and regulations are not effective. Today, if the Cybercrime is increasing in skyrocketing trend one of the major reasons is there is no comprehensive Cyber law in the United States to prevent the cybercrime and protect the digital assets rights for example.
Theoretically and realistically the Internet can grow up indefinitely. To regulate and control the Internet there is need to enact a comprehensive Cyber law. The cybercrime is not in effect only in the United States, it is a global problem. The United States should lead the global cyber community to legislate a universally accepted cyber law eventually.

Because of the ambiguity in the cyber world there are also problems with the digital archives. "Digital preservation practice exists in a legal gray area" (Knutson, 2009). Nobody knows how to legally store all the digital information. Storing the digital information could be a crime, such as a copyright or intellectual property crime. Because of the legal ambiguity in the digital storage area the archivists are over cautious and they are not productive enough. Many information are not classified or stored properly because of the legal uncertainty. The projected Cyber law should embrace every aspects of human life.

The Information Technology has opened a new revolutionary era in the human history; complying with the new cyber world facts are imminent and crucial. Recently China and Russia sent a proposal letter to the United Nations in order to establish international code of
conduct for the Internet (Farnsworth, 2011). The proposal backed up by Uzbekistan and Tajikistan. This initiative shows that globally there is a need to regulate the internet. Although, those countries are not totally democratized and they have many human rights and freedom problems and their intent is maybe to control their citizens via the internet, this initiative is still an important step developing a global cyber law.
CHAPTER TWO
BACKGROUND

Information Technology has been an important field for a long time but it has gained greater significance toward the end of the 20th century and has gained more significance in this 21st century. People all around the world have started to use products of information technology and have realized that their life can be easier with new technological gadgets (Richtel, 2010). In addition, using the new gadgets such as phones, computers, TVs, cars etc. have helped people to save more time and money.

Now many people in the world have more time and money to spend on themselves and others. New hobbies have been started and more people have started to travel around the world, discovered new places, tasted new foods, learned new cultures and enjoyed being an integrated "world citizen." Information technology has helped in this transition.

After learning the effectiveness and convenience of the information technology and other gadgets, people have started to think about using technology more seriously.
Development of the Internet has been a breakthrough. With the power of the Internet, people are able now to reach unlimited information by just sitting on their comfortable chair and surfing the Internet. People don't have to travel to discover new places and accessing greater information any more. Pictures, photos, articles, reports, blogs, virtual friendships, virtual churches and chat rooms started to play important roles in people's daily life. Eventually, another new concept developed, Social Media and Social Network over the Internet. People started to invest more time and money in their Social Networks and other Internet communication mediums such as Facebook, LinkedIn, hi5, email, Flickr, Twitter, and YouTube etc.

These new trends push the people to contribute much content in their Social Media accounts. Eventually, now it is not a surprise that some people spend countless hours on their emails and social media accounts. The contents in the Social Media or email accounts have become very valuable to them and can be defined as “assets.” The assets are called “Digital Assets.” The reason they are called digital assets are because the pictures, text and musical files are in digital formats.
Currently, many of us are not aware of the value of digital accounts in our life. For example, many consider emails as must have communication tools in their life. So the question comes to mind, “How do I give my digital Asset to my family or friends?” How about inheriting, transferring or selling these digital assets? Is that possible? Why shouldn’t people transfer or inherit their digital assets to their next of kin or anybody they wish?

Social media like Facebook, LinkedIn and Flickr and email accounts are a part of our daily lives. Thus, these new digital assets have opened new roads in peoples lives and these new roads are reshaping the habits of human being all over the world.

The new trends and facts in human life opened a new road and destination in human history called the Internet and “Digital Asset.” Helping to recognize the “Digital Asset” concept by the legislators and IT service providers in the industry is main goal of this study. The Cyber world is developing incredible fast. Today, people use many jargons that were created by the “cyber citizens” but these terminologies not reflected and defined by the law. In order to eliminate the communication problems and close the gap between the policies and the technology there is a great need to enact a comprehensive “Cyber law.”
3.1 Introduction

In the fast growing digital society, many digital activities are unveiled every day. Digital activities may contain some form of social and economic values. Although "Digital Asset" is a new concept, it is already a widespread term, and contains many different digital activities and properties in the cyber world. In this study, particular major social networks and email accounts are researched under the "Digital Asset" concept. Digital photo album accounts for instance Flickr, Picasa or Social media accounts such as Facebook, Twitter, LinkedIn, and other major email accounts, for instance, Hotmail, Gmail and Yahoo are analyzed, compared, and contrasted in order to find answers that will explain what will happen to aforementioned digital assets after the initial account owners died? Can they inherit their accounts or not under the current Terms of Services (TOS) of digital service providers or should they? Why these account owners need better law and regulations in order to protect and transfer their digital assets to their beneficiaries?
Some digital accounts that commonly considered “digital assets” are elaborated in this study:

3.2 Social Media and Digital Assets

3.2.1 Flickr


Flickr is digital photo album storage and sharing web account that runs under the Yahoo’s Terms of Services. According to Yahoo’s TOS, there is “No right of survivorship and non-transferability. Yahoo account is non-transferable and any rights to your Yahoo ID or contents within your account terminate upon your death.” Yahoo is very strict with its TOS and gives another ultimatum to its clients. “Upon receipt of a copy of a death certificate, your account may be terminated and all contents therein permanently deleted. No third-party beneficiaries. You agree that, except as otherwise expressly provided in this TOS, there shall be no third-party beneficiaries to this agreement” (Yahoo Terms of Services). Currently, the beneficiaries cannot access to Flickr account without costly legal battle against to Yahoo’s TOS.
3.2.2 Google


All Google’s services including Gmail and Picasa are also under strict TOS and designed to protect Google. According to Google’s TOS there is no reference about the accounts after their owners deceased. Instead, Google prefers a broad legal term to determine the account status “20.7: The Terms, and your relationship with Google under the Terms, shall be governed by the laws of the State of California without regard to its conflict of law’s provisions. You and Google agree to submit to the exclusive jurisdiction of the courts located within the county of Santa Clara, California to resolve any legal matter arising from the Terms” (Google Term of Services). Google is not helpful. In this case any Google account beneficiary should go to court and seek costly legal assistance in order to take over the Google account from a deceased person.

In March 1, 2012 Google changed its TOS and added new option for account owners:

"Currently, it is not possible to transfer profiles or account ownership to another account. However, you can add another user as an account administrator on your account so that they can log in using their
email and have the same privileges as the owner.”
According to Google, each account must have at least
one user with account administrator privileges. The
new Google TOS is close to the solutions opted in
this article but not fully comprehensive yet.

3.2.3 Yammer
https://www.yammer.com/about/terms/
Yammer is a leading enterprise social network owned
and operated by Microsoft. Initially Yammer is used for
private communication within organizations or between
organizations. Actually Yammer was designed as an
enterprise level social networking and microblogging
service. Yammer’s TOS is close to the Microsoft’s general
TOS, however, because of its nature Yammer’s TOS
differentiate a bit. According to the Yammer’s TOS the
account owners may not let the others use the account and
there is no statement in the TOS recognizing the account
as a digital asset.

“You may never use another Member’s account without
permission. When creating your account, you must
provide accurate and complete information. You are
solely responsible for the activity that occurs on
your account, and you must keep your account password
secure.”

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3.2.4 Microsoft

Microsoft and its services are more flexible and helpful comparing to Google and Yahoo. Under the Microsoft’s TOS the users should accept the following contract:

12.3. No third-party beneficiaries
This contract is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors.

12.4. Claims
Claims must be filed within one year. You must bring any claim related to this contract or the service within one year of the date you could first bring the claim, unless your local law requires a longer time to file claims. If it isn’t filed in time, the claim is permanently barred (Microsoft Terms of Use).

However, Microsoft limited the claims time within a year and after that taking over accounts from Microsoft can be more difficult or impossible. It is not clear but the claim should be supported by legal documents, such as death certificate, relationship to the deceased and a will.
3.2.5 Facebook

https://www.facebook.com/policies/

Facebook is an online Social Networking service that enables its members to communicate each other, to share pictures, photos or blogs.

Facebook does not mention about how to transfer the account to the beneficiaries of the deceased person. Facebook generally talks about the regulations between the company and a live person.

Some Facebook TOS regulations may give hints about the usage and fate of the account:

"8. You will not share your password, (or in the case of developers, your secret key), let anyone else access your account, or do anything else that might jeopardize the security of your account (Facebook Term of Services).

9. You will not transfer your account (including any page or application you administer) to anyone without first getting our written permission" (Facebook Term of Services).

Facebook concerns only its own security and contents. The Facebook account owners have no right to make a decision about the fate of their accounts. The Facebook account beneficiaries need to go to the court with proper
legal documents and take over the account via the court order.

3.2.6 Twitter

https://twitter.com/tos

Twitter is an online social networking, messaging and microblogging service that enables its users to send and read text-based messages of up to 140 characters, known as “tweets.” Twitter has its unique TOS that slightly differentiate itself from other Social Networks.

Twitter also does not mention about the transfer or inheritance of accounts after the account owners have deceased. In its TOS, Twitter strictly mentions its account/service ownership. “All right, title, and interest in and to the Services (excluding Content provided by users) are and will remain the exclusive property of Twitter and its licensors” (Twitter Term of Services). In this case the account beneficiaries should seek a legal solution to take over the Twitter account via the court system. The other hope is a enacting a comprehensive Cyber law.

3.2.7 LinkedIn

http://www.linkedin.com/legal/user-agreement

LinkedIn is a social networking website for people in professional occupations. LinkedIn is mainly used for
professional networking. The network connects its members in professional manner, and establishes communication between the members and the potential employers. As of January 2013, LinkedIn reports more than 200 million acquired users in more than 200 countries and territories.

LinkedIn provides a clear explanation at the end of its TOS that show some help. Memorializing Accounts; “If we learn that a User is deceased, we may memorialize the User’s account. In these cases we may restrict profile access, remove messaging functionality, and close an account if we receive a formal request from the User’s next of kin or other proper legal request to do so” (LinkedIn User Agreements). Of course the LinkedIn’s TOS is helpful but still the account owners and their beneficiaries have no right to design and run the account with their own wish. LinkedIn is mostly preferred by professionals who want to introduce themselves to the potential employers and create a personal network among the LinkedIn users.

3.2.8 Fotki

http://help.fotki.com/terms/

Fotki is online photo sharing community. Fotki creates online albums and uploads graphic files to these albums for its registered members. According to the TOS
Fotki has no obligation to the fate of the account or its ownership. Fotki’s basic concern is the copyright problem.

“It is the obligation of the individual members to ensure that the posting of their photos is not violating any copyright. Members are solely responsible for the content of their photo albums. If you feel a member is violating your copyright, please contact that member.”

Fotki, Inc. does not claim any ownership rights in the content of Fotki albums. And the company has no intention to use images for its marketing purposes without obtaining the permission from the content owners.

3.2.9 YouTube

http://www.youtube.com/t/terms

YouTube is video sharing website that helps the video enthusiasts to upload-download and shares the videos. YouTube is strict about its TOS and enforces the users about opening of a YouTube account. TOS strongly emphasizes the users to use only their accounts. Probably the copyrights and origination and essences of the contents in the YouTube videos concern the YouTube for strict account ownership.

A. “In order to access some features of the Service, you will have to create a YouTube or Google account. You may never use another’s
account without permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify YouTube immediately of any breach of security or unauthorized use of your account.”

B. “Although YouTube will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of YouTube or others due to such unauthorized use.”

However, YouTube does not mention the transferability or inheritance of the account ownership. And there is no word mentions that the videos on YouTube should be treated like digital assets for the account holders.

3.2.10 Vkontakte
http://vk.com/terms

Vkontakte (VK) is a Russia based Social network website and available in several languages. In its TOS the VKontakte strictly prohibits the account ownership and warning the users not to transfer, share the login and password to the third parties.

“not to provide other users with access to his/her own personal page or individual pieces of information on
it, if it can involve breach of the Russian legislation and/or these Terms, special documents of the Site Administration;”

“4.9. The login and password chosen by the User are the necessary and sufficient information for the User’s access to the Site. The User does not have the right to transfer his/her login and password to third parties and bears full responsibility for their confidentiality, choosing himself/herself the method of their storage. Using his/her hardware and software the User may permit storage of the login and password (through cookies) for subsequent automatic authorization on the Site.”

Transferring or providing the usage of the VKontakte account is a serious TOS breach according to the VKontakte and there are no actual or implied words about the digital asset concept.

3.2.11 Bebo
http://www.bebo.com/TermsOfUse2.jsp

Bebo is a multilingual social networking site. The most remarkable sentence in the TOS is about the ownership of the content that the account holders submit.

“Bebo does not claim any ownership rights in any Materials that you submit, post, or display on or through the Bebo Service. After submitting, posting or displaying
Materials on or through Bebo or the Bebo Service, you continue to retain all ownership rights in such Materials, and you continue to have the right to use your Materials in any way you choose."

In addition, Bebo website permits the minimum age permit to 13 years old and let them open an account. However, permitting 13 years old people to open an account might cause some legal problems for Bebo. Also, there is no indication in the TOS about the digital asset concept.

"You must be 13 years or older to use the Bebo Service. You should provide true, accurate and complete registration information to be a Bebo member ('Member'), and also maintain the accuracy of this information. As part of the registration process, you will be asked to select a username and password and you will be responsible for all activities occurring under your username and for keeping your password secure."

3.2.12 Multiply
http://multiply.com/terms-and-conditions

Multiply offers several social networking activities in one place. According to the Multiply "Users can create, share and discuss blogs, photos, videos and music with others as well as post reviews of movies and books, or
share a calendar of events." Multiply directs the users opening only one account and not to use others accounts.

"In order to use some of the services on the Website you will have to register with Multiply as a Member. You may not register for more than one Member account, register for a Member account on behalf of an individual other than yourself, or register for a Member account on behalf of any group or entity.

According to Multiply the minimum age limit is 13 for opening an account. However, for shopping the age limit is 18. The variety of age limits may contain some impediments to the Multiply.

"You must be thirteen (13) years of age or older to register as a member of Multiply or use the Website or Service. By using the Website or registering for the Service, you represent and warrant that you are thirteen (13) years of age or older and that you have the right, authority, and capacity to agree to, and abide by, this Agreement."

However, with the next provision Multiply is trying to protect itself and mentions supervision of parents if the users are under the age of 18 and passes the responsibility to the parents or legal guardians.
"Individuals under the age of 18 must at all times use our services only in conjunction with and under the supervision of a parent or legal guardian who is at least 18 years of age. In this all cases, the adult is the user and is responsible for any and all activities."

Although Multiply offers several social networking activities in one place there is no wording about the digital asset concept.

3.2.13 Meetup
http://www.meetup.com/

According to the Meetup the website "helps groups of people with shared interests plan meetings and form offline clubs in local communities around the world." Because the nature of the Meetup website the age limit threshold is minimum 18 years old.

"2.1 Eligibility: Our Platform is available to all individuals who are at least 18 years of age. Our Platform is not available to any temporarily or indefinitely suspended Meetup users. By registering to use our Platform, you represent and warrant that you are at least 18 years of age. Additional eligibility requirements for a particular Meetup Group or Meetup Everywhere may be set by the organizer, co-organizer, or assistant organizer of the
Meetup Group (an "Organizer") or creator ("Creator") or host ("Host") of the Meetup Everywhere."

"2.2 Password and Security. When you complete our registration process you will create a password that will enable you to access our Platform. You agree to maintain the confidentiality of your password, and are fully responsible for all liability and damages resulting from your failure to maintain that confidentiality and all activities that occur through the use of your password."

The Meetup service is a social gathering network. It contains many personal stories and pictures. For some people this website is an important digital asset, however, there is no implied or openly expressed words regarding to the digital asset.

3.2.14 Ning
http://www.ning.com/termsofservice/#def_20

Ning is a customizable social network. Different than other social networks the users can customize the Ning according to their needs or appetites. In Ning’s TOS it mentions inactive account for an "extended period of time" but there is no specific time limit that causes ambiguity.

"Generally speaking, account credentials are non-transferable, but Network Creators will have the ability to reset Member passwords in the event that a
Member loses or can’t remember it. You will be solely responsible and liable for any activity that occurs under your account credentials. Ning reserves the right to log off or deactivate Member accounts, including Your Network, that are inactive for an extended period of time.

At the end the Ning clearly expresses that the account is non-transferable and there is no emphasis about the digital asset concept.

"Ning maintains ownership of your Network Subdomain and grants you a limited, non-exclusive, non-sublicensable, non-transferable, freely revocable, license solely to use the Network Subdomain on the Ning Platform."

3.2.15 Cafemom

http://www.cafemom.com/

Cafemom is especially female gathering social network. "CafeMom is a community where moms come together to get advice and support on topics like pregnancy, health, fashion, food, entertainment, and more." Cafemom is a unique network and while membership is not required it is encouraged to access the full services.

"You do not have to be a CafeMom Member to use this Site. However, only Members can access certain of the
Services (as defined below). Unauthorized access of the Services is prohibited.”

Different than other social networks the Cafemom authorizes the third parties to use the account, however, the original account owner is responsible about the account activities.

“Each Member is responsible for the confidentiality of her/his screen name and password and all usage or activity on her/his account, including use of the account by any third party, whether or not such use is authorized by the Member. Members may share an account (using one screen name and password) if the account is being used for legitimate group discussions and if it is clearly disclosed that it is a group account.”

The major termination criteria is the inactivity of the account for a period of 12 months, in addition after 3 months of account inactivity the website remove the photos in the site.

“CafeMom may terminate any Member’s account at its sole discretion if a Member has been inactive for a period of twelve (12) months. A Member will be defined as inactive if she has not logged into the Site with her screen name and password, or contacted CafeMom in any other manner during such twelve (12) month period. In
addition, if you have been inactive for three (3) months, we may, but shall have no obligation to, take down any photos that you have posted to your profile or anywhere else on the Site.”

In this research all pictures or contents in an account are considered digital assets. Cafemom is not different than the other social networks. Cancelling an account without warning or memorializing is the standard.

3.2.16 Tagged
http://www.tagged.com/

Tagged has a different approach in order to attract the potential social networking clients. “Tagged makes it easy to meet and socialize with new people through games, shared interests, friend suggestions, browsing profiles, and much more.” Tagged hooks the clients through games, common interests, similar profiles or suggestions. However, Tagged members cannot share or use other members’ accounts or passwords; means that the account holders cannot transfer or inherit their account/s to their beneficiaries.

“Without limitation, Tagged reserves the right to terminate your access to and use of the Services if, in our view, your conduct fails to meet any of the following guidelines: Members shall not use the account, username,
or password of another Member at any time or disclose their password to any third party or permit any third party to access their account.

"An account may be terminated at any time, without notice, depending on the severity of the offense, which is determined exclusively at the discretion of Tagged. Tagged is not obligated to provide a Member with a warning prior to removal."

3.2.17 Livejournal

http://www.livejournal.com/legal/tos.bml

Livejournal is a multilingual, global journal or blog where users share common passions and interests. Livejournal is especially popular in Russia. The website Headquarter is in the USA but owned by SUP media in Russian Federation. In this case the website is in the USA jurisdiction. Livejournal eliminates inactive accounts including all contents after specific time frame without warning. All artworks, photos, pictures or anything considered "digital asset" in the content are subject to remove.

"Purging Inactive Accounts: Without limiting the generality of the foregoing, by using the Service, you hereby acknowledge and agree that LiveJournal reserves the right to purge "Inactive Accounts" as part of its general
housekeeping procedures in order to improve site efficiency and performance. This results in permanent removal of all related Content, including, but not limited to, original writing, artwork, design, photos, and links. LiveJournal cannot be held accountable, in whole or in part, for any alleged monetary damages or loss of profits flowing from the removal of said Content during the ordinary course of business."

Inactive Accounts are defined as follows:
a. The user has deleted the Account.
b. The Account has been suspended for a minimum of six months due to violation of the TOS described herein.

3.2.18 DeviantArt

http://www.deviantart.com/

DeviantArt is an art community of artists and those devoted to art. Photography, digital art, themes, wallpaper art, traditional art, skin art, poetry and art prints. The most remarkable TOS in the DeviantArt is the network site does not claim any ownership in the account owners’ content.

"deviantART does not claim ownership rights in Your Content. For the sole purpose of enabling us to make your Content available through the Service, you grant to
deviantART a non-exclusive, royalty-free license to reproduce, distribute, re-format, store, prepare derivative works based on, and publicly display and perform Your Content.”

3.2.19 Pinterest

http://about.pinterest.com/terms/

Pinterest is a content sharing service that allows members to “pin” images, videos and other objects to their pin-boards. The website includes standard social networking features. Pinterest demands accurate and complete account information. The minimum age to access the account is 13 years old. It is also possible that an organization is also can open Pinterest account with the authorization of the company.

“When you create your Pinterest account, you must provide us with accurate and complete information. Any use or access by anyone under the age of 13 is prohibited. If you open an account on behalf of a company, organization, or other entity, then (a) “you” includes you and that entity, and (b) you represent and warrant that you are authorized to grant all permissions and licenses provided in these Terms and bind the entity to these Terms, and that you agree to these Terms on the entity’s behalf.”
Not surprisingly Pinterest only permits non-transferable account to its end users.

"Subject to these Terms and our policies (including our Acceptable Usage Policy), we grant you a limited, non-exclusive, non-transferable, and revocable license to use our Products."

"Pinterest allows you to post content, including photos, comments, and other materials. Anything that you post or otherwise make available on our Products is referred to as "User Content." You retain all rights in, and are solely responsible for, the User Content you post to Pinterest."

It means if users post contents on Pinterest, it still belongs to the end users or digital account owners but Pinterest can show it to people and others so they can re-pin it. The bad thing is if the account owners want to close the account the content will stay in the Pinterest during commercially viable time and others may use, copy or distribute the owners' content. It means that Pinterest does not protect or consider the content as a digital asset.

"Following termination or deactivation of your account, or if you remove any User Content from Pinterest, we may retain your User Content for a commercially
reasonable period of time for backup, archival, or audit purposes. Furthermore, Pinterest and its users may retain and continue to use, store, display, reproduce, re-pin, modify, create derivative works, perform, and distribute any of your User Content that other users have stored or shared through Pinterest.”

3.2.20 Yahoo

Yahoo is an American multinational internet company. Yahoo is widely known for its web portal, search engine Yahoo! Yahoo also gives important information about finance and stock market. Unfortunately Yahoo strictly forbids the third party beneficiaries. In this case transferring or inheriting the accounts to the beneficiaries is very difficult.

“You agree that, except as otherwise expressly provided in this TOS, there shall be no third-party beneficiaries to this agreement.”

Yahoo is really needs to update its TOS because the concept of digital asset is widely finding acceptance in formal and informal life. Everyday a new legislation favors the digital asset concept and Yahoo accounts are part of them.
"No Right of Survivorship and Non-Transferability.

You agree that your Yahoo! account is non-transferable and any rights to your Yahoo! ID or contents within your account terminate upon your death. Upon receipt of a copy of a death certificate, your account may be terminated and all contents therein permanently deleted."

Interestingly Yahoo does not delete the account right away and sets a statute of limitation. So the account beneficiaries have right and time (1 year) to file a claim about the Yahoo account.

"Statute of Limitations: You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Yahoo! Services or the TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred."

3.2.21 Viadeo

http://www.viadeo.com/aide/cgv/

Viadeo spreads to on all five continents; the Viadeo offers business opportunities and network development solutions at both in domestic and global environment to professional people. Members include business owners, entrepreneurs, and managers from a diverse range of
companies. The site is available in English, French, German, Italian, Russian, Portuguese and Spanish.

"You own your personal information. You have a full right of access, modification and deletion of your personal information. You may exercise this right by accessing the APVO Web site, clicking on the "Profile" and "Edit" section and using the tools we have provided to you or by writing to the customer service department at contact@viadeo.com."

Basically Viadeo has no concern about copyright and intellectual property problems. Viadeo let the account users do their best approach. However, this approach is also ignores the fact of digital asset concept.

"We allow each individual to access his Personal Information and allow the individual to correct, amend or delete inaccurate information, except where the burden or expense of providing access would be disproportionate to the risks to the privacy of the individual in the case in question or where the rights of persons other than the individual would be violated."

3.2.22 Fotolog
http://us.fotolog.com/terms_of_use/

Fotolog is multilingual, one of the oldest and largest sites for sharing pictures through online
photo-blogging and social networking website. If there is a one year inactivity Fotolog delete and removes the account with its all content. The digital asset owner will lose all the contents in the website.

"Termination You agree that Fotolog, in its sole discretion, may terminate your use of the Site and Services and remove or delete any Content on the Site, particularly if you do not use the site for a period of 1 (one) year and therefore cannot adhere to these or if you have violated or not you are comply with the letter or spirit of the Terms of Use."

Fotolog is not reliable and doesn’t respect the account owners’ content in the website. If it is lost its lost approach is in the TOS of the Fotolog and shows no concern about the customers’ protection.

"You can always cancel your membership on. Website Disclaimer of Warranties Your use of this Site and the Services at your own risk. The Site and its contents are provided "AS IS." Fotolog is no guarantee that the services provided will not be interrupted or will be error free. Fotolog assumes no responsibility for the availability or content of other services that can be accessed through a link from this Site."

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The website is out of USA jurisdiction and if any digital account owners or their beneficiaries want to claim any right subject to international and French law.

"These terms and conditions are subject to French law. Any dispute will be brought before the courts of the jurisdiction of the Court of Appeal of Paris."

The digital account owners cannot sell their photos or any content in the Fotolog. Therefore any digital asset loaded in the Fotolog might disappear anytime.

"These conditions are concluded between you and Fotolog Inc Company that publishes the website, you cannot sell them. Fotolog is a website oriented "community", based on the exchange and free participation of users. You acknowledge and agree that any content posted on the Site by you will be freely accessible to all users."

3.2.23 Picasa

Picasa is part of Google Inc. and regulated by Google’s TOS. The website is a photo or image organizer and image viewer. Picasa can organize and edit digital photos or images. In addition the users can share their images with the other members or non-members.

Picasa refuses any ownership or intellectual property rights in its services and the digital asset owners'
With its strict TOS Picasa looks like not a content friendly website and requires enforcement of law in order to obtain rights.

"Using our Services does not give you ownership of any intellectual property rights in our Services or the content you access. You may not use content from our Services unless you obtain permission from its owner or are otherwise permitted by law."

However, for the original account owners Picasa gives time and permission to access and preserve their contents if the website stop or account owners cancel the services.

"You can stop using our Services at any time, although we’ll be sorry to see you go. Google may also stop providing Services to you, or add or create new limits to our Services at any time. We believe that you own your data and preserving your access to such data is important. If we discontinue a Service, where reasonably possible, we will give you reasonable advance notice and a chance to get information out of that Service."

3.2.24 Foursquare
https://foursquare.com/legal/terms

Foursquare is a social networking website using mobile electronics device, such as smartphones. Members can find places using a mobile phone, website, text
messaging or applications by selecting from a list of spots that located nearby.

The account owners have no right to protect or preserve their digital assets. As it mentioned in the TOS the users may lost all of their assets immediately without notice, which is not fair.

"Foursquare may terminate your access to all or any part of the Service and/or Add-to Link at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your membership. If you wish to terminate your account, you may do so by following the instructions on the Site."

3.2.25 Friendster

http://www.friendster.com/user_terms_and_conditions

Friendster is a global, multilingual social network that emphasizes friendship, social gaming, sharing the online contents with the others, including sharing videos, photos, messages, dating, finding new events and hobbies. The company based in Kuala Lumpur Malaysia.

Friendster forbids other members or non-members using the account. Although non-commercial approach understandable in the TOS not mentioning the content as an end users' digital asset is not fair.
"The Service and the Website are for the personal use of individual Members only. No Member may copy, transfer or use any names, photos, links, text, data or other content belonging to or posted by Friendster or other Members for the purpose of selling, engaging in, marketing or promoting any other product or service."

Friendster emphasizes the restrictions of the third parties accessibility in its following version of the TOS and also includes organizations or companies may not become members or use the services unless they obey the additional restrictions.

"In addition to the above restrictions, you may not authorize, enable or otherwise grant to any other person, organization, company or business access to your Friendster profile or other content uploaded on the Website for the purpose of extracting such information or other content. Organizations, companies and/or businesses, including third party companies may not become Members and should not use the Service or the Website for any purpose unless they, in addition, agree to the Developer Terms of Service, available on the Website."
3.2.26 Habbo

https://www.habbo.com/

Habbo is the world's largest multilingual virtual hotel and social game and online community for teenagers. Habbo members meet online, make friends, play games, chat with others, create avatars, design hotel rooms etc. Originally, Habbo Hotel was created as a Finnish social networking service aimed at teenagers. The website is owned and operated by Sulake Corporation.

Habbo’s TOS are very similar to other social networking websites. It doesn’t matter if the website is an American or international company the common restrictions are very similar. Habbo doesn’t recognize the digital asset concept and shows no respect to digital account owners’ content. If an account owner did not access the account more than 180 days Habbo cancel or terminate the services without notice.

"without limitation, we may terminate your license to the service or otherwise suspend or terminate your account at any time with or without notice to you if: (a) you breach these terms or any applicable additional terms including without limitation the habbo way; (b) you have not accessed your account for 180 days; or (c) if the service is going to be shut down or merged with other
sites and/or services. In these situations your account license to use the service or a part thereof will be automatically terminated."

Habbo doesn't grant any account access or transferability of the account to the others. In the account profile asking to the account owners to who they want to transfer their accounts would be an easy and fair approach, but Habbo doesn't recognize any content values.

"During the Account creation process, you will be required to select a password ("Login Information"). You shall not share the Account or the Login Information, nor let anyone else access your Account or do anything else that might jeopardize the security of your Account. You are solely responsible for maintaining the confidentiality of the Login Information, and you will be responsible for all uses of the Login Information, including purchases, whether or not authorized by you. You are responsible for anything that happens through your Account."

3.2.27 Hi5

http://www.hi5.com/

Hi5 is a social network to meet and socialize with new people through browsing profiles, games, shared interests, friend suggestions and messages. Hi5 website is based in San Francisco, California.
Hi5 restricts the account ownership with the original account owner and does not recognize any content or digital asset values. Transferring or letting others to access to the account prohibited according to the TOS.

“hi5 does not guarantee that any monitoring it does perform will be to your satisfaction. Members shall not use the account, username, or password of another Member at any time or disclose their password to any third party or permit any third party to access their account.”

3.2.28 MyHeritage

MyHeritage is a multilingual social networking and free genealogy software. With the MyHeritage the users can create family trees and discover family histories, share pictures and videos, organize family events and search for ancestors. The website Headquarter based in Israel and it has more than 1 billion online profiles. The account ownership requires strictly correct information.

“As part of the registration process, you will submit your email address, full name and select a password. You must provide us with true, accurate, complete, and updated registration information. Failure to do so will constitute a breach of this Agreement.”
The minimum age limit is 13 and it depends on the country where the account owner lives.

You must be 13 years or older to use the Service, unless the laws of the country in which you are a resident or from which you are using the Service provide otherwise. Registering and logging in to the Website shall be deemed as confirmation that you are over the age of 13. If you are over the age of 13 but under the age of 18, you will be requested to submit written consent from a parent or legal guardian to use the Service."

MyHeritage website strictly forbids the sharing of the password and letting others to access to the account maybe grounds of termination of the membership. However, the website never mentions the digital account should be considered and treated as a digital asset. The importance of the content is agreed but never considered as an asset. This approach is common wrong almost in all social network websites.

"You are responsible for all usage or activity on the Website via your password. Distribution of your password for access to the Website by others is expressly prohibited and shall constitute a breach of this Agreement. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your
membership, at our sole discretion, and you may be referred to appropriate law enforcement agencies."

3.2.29 Mylife

http://www.mylife.com/user-agreement/

Mylife is (formerly Reunion.com) is a social network service that helps to its members to find relatives, friends and lost loves. Mylife has no intention to consider its members' account as a digital asset. Instead Mylife is over protecting itself by using strong TOS language. Obviously the network users have no right to claim any content values.

"You acknowledge that MyLife.com®, in its sole discretion, may terminate your ID, password, account (or any part thereof), or use of the Service for any reason or no reason, including, without explanation or limitation, if MyLife.com® believes that you have violated or acted inconsistently with the letter or spirit of the Agreement or MyLife.com’s User Agreement."

Mylife can terminate the account at any time without any notices and the account owners have no right to claim any rights. The binding contract is designed only one way to protect the website not the end users. For that reason
a comprehensive Cyber law is necessary to regulate the system and protect the end users.

"MyLife.com® may also in its sole discretion and at any time discontinue providing the Service, or any part thereof, with or without notice. You agree that any termination of your access to the Service under any provision of this Agreement may be effected without prior notice, and acknowledge and agree that MyLife.com® may immediately deactivate or delete your account and/or bar any further access to the Service."

3.2.30 Netlog
http://en.netlog.com/go/about/legal/view=general

Netlog is a social network where users can keep in touch with and extend their relations. It is a multilingual Belgian social networking website targets the Global youth. Users can create their own web pages, publish their playlist, share videos and post their blogs. Netlog formerly known as Facebox and Bingbox.

Netlog does not concern the existence of digital asset and tries to eliminate any possible conflict with the strong language in its TOS. Netlog doesn’t accept any implied or real conflicts or problems and passes the responsibility to the end users.
"By registering you agree that you are providing correct, accurate and true information, and that you have the legal competence to conclude such an agreement. Minors should have the permission of one of their parents or legal guardian before registering. In any case, you should be 13 or older to register on Netlog. Netlog is at liberty to cancel your membership at any time, for any reason and without prior warning. All members are liable for the consequences of using this Website. Massive Media may cease to provide the service, as well as block or delete a membership at any time and without warning. In the case of a conflict with one or more other (non) members, Massive Media will not be liable for any damages of any kind, in the present or in the future, anticipated or unanticipated, known or unknown, which are the result of or concern the said conflict."

3.2.31 Orkut
http://g0.gstatic.com/orkut/html/en-US/additionalterms.orkut.html

Orkut is a Google owned and operated Multilanguage social networking website. The website is designed to help members to meet with new and old friends and retain existing relationships. Google employee Orkut Büyükkökten (Turkish-American) created the website and named after
him. Although Orkut is less popular in the United States it is one of the most visited websites in India and Brazil.

Orkut bound by the Google’s TOS. Orkut TOS is not different than other social networks. As we know Google’s TOS is not flexible and considering the Orkut users’ as a digital asset owner is not recognize by the Google Inc. yet. The TOS designed to protect the Orkut and Google. End users’ rights are not part of the language yet. However, Orkut and Google might change their TOS soon in order to recognize the digital asset ownership and protect the end users.

"By using Orkut and any data or information accessed from Orkut, you agree to be bound by the (i) Google Terms of Service (including without limitation all disclaimers, exclusion of warranties and limitations of liability contained therein), (ii) the Privacy Policy that is incorporated here by reference, (iii) Orkut’s Community Guidelines also incorporated here by reference and (iv) these additional terms and conditions set forth below. These terms, taken together, are referred to as “the Agreement” below. If you are under 13 years of age, then please do not use Orkut. Google reserves the right to
refuse service to anyone at any time without notice for any reason.”

3.2.32 Hotmail

http://windows.microsoft.com/en-us/windows-live/microsoft-services-agreement

Hotmail is a free web based email system created and owned by Microsoft. It is officially called Microsoft Hotmail, previously Windows Live Hotmail and MSN Hotmail and currently Outlook.com. Hotmail was one of the first web-based email services that was started in 1996 and acquired by Microsoft in 1997. Microsoft wants account access minimum every 270 days. If not Microsoft may cancel and terminates the account and its content.

“The Microsoft branded services require that you sign into your Microsoft account periodically, at a minimum every 270 days, to keep the Microsoft branded services portion of the services active, unless provided otherwise in an offer for a paid portion of the services. If you fail to sign in during this period, we may cancel your access to the Microsoft branded services. If the Microsoft branded services are canceled due to your failure to sign in, your data may be permanently deleted from our servers.”
The Microsoft's Outlook.com TOS does not recognize the digital asset concept and the importance of the content values for the end users. The TOS says "your content remains your content" but Microsoft can cancel or terminate the email accounts and their content at any time without notice. In this case there is no protection for the digital account owner (end users).

"Content includes anything you upload to, store on, or transmit through the services, such as data, documents, photos, video, music, email, and instant messages ("content"). Except for material that we license to you that may be incorporated into your own content (such as clip art), we do not claim ownership of the content you provide on the services. Your content remains your content, and you are responsible for it. We do not control, verify, pay for, or endorse the content that you and others make available on the services."

Microsoft strictly prohibits the third-party beneficiaries. The account owner has no right to transfer and inherit their email accounts and the content.

"No third-party beneficiaries: This agreement is solely for your and our benefit. It isn't for the benefit of any other person, except for Microsoft's successors and assigns."
3.2.33 Yelp


Yelp, Inc. is a local business directory service and review site with social networking features.

Looking for local restaurants, pubs, gas station, shopping places or other local attractions Yelp can help.

“As between you and Yelp, you own Your Content. We own the Yelp Content, including but not limited to visual interfaces, interactive features, graphics, design, compilation, including, but not limited to, our compilation of User Content and other Site Content, computer code, products, software, aggregate user review ratings, and all other elements and components of the Site excluding Your Content, User Content and Third Party Content.”

In the content concept Yelp categorizes it as Yelp’s content and end users’ content. While Yelp makes sure that there is proper protection of its content part, it is ambiguously recognizing the end users’ content.

“As such, you may not modify, reproduce, distribute, create derivative works or adaptations of, publicly display or in any way exploit any of the Yelp Content in whole or in part except as expressly authorized by us. Except as expressly and unambiguously provided herein, we
do not grant you any express or implied rights, and all rights in and to the Site and the Yelp Content are retained by us.”

Yelp expects the end users' contribution to the website and if not happy Yelp can close any end users' account at any time with no reason. This is a big problem for totally unprotected end user accounts. Thus, the expected Federal Cyber bill should cover all the digital account holders' rights and the contents in their digital assets.

“We reserve the right to close your account at any time for any or no reason.

Your account is for your personal, non-commercial use only. In creating it, we ask that you provide complete and accurate information about yourself to bolster your credibility as a contributor to the Site.”
CHAPTER FOUR
EVALUATION

All social media should consider as digital asset. Digital asset inheritance is a global concept now. The Cyber world is trying to understand what the digital assets are and bring solutions to the Digital asset related problems including inheritance. The ambiguity and gray areas in the digital asset inheritance upset many "Digital Asset" users around the globe. Several inconveniences and hardships upset the account beneficiaries for not accessing their loved ones digital accounts after they pass away. For example, a Chinese woman last-named Wang in Shenyang, capital of northeast China's Liaoning province claimed access to her deceased husband's QQ account but was refused by the service provider (Xinhua News Agency, 16 October, 2011). According to the Terms of Services of QQ, users do not own their QQ accounts, but are only granted a limited right to use them as an end user. QQ’s TOS mentions that the right to use an account belongs exclusively to the original applicant, and “this right shall not be gifted, loaned, rented, transferred or sold” (QQ’s TOS, Xinhua News Agency, October 16, 2011). The impediments of not able to use
loved ones social media also a humanistic problem which could be another study topic. This problem could be solved if Chinese government enact new laws and regulate the usage of digital accounts between the digital service providers, account owners, and the beneficiaries.

In the USA the digital account inheritance is also a problem, and comparable to China, for example; Justin Ellsworth, a marine killed in Iraq. Prior to his death in 2004, Ellsworth regularly emailed his daily life to his father John via a Yahoo account which is similar to China’s QQ. In the Ellsworth case, the Yahoo’s Terms of Service stated that his account was non-transferrable (Gehner, J. News Gazette, 21 August 2011). After his son was killed John wanted to obtain all the emails his son had sent to him and others. John Ellsworth had to go to probate court, where a judge eventually ordered Yahoo to provide that account to John Ellsworth (News Gazette). The process was pricey, lengthy and frustrated.

In order to get help for regulating and designing the digital asset inheritances there are several companies offer services; for instance Assetlock Internet Company, http://www.assetlock.net or Legacy Locker, http://legacylocker.com, these companies provide services that allow people to access, delete, update, or transfer
digital account information after a loved one or friend passed away. However, the procedure is costly and time consuming. Instead of going to the court system and seeking costly legal procedures or paying high fees to digital assets management companies, it would be better off enacting new Cyber law to regulate the "Digital Assets" that can help people to convey their rights to their beneficiaries smoothly without any extra financial cost or burden. However, there are several obstacles before enacting laws about the digital assets. First of all the number of users in the digital society are the clients of digital service providers and these clients are considered "end users" not the "digital asset" owners.

The new legislation should define what a "Digital Asset" is first and subsequently who are the digital asset owners. Digital citizens do not own the digital service providers' services such as Hotmail, Gmail, Yahoo, Flickr, Facebook and Twitter but they are the "end users" of these services. When people open an email account or a social media account the service providers dictate the rules via the TOS and the end users usually accept them with no choice. Currently, the digital account users have no right to negotiate the way of account set up and/or make a decision about the fate of the account or claim "digital
asset” ownership. It is called a “contract” between the digital service providers and the end users; however, a contract should contain some options and negotiation initiatives between the parties.

In the current TOS, consumers’ rights are obviously ignored and violated. In this case, current legal concept of TOS is also questionable and should not be legally binding the “end users.” A new Cyber law should clearly define and regulate the digital accounts and digital assets. The law should explain and protect the rights of digital account owners and consequently how to convey the digital accounts or digital assets to the beneficiaries.

Digital service providers have a simple approach. Basically, digital service providers create a digital account service for living people. According to the digital service providers’ the “spirit” of Term of Services (TOS) conclude that, if the account owner died the digital account should lose its validity and be closed. However, this approach is not only wrong or unfair it is also unethical. For example, an individual goes to XYZ bank and opens an account with $1 deposit. Assuming the account owner added more money and the account could reach $10,000 before he/she died. If he/she did not leave a will, the beneficiaries automatically should share the
amount of the money according to the law. Same approach should occur when a digital account owner opens for example a PayPal account, Facebook account, email account, a digital photo file or digital music file accounts that could reflect a kind of monetary or personal value at the end.

At the beginning, the account may not have any value, but over the time, progressively, the account might build some monetary and social values or content. The account owner may have money in his/her PayPal account after if an item sold in eBay or added valuable digital pictures on Flickr account until he/she died or the Facebook account may reached valuable content that can be significant for the account beneficiaries.
CHAPTER FIVE
SOLUTIONS

As a quick solution, before opening a new account digital service providers should ask potential members if they want to bequeath their digital assets to others after they die. A short survey can provide sufficient information about the future usage of the digital accounts. Digital accounts to be bequeathed may include passwords, instructive memos and potential digital account beneficiaries’ names and addresses under the guidelines of Terms of Services (TOS).

An example of a short survey while opening a digital account:

a. Do you want to bequeath the usage of your account if you die?
b. Who are the account beneficiaries?
c. Phones, emails and addresses of beneficiaries?
d. Do you want to memorialize your account?
e. Or do you want to close and totally remove your account after you die?

In the latter case the account should be deleted by the service provider after the account owners’ death is legally proven or not accessed for a certain amount of
time by the user. The amount of time should be declared in the account contract (state or federal laws overwrite the time limit). While establishing a digital account, if beneficiaries are not named at this time then the account is subject to the prevailing laws. If beneficiaries are provide, then the set up account is considered a legal documents, and as such court orders, wills, trust will be subject to the laws of the state or country of origin.

The digital accounts/assets should be treated like a bank account or valuable, similar to tangible and intangible assets. The digital asset/account owners and beneficiaries should know that their rights are protected by law.

Unfortunately, currently, there is no federal law and regulation to protect people’s “Digital Assets.” However, at this time five states have enacted law regarding to digital assets and expecting more states in the near future.

• Oklahoma HB2800: Control of certain social networking, micro blogging or e-mail accounts of the deceased

• Connecticut Public Act No. 05-136: An Act Concerning Access to Decedents’ Electronic Mail Accounts
• Rhode Island HB5647: Access to Decedents’ Electronic Mail Accounts Act


• Idaho SB1044: Control of certain social networking, micro blogging or e-mail accounts of the deceased

Rhode Island and Connecticut enacted the law and established some basic rules to regulate the email accounts. Oklahoma’s law is a bit more comprehensive. The law not only regulates the email accounts. The law specifically indicates “Digital accounts”, so the digital account can be email, blogging, social media, eBay, PayPal or any account that has been determined as ‘Digital account” according to the law. Oklahoma law passed on November 1, 2010. The law allows executors to access delete or administer digital accounts of deceased people. The law says: “The executor or administrator of an estate shall have the power, where otherwise authorized, to take control of, conduct, continue, or terminate any accounts of a deceased person on any social networking site, any micro blogging or short message service website or any email service website.” (Bill No. 2800, is sponsored by
Rep. Ryan Kiesel, and Dorman and Murphey of the House and Rice of the Senate, Oklahoma State).

Oklahoma House Bill 2800 recognizes that digital assets need to be included in estate plans and be recognized as an important part of the total estate. Probably, in the near future there will be more states across the country to follow these five states. Hopefully, digital service providers will recognize the vitality of the "Digital Account" concept for people and will start to change their Terms of Services (TOS) to allow people to decide what they want to do with their digital accounts after they pass away. In fact, some digital service providers might have already started to change their TOS in order to comply with the law forthcoming and provide their users better TOS and let them to decide the fate of their accounts such as if they want to transfer, inherit, memorialize or delete their digital accounts after they die. Digital asset owners also need to be informed and educated by the digital service providers, media and lawyers about the importance of the "Digital Assets" and if they want to include the "Digital Assets" in their estate plans or portfolio.

Recent legislations are important milestones to show the future characteristics of digital assets that need to
be in the nationwide and perhaps globally. The law receives its driving sources from the new facts, necessities and changes in the society. New laws are going to change the Terms of Services of most digital account service providers, such as Facebook, Twitter, LinkedIn, Yahoo, Google and others. Most importantly, the law indicates that the digital account owners and their beneficiaries have the rights and ownership to any content on the websites. The Information Technology is reshaping the world and the legislators should act fast enough to close the gaps. In this case the Congress should go into action and play its historical role immediately.
CHAPTER SIX
CONCLUSION AND FUTURE WORK

It is not easy to predict the future of the digital assets but it is easy to say that digital assets are already part of the digital society. Especially, increasingly popular social media, cloud storages and financial services over the internet make digital assets more attractive, convenient, valuable and consequently more important than before. Similar to bequeathing tangible and intangible assets, people want to give their “Digital Assets” to their beneficiaries after they die. Because of lack of legislations and regulations, the concept of “Digital Asset” causes ambiguity between the digital account service providers and the account users. The ambiguous digital environment makes the concept problematic, unfair and unproductive. So far five states have enacted laws that related to digital assets and estate planning. Especially Oklahoma State’s law is an important milestone that covers the broader concept of digital asset, but not enough to solve and regulate digital world’s mounting problems. Consequently, enacting “Federal Cyber Law Act” is imminent in order to regulate
the “Digital Assets” and other cyber problems in the United States.

The fast growing digitalized world population or cybercitizens are integrated to each other via the internet. It would not be wrong to say that internet is the only global government without borders. In this digital world, every day, new technological and social requirements manifest new cyber rules that could be “cyber law” eventually. The cyber world is dynamic enough to create its own rules; however, these scattered rules need regulation in order to better serve to the national and global cyber community. A “globally uniform cyber law” will not only better regulate the “Digital Asset” but cyber problems should find an answer in a globally accepted cyber manifesto. United Nations or any globally recognized institution may play important role to distribute, regulate and enforce the “Global Cyber law” to the “Global Cyber Citizens.”
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