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Digital Inheritance and Conflict-of-Laws Issues in its Legal Regulation

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Abstract: The global spread of digitalization has transformed how people create, manage, and store personal property, giving rise to a new legal domain known as digital inheritance. As individuals increasingly accumulate digital assets such as email accounts, cryptocurrency, social media profiles, and cloud-based content, legal systems are struggling to address the post-mortem fate of these assets, especially in cross-border contexts. This article examines digital inheritance through the lens of private international law and conflict-of-laws issues, offering comparative insights from different legal systems and practical recommendations for harmonization. The article also focuses on Uzbekistan's emerging approach, highlighting legal gaps and opportunities to develop a progressive framework for regulating digital succession.

Key words: Digital assets, inheritance law, private international law, conflict of laws, digital legacy, blockchain, cross-border succession, Uzbekistan, digital wills, applicable law.

Introduction. The inheritance of property is a long-established institution of civil law. Traditionally, inheritance law has focused on tangible or clearly defined financial assets—real estate, vehicles, bank accounts, and physical valuables. However, the growing reliance on digital technologies has led to the creation of new types of assets that exist solely in digital form, often stored on servers located in different jurisdictions and governed by the private contracts of multinational corporations. These digital assets may include social media accounts, email records, cryptocurrency wallets, domain names, non-fungible tokens (NFTs), online gaming avatars, and cloud-stored intellectual property.

This shift has created a pressing need to address "digital inheritance," a relatively new legal concept that deals with the transmission of digital assets after death. The issue is further complicated when the deceased's digital estate includes assets or accounts managed by foreign service providers, hosted on international servers, or protected by privacy laws or user agreements that prohibit posthumous access.

Private international law (also known as conflict of laws) provides a framework to resolve legal questions involving more than one jurisdiction. In the realm of digital inheritance, it offers a path to determine the applicable law, competent court, and enforceability of foreign judgments. However, existing conflict-of-laws principles often fail to account for the unique nature of digital assets—especially their decentralized, locationless, or pseudonymous characteristics.

This article aims to explore the regulation of digital inheritance from a private international law perspective. Specifically, it addresses the following core questions:

- What is the legal nature of digital assets in the context of inheritance?
- How should courts determine applicable law when digital assets are located across borders or in cyberspace?
- What are the key challenges and inconsistencies in regulating digital inheritance internationally?
- What can be learned from comparative legal models in Europe, the U.S., and Asia?
- How can Uzbekistan develop an effective legal framework for managing digital inheritance and resolving related conflict-of-laws issues?

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

To answer these questions, the article proceeds in several stages. First, it defines digital inheritance and classifies digital assets by their legal nature. Second, it examines how traditional conflict-of-laws rules apply (or fail to apply) to digital succession. Third, it conducts a comparative analysis of legal frameworks in selected jurisdictions. Fourth, it considers the current state and future potential of Uzbekistan's legal system in this area. Finally, the article provides policy recommendations for the development of a harmonized and modern digital inheritance regime.

What Is Digital Inheritance?

Digital inheritance refers to the process by which a deceased person's digital assets and accounts are transferred to heirs or managed by fiduciaries according to the law of succession. Unlike traditional inheritance—centered on tangible property—digital inheritance encompasses a wide spectrum of intangible, electronically stored, and frequently decentralized data and accounts.

"Digital inheritance" means the transmission or succession of digital assets—ranging from social media and cloud data to cryptocurrency and domain names—from a deceased person to their legal heirs, in accordance with national inheritance laws and subject to international private law where applicable.

This notion encompasses not only the ownership of digital content but also the rights to access, control, and manage digital identities and virtual properties post-mortem.

Legal systems are still grappling with how to classify and regulate digital assets. Based on scholarly writings digital assets can be grouped into three main categories[1]:

While physical assets are generally presumed to be inheritable under law, digital assets often raise questions due to:

- *Contractual Restrictions*: Many platforms impose license agreements that terminate upon death, or bar access to third parties.
- *Technical Barriers:* Lack of passwords, multi-factor authentication, and encryption prevent heirs from accessing assets.
- *Jurisdictional Complications:* The assets may be stored in different countries, or governed by foreign laws.

Example: A user's Apple iCloud account may store critical family photographs and financial data. However, under Apple's TOS, heirs must present a court order to access this data—often limited by local data protection laws.

Digital inheritance is important for several reasons:

1. Economic value – Cryptocurrencies and NFTs can represent significant wealth.
2. Emotional value – Family photos, videos, and messages hold sentimental significance.
3. Intellectual property – Creators often store original works online, whose copyrights outlive the author.
4. Data protection and privacy – Preventing abuse of digital identities posthumously.

CLASSIFICATION AND LEGAL NATURE OF DIGITAL ASSETS. The legal treatment of digital assets is foundational to resolving inheritance claims, especially when determining their transferability, assignability, and value. Whether digital assets are classified as property, contractual rights, or a sui

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Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

generis category affects whether they may be inherited, and which legal norms apply—particularly in cross-border scenarios.

There is no uniform global standard for classifying digital assets. However, most approaches fall into three theoretical categories:

In civil law jurisdictions (e.g., Germany, France), digital assets may be considered property ("Vermögen" or "biens"), allowing them to be inherited like other estate components. For instance, cryptocurrencies stored in digital wallets are increasingly recognized as property under German law (BGB), making them inheritable.

Example: In Germany, the Federal Court of Justice (BGH) ruled in 2018 that Facebook user accounts are inheritable as part of the general law of succession.

In common law systems (e.g., United Kingdom, USA), digital accounts are often governed by contracts between users and service providers. In such cases, user rights may be classified as licenses—non-transferable and extinguished at death unless the contract says otherwise.

Example: U.S. platforms such as Yahoo or Google often cite user agreements to deny access to heirs, even with probate court orders.

Tokenized and Blockchain-Based Assets.

Cryptocurrencies (e.g., Bitcoin, Ethereum) and NFTs (non-fungible tokens) present additional complexities:

- They are decentralized and not stored on any national server.
- Ownership is defined by possession of private keys.
- No central authority exists to assist heirs in recovering them.
- Legal systems have begun adapting:
- In **Japan,** cryptocurrencies are classified as "property" under the Payment Services Act.
- In **Switzerland,** crypto-assets are treated as property and subject to inheritance.

However, most countries lack procedural rules for post-mortem access.

Problems in Valuation and Jurisdiction. In terms of **valuation,** digital assets fluctuate wildly—especially cryptocurrencies. Courts may be uncertain whether to use date-of-death value, date of transfer, or average.

In terms of **jurisdiction,** decentralized assets challenge the idea of lex situs (law of the asset's location), a core principle in traditional conflict-of-laws doctrine.

Conflict-of-Laws Issues in Digital Inheritance. In the digital age, individuals are increasingly accumulating assets that exist solely in virtual environments. These include not only cryptocurrencies and tokens stored on blockchain networks, but also cloud-stored documents, email accounts, digital media libraries, websites, and social media profiles. When a person dies, the question arises: what happens to these assets? The issue becomes more complex when these digital assets are tied to platforms or servers in multiple jurisdictions, or when the heirs of the deceased reside in different countries. This complexity brings into focus the field of private international law—commonly referred to as conflict of laws-which governs the resolution of legal issues that span across multiple legal systems.

At the heart of conflict-of-laws issues in digital inheritance lie three interconnected questions. First, which court has jurisdiction to hear a case involving digital assets of a deceased person? Second,

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

which law should be applied to determine the rights and obligations concerning those digital assets? Third, how should foreign judgments or probate decisions involving digital property be recognized and enforced, particularly when assets or service providers are located abroad?

Traditionally, the determination of applicable law in inheritance matters has relied heavily on the doctrine of **lex situs**-the law of the location of the property. For tangible movable or immovable assets, this approach makes sense: a house in France is subject to French inheritance law, a bank account in Germany is subject to German succession rules. However, digital assets are intangible, often decentralized, and may not have a clearly identifiable situs. A cryptocurrency wallet may be accessible from any device worldwide, and a Gmail account may be hosted on mirrored servers in multiple countries. This raises the fundamental question: **can digital assets be said to have a situs in the traditional sense at all?**

The lex situs doctrine begins to unravel in the face of these realities. Some commentators propose that for digital assets, situs should be determined by the location of the user (i.e., the deceased), the place where the service contract was concluded, or the domicile of the service provider. Yet none of these approaches is wholly satisfactory. For instance, a German national living in Uzbekistan with a Facebook account stored on servers in Ireland raises the possibility of at least three different applicable laws.

To circumvent these challenges, some legal systems have begun to shift towards **habitual residence** as a connecting factor in inheritance matters. The **European Union's Succession Regulation No. 650/2012** is a leading example. It provides that, as a general rule, the law applicable to the succession of a deceased person is the law of the state in which the deceased had their habitual residence at the time of death. Importantly, the regulation also allows individuals to designate the law of their nationality as the applicable law in their will, thereby introducing **party autonomy** into the field of succession. However, this Regulation applies only to EU member states and excludes from its scope questions concerning the nature of digital assets and their classification under national laws.

In contrast, **the United States** has approached the matter primarily through **contract law and fiduciary access statutes**, notably the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). Under this model, access to digital assets after death depends on whether the deceased granted express authorization through a will, trust, or an online tool provided by the platform. However, even with authorization, access may be denied if it conflicts with federal statutes such as the Stored Communications Act (SCA), which restricts disclosure of electronic communications without user consent. Furthermore, since service providers often operate under user agreements that specify jurisdiction and governing law, conflict-of-laws issues may be resolved in favor of the service provider's home state, often in the U.S., regardless of the deceased's nationality or residence.

The situation becomes even more complex in relation to **blockchain-based assets,** such as Bitcoin, Ethereum, or NFTs. These assets are not held on any server but instead exist on a distributed ledger, accessible only through a private key known to the owner. In the absence of access to this key, even a favorable court decision becomes meaningless. As such, in blockchain succession, the conflict-of-laws problem is not merely legal—it is technical. Courts may declare an heir entitled to a wallet's contents, but unless the heir has or can lawfully obtain the cryptographic key, they cannot access or transfer the asset. Jurisdiction and applicable law may therefore become irrelevant unless accompanied by effective legal-technical infrastructure.

One further complication is the interplay between **succession law and data protection laws,** particularly in jurisdictions governed by the **EU General Data Protection Regulation (GDPR).** While the GDPR does not apply to deceased persons, several EU member states have enacted national laws that extend privacy protection post-mortem. This can create a conflict between the rights of heirs to access a deceased person's digital assets and the deceased's right to posthumous privacy. In some

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

jurisdictions, courts have sided with family members—such as in the 2018 German Federal Court case allowing parents to access their deceased child's Facebook messages—while others have enforced platform terms of service that prohibit disclosure.

Jurisdictional issues also arise when heirs attempt to enforce probate rulings or court orders in countries where digital service providers are based. Most providers, including Apple, Google, and Meta (Facebook), require a court order from a local court—often in the United States—before they will release account contents, regardless of foreign rulings. Even where access is granted, service providers frequently cite **Terms of Service (TOS)** that define digital content as non-transferable licenses, which expire at death and are not part of the estate.

Another challenge is the absence of multilateral treaties governing digital inheritance across borders. While some bilateral treaties on judicial cooperation may provide for the recognition and enforcement of foreign probate decisions, these are typically geared toward tangible or financial assets—not digital ones. The lack of harmonization creates uncertainty, delays, and additional costs for heirs and estate administrators.

To address these problems, legal scholars and practitioners have begun calling for **international harmonization** of conflict-of-laws rules as they apply to digital assets. Proposals include expanding existing frameworks—such as the Hague Conference's work on the recognition of foreign wills—to explicitly include digital assets, or developing new model laws under the auspices of UNCITRAL. Until such efforts materialize, national courts will continue to apply traditional private international law doctrines in ways that may be inconsistent, unpredictable, and ill-suited for the digital age.

In sum, the regulation of digital inheritance in cross-border scenarios exposes the limitations of traditional conflict-of-laws tools. Digital assets challenge the definition of situs, complicate jurisdictional analysis, and frustrate enforcement across borders. Without harmonized principles and recognition mechanisms, testators and heirs alike remain subject to legal uncertainty, fragmented solutions, and, at times, complete legal vacuum.

The European Union: Succession Regulation and National Variations. The European Union has taken a significant step toward harmonizing conflict-of-laws rules in cross-border inheritance through **Regulation (EU) No. 650/2012,** known as the **EU Succession Regulation.** This regulation applies in all EU member states (except Denmark and Ireland) and governs jurisdiction, applicable law, recognition, and enforcement in matters of succession.

- The general rule is that **the law of the deceased's habitual residence** at the time of death governs the entire succession.
- **Party autonomy** is recognized: the deceased may opt for the law of their nationality to govern their succession.
- A **European Certificate of Succession** enables heirs to prove their status across member states.

This framework provides legal clarity in traditional succession cases, but it is less effective when applied to **digital assets**, especially where classification of such assets remains unclear under national law. For example:

- **Germany** recognizes digital assets as part of the estate. In the **BGH Facebook decision (2018),** the Federal Court ruled that a deceased child's social media account passes to the parents as heirs, just like physical diaries or letters.
- Other EU countries, like **France,** are more restrictive and emphasize privacy and data protection post-mortem. French data law requires express consent before digital data may be disclosed to heirs.

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

Moreover, the EU Succession Regulation does not address ***lex situs*** problems for intangible assets, nor does it require platform compliance with court orders originating outside the provider's home jurisdiction.

The United States: RUFADAA and the Primacy of User Consent. In the United States, the legal framework is fragmented, due to the federal system and absence of a uniform national succession law. Most states have adopted the **Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA),** which attempts to balance the rights of heirs with user privacy and service provider obligations.

- Allows individuals to designate digital asset access through ***online tools or testamentary instruments*** (will, trust).
- If no express authorization is granted, fiduciary access is limited or denied.
- Service providers are generally not compelled to disclose contents of communications (e.g., emails) without user consent due to the **Stored Communications Act (SCA).**

In practice, access to digital assets in the U.S. remains heavily dependent on:

- The deceased's prior explicit consent
- Platform-specific rules
- State adoption and interpretation of RUFADAA

Critics argue that this places too much power in the hands of digital service providers, and risks undermining traditional inheritance principles, especially where families lack knowledge or technical means to manage digital accounts.

Japan: Recognizing Digital Property and Cryptocurrencies.

Japan is among the more proactive countries in adapting its legal system to digital realities. It has officially recognized **cryptocurrency as property** under the **Payment Services Act,** thereby bringing it within the scope of civil succession.

- Japanese courts have ruled that heirs may succeed to cryptocurrency holdings.
- Discussions are ongoing about how smart contracts and blockchain-based wills may be integrated into existing civil law frameworks.
- Japan's Civil Code allows for testamentary freedom, and recent cases have shown openness to the idea of digital wills.

Nevertheless, conflict-of-laws principles in Japan continue to rely on traditional situs rules, which may be impractical for decentralized assets. Furthermore, posthumous access to foreign-managed platforms (e.g., Google, Facebook) remains governed by foreign law and user agreements.

Singapore: A Digital Economy Law Leader. Singapore, with its strategic focus on digital economy leadership, has begun considering digital inheritance as part of its broader legal modernization efforts. While comprehensive legislation on digital succession is still developing, the country has taken steps in related areas:

- The **Personal Data Protection Act (PDPA)** is among Asia's most advanced privacy frameworks.
- Singapore courts recognize **digital evidence and assets,** and its judiciary is known for being tech-forward.
- The **Monetary Authority of Singapore (MAS)** has issued guidance on digital tokens, classifying some as financial assets, potentially subject to inheritance.

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

Singapore has not yet enacted a statute equivalent to RUFADAA, but draft proposals under discussion include mechanisms for:

- Appointing digital asset executors
- Creating registries of digital holdings
- Authorizing automatic transmission of credentials via legal smart contracts

In terms of conflict-of-laws, Singapore generally follows **common law principles,** including lex situs and lex domicilii, but courts have discretion to adjust where rigid application leads to unjust results.

UZBEKISTAN'S LEGAL FRAMEWORK AND PROSPECTS. Uzbekistan, like many post-Soviet legal systems, continues to evolve its civil law traditions in response to new technological developments. As of today, the country does not have a specialized legal framework governing digital inheritance, nor has it comprehensively reformed its conflict-of-laws rules to account for digital assets. However, ongoing digital transformation strategies and legal reforms provide an opportunity to position Uzbekistan as a forward-looking jurisdiction in this domain.

Current Legal Landscape. Uzbekistan's **Civil Code** (1996) governs general inheritance law but does not contain provisions specifically dealing with digital assets. Under Chapter 35 (Succession Law), the estate of a deceased person may be inherited by law or by will. The definition of "property" (mulk) in the Code traditionally refers to tangible and financial assets, with no reference to intangible digital content.

Similarly, the **Law on Personal Data (2019)** provides general protection for personal data but is silent on the treatment of such data after death. As such, there is a **regulatory vacuum** concerning:

- The legal status of social media, email, or cloud-stored content
- Access to digital accounts by heirs
- Succession to cryptocurrency or tokenized assets
- Judicial procedures for handling digital estate disputes

Furthermore, **Uzbekistan's conflict of laws rules**-derived in part from the 2001 Law on Private International Law and general PIL principles—rely heavily on lex situs, lex domicilii, and nationality. These rules do not adequately address digital assets that lack a clear situs or are governed by foreign platform contracts.

There are signs of institutional awareness of the importance of digital legal reform. Uzbekistan has adopted:

- The **Digital Uzbekistan 2030 Strategy**, which outlines digital governance initiatives.
- A **Digital Economy Law (2023 draft)** which includes references to digital rights and digital property but does not address inheritance or private international law implications.
- Regulatory sandboxes in the fintech and blockchain sectors, through which legal innovation may be tested.

These developments create a foundation for further work on **digital succession regulation,** especially through civil law modernization.

In order to address the current legal gap and align with international practice, the following steps are recommended:

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

1. **Explicitly Recognize Digital Assets as Part of the Estate**
   Amend the Civil Code to include digital property as a category of inheritable assets. This should include cryptocurrency, online accounts, and virtual intellectual property.
2. **Enable Testamentary Digital Consent Mechanisms-**
   Allow individuals to include digital access and asset directives in wills or digital vaults recognized by law.
3. **Designate Judicial Procedures for Digital Inheritance-**
   Establish clear probate procedures for accessing encrypted or protected digital assets with court authorization.
4. **Create a National Digital Succession Registry-**
   Provide an optional system for individuals to register digital assets and access wishes before death.
5. **Modernize Conflict-of - Laws Rules-**
   Adopt habitual residence or law of nationality for succession to digital assets. Create exceptions to lex situs in cases of decentralization.
6. **Engage with International Forums**
   Participate in UNCITRAL and Hague Conference work on digital asset succession to ensure harmonization and cross-border recognition.

The intersection of digital inheritance and private international law represents one of the most pressing and underdeveloped areas of contemporary legal regulation. As individuals increasingly live their lives online and accumulate digital assets—ranging from cryptocurrencies and cloud-stored intellectual property to social media profiles and email archives—the need to ensure the lawful transmission of these assets upon death becomes both a legal and societal imperative.

Conclusion. Traditional legal doctrines governing inheritance—especially those rooted in tangible property concepts, territorial jurisdiction, and lex situs principles—have proven inadequate in addressing the complexities of digital assets. These assets are often intangible, decentralized, globally distributed, and contractually governed by private corporations. As a result, the application of classic private international law frameworks such as situs or domicile has led to legal uncertainty, inconsistent outcomes, and procedural barriers to enforcement.

This article has demonstrated that while some jurisdictions—such as Germany, Japan, and select U.S. states—have taken progressive steps to recognize digital assets as part of the decedent's estate, there remains a lack of harmonized global approaches. Notably:

- The **European Union's** Succession Regulation provides a coherent jurisdictional and applicable law framework based on habitual residence, but its application to digital assets remains dependent on national interpretations.
- The **United States** relies on state-by-state adoption of laws like RUFADAA, placing substantial emphasis on user consent and contract law, which often leads to exclusionary practices by service providers.
- **Japan and Singapore** have initiated the formal recognition of digital assets in civil law and fintech regulation, but lack fully developed inheritance mechanisms and international coordination.

Against this backdrop, **Uzbekistan** finds itself at a critical juncture. While its current legal system does not directly address digital inheritance or the conflict-of-laws issues it presents, the country's broader digital transformation strategy offers an opportunity to craft forward-thinking legislation. There is potential for Uzbekistan to leap ahead by adopting clear legal definitions of digital assets, establishing

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

testamentary access mechanisms, and revising its conflict-of-laws rules to reflect the non-territorial nature of digital property.

The legal and practical challenges analyzed in this article suggest several key conclusions:

1. **Digital assets must be explicitly included in the definition of inheritance property.** The absence of such recognition leaves heirs vulnerable and digital legacies at risk of being lost or locked away permanently.
2. **Terms of service and platform contracts should not override national succession laws.** Contractual clauses denying post-mortem access should be subordinated to legally valid wills or court orders within a transparent legal framework.
3. **Lex situs as a choice-of-law principle is no longer suitable.** Digital assets often lack a physical location. Therefore, habitual residence or party autonomy should serve as more appropriate connecting factors for succession law in cross-border cases.
4. **Judicial cooperation must be enhanced across jurisdictions.** Without treaties or multilateral mechanisms for the recognition of probate decisions involving digital assets, court orders remain unenforceable across borders.
5. **Heirs face serious technical and legal obstacles to accessing digital property.** Even where inheritance rights exist, without passwords or cryptographic keys, access is impossible. Law and technology must therefore be aligned, for instance by enabling legal escrow services or key custodianship agreements.
6. **Data protection and posthumous privacy rights must be carefully balanced.** While protecting the deceased's dignity and privacy remains important, overly restrictive data regimes can hinder lawful succession and deprive heirs of their rights.
7. **International harmonization is essential.** A model law or guiding principles—perhaps under UNCITRAL or the Hague Conference—should be developed to promote legal certainty, interoperability, and mutual recognition.

For **Uzbekistan,** this moment presents a rare opportunity to position itself at the forefront of legal modernization in Central Asia. A comprehensive reform package that includes:

- Civil Code amendments,
- Digital wills regulation,
- Specialized probate rules for digital assets,
- And modernized conflict-of-laws principles

can enable the state to better protect its citizens' digital legacies while promoting legal certainty, economic growth, and digital justice. Moreover, participation in international dialogues on this subject will help Uzbekistan align its domestic laws with global standards, paving the way for transnational recognition of its judgments and ensuring that Uzbek citizens are not left behind in the rapidly evolving digital legal order.

In conclusion, digital inheritance is no longer a niche topic reserved for technology lawyers or estate planners. It is a fundamental matter of intergenerational equity, personal dignity, and legal certainty in the 21st century. A harmonized, rights-based, and future-proof legal approach is not only necessary—it is inevitable.

Volume: 4 Issue: 8 | Aug–2025 ISSN: 2720-6882
http://journals.academiczone.net/index.php/jiphr

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