

Legal Adaptation of Digital Estate between Transfer and the Right to Privacy

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Abstract

Technology has become a slogan for this era, and a starting point for the advancement of services that the world has not seen throughout history, including the acceleration in this era by providing more means and mechanisms that enable man to harness the environment around him, the World Wide Web has imposed patterns of behaviours and traditions, which caused the creation of challenges to legal concepts, and among those new concepts that need to be legally addressed is the electronic inheritance, which means all the electronic property left by the deceased whose content is of value, in which the personal aspect predominates over the financial aspect. Such as Facebook, Twitter, Tiktok, YouTube, and all videos and audio recorders published in it, or unpublished, and the course of their legal wording revolve around a question: How portable or inheritable are these rights after testators death? When testing both possibilities, we must adapt the subject with the right or money, and adapting it creates a risk of violating the right to privacy, because it is considered by personal right, and therefore cannot be transferred or inherited after the inheritor, and in the light of the above, we believe that it is necessary to discuss finding legal solutions to the issue, especially since the Iraqi legislator left the issue unaddressed.

Keyword: Digital Estate, The Right to Privacy, Inheritance, Transfer of ownership

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1. Introduction

The communications and information technology revolution has led to many new issues and concepts that require legislative intervention to address them. The most prominent of these issues is the digital legacy, as the emergence of computers and the Internet has led to the emergence of many digital programs, social networking sites, personal pages, commerce, websites, and other digital assets that do not have a physical presence. The problem is raised about the extent to which these assets can be transferred to the heirs after the death of their owners, as the legal nature of these digital assets must be determined and adapted within a range of legal classifications of rights, i.e. is it considered property or does the owner's right not exceed benefit or use and other, as these digital assets are sometimes related to the personality of the deceased, and accessing it means nothing but a violation of the privacy of the deceased, so there is a conflict between the right of the heirs and the right of the deceased, and this raises a legal problem about the extent to which the right to privacy extends beyond death. Therefore, the reason for choosing this topic is the emergence of resorting to social platforms, electronic transactions, trading in digital currencies and possessing them, as the death of the owner of these digital assets raises legal problems about the extent to which these rights are transferred to the heirs and the extent to which companies are obligated to disclose the secret number of the heirs to access the digital estate, as well as delving into the controversy raised about the adaptation of digital assets, whether they are transferred to the heirs or should they be deleted and completely refuted, taking into account the deceased's right to privacy? In order To reach the desired results of this research, we divided the research into three main sections, preceded by an introduction and followed by a conclusion, and we devote a paragraph to talking about the nature of the digital estate and addressing its legal organization, then we talk about the extent of the permissibility of inheriting the digital estate, and then we talk about the controversy

between the right to transfer the digital estate and the deceased's right to privacy, then we conclude by discussing several results and recommendations as follows:

2. The Concept of Digital Estate and its Legal Regulation

The concept of digital inheritance needs to be explained, clarified and its terms defined. The legal organization of digital inheritance also helps us to reach the desired results of the research, so we will discuss each of them as follows:

2.1. The Concept of Digital Estate

2.1.1. The Emergence of Digital Estate and its Inheritance

After the invention of the Internet, the digital legacy began to appear in the seventies of the last century, especially after the invention of "USENET" in 1979 (Matthew Shames, 2005), but the idea of inheriting the digital legacy did not appear until after the parents of the American soldier (Justin Ellsworth) who was killed in the Fallujah battles in 2004 filed a lawsuit against Yahoo to obtain the password for their son's personal email, and the judiciary decided to oblige the company to enable them to obtain the email and give them the secret number, and this lawsuit, according to our knowledge, is the first appearance of the idea of transferring the digital legacy to the heirs (Jabry Yassin, 2022: 300). This lawsuit also opened the door to discussion about the extent to which the digital legacy can be transferred and the extent to which it conflicts with the right to privacy of the deceased or the extent to which this right continues after death.

2.1.2. Definition of Digital Estate

2.1.2.1. Estate

The word estate in the Arabic language refers to a garden that people neglect and do not tend to (Al-Farabi, 1987: 4, 1557), or it is what a person leaves and remains. (Al-Jurjani, 1983: 56), the word estate in English refers to all the "possessions and money that someone owns when they die". (dictionary.cambridge.org, Estate, 2024)

The estate is idiomatically defined as: "remaining as the property of the deceased." (Al-Naysaburi, 1982: 135, 2) It is clear from this definition that the estate, according to this trend, is related to what falls within the scope of ownership, and accordingly, everything that is not considered the property of the deceased is not transferred to the heirs. Some have also defined it as: "what the deceased leaves of money absolutely" (Sayed Sabiq, 1977: 604, 3) It is worth noting that this definition focuses its attention on money rather than ownership, and money is more specific than ownership; Because the benefits of the assets are considered to be property and not money, and money means: "what nature inclines towards and can be saved for a time of need" (Abdulaziz, 268, 1) and the Iraqi legislator has taken this approach in defining the estate by saying: "The

inheritance is the money of the deceased that the heir takes” (Note: Article (86/A-3) of the Iraqi Personal Status Law No. 188 of 1958), and there are those who expand the scope of the estate to include the transfer of money and rights by saying: “The estate is what a person leaves behind after his death of money, rights and specializations” (Abdul Karim, 1421 AH, 205).

2.1.2.2. Digital

Digital is known by different definitions. Doug Hodges defined it as the process of converting intellectual content available on a traditional physical storage medium into a digital form (Abdul Rahim Muhammad, 2021: 2043). It was defined in the Oxford Dictionary as “Designating a virtual, computer-mediated counterpart of an object that exists in the physical world” (Oxford English Dictionary). The Cambridge Dictionary also defines it as the use of an electronic system that converts sounds or images into signals in the form of numbers according to the principles of electronics (cambridge.org).

It is possible to use the word "digital" reciprocally with the word "electronic", as the word "electronic" refers to means, devices, programs, sounds and tones created according to the principles of electronics, and thus there is a relationship between the term "digital" and "electronic" (Webster dictionary).

2.1.2.3. Definition of Digital Estate

The combination of the word “estate” and “digital” makes it clear what is meant by “digital inheritance,” which refers to the digital assets left behind by the deceased. The digital estate is new in its emergence, and there are major jurisprudential attempts to define it. Accordingly, the electronic estate is known by many definitions that are close to each other. Some have defined it as: “E-mail accounts, social media, and images stored on the Internet, in addition to official documents and services via the Internet” (Rana, 2023: 315) this definition is flawed, as it mentions examples without setting an objective standard or specifying the characteristics of the electronic estate, it also does not include data stored on physical media such as USB drives.

Some have called digital legacy digital assets, saying: “Digital asset means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record”. It is noted that this definition adapts the location of the electronic estate to the right or the interest, and there is a clear The right is an interest protected by law, as the law protects the right, and the right has no value if the law does not approve and protect it, but the interest is sometimes not protected by the law.

Another defined it as “digital things whose content consists of values in which the personal aspect predominates over the financial aspect, i.e. the non-financial

consideration is stronger than its financial consideration, as in social networking pages and what they contain of comments, posts and likes, e-mail, personal video clips, photos, books and files, personal messages, mobile phone content, intellectual and social activities of the person on the Internet, and other forms, which the person possesses according to an emotional motive or his own taste, or according to the requirements of the job or the government, political or administrative position and other motives". (Khaled, 2012: 290).

There are Some classify the digital legacy among things and thus define it as: "is a collection of digital objects belonging to the deceased, such as social media accounts, email, data repositories, digital currencies, domains, and other virtual assets, this also includes digital copies of personal documents, photographs, creative works, and other electronic content". (Shaimardanova, 2024: 53)

It is noteworthy that Microsoft defined digital assets as: "a digital estate is an abstract reference to a collection of tangible owned assets. In a digital estate, those assets include virtual machines (VMs), servers, applications, data, and so on. Essentially, a digital estate is the collection of IT assets that power business processes and supporting operations" (microsoft.com). It is worth noting that the use of the word (tangible) does not mean actual touch, but rather this word is used for everything is "real and able to be shown or touched" (Cambridge dictionary) and the digital estates can be shown therefore it is true to use the word of "tangible" for definition it.

It is clear from the previous definitions that what is meant by digital inheritance is everything that the deceased leaves behind of intangible things, which are either "digital things" or "digital objects" or "tangible owned assets". Accordingly, the idea of digital estates conflicts with the idea of a physical thing that can be possessed, as it does not have a tangible reality and cannot be possessed. Accordingly, there is what is called digital assets, where it says: "Digital assets are intangible property and are neither a thing in possession nor a thing in disposition" (DIFC LAW NO. 2 OF 2024, part1:9), It is worth noting that this definition is more accurate than the previously mentioned definitions, as it specifically specifies the characteristics of the digital estate, and it cannot be controlled or possessed physically. Accordingly, we do not see the need to define it and we choose it as a definition of the digital estate.

2.1.3. Types of Digital Estate

The digital legacy is divided into several types depending on different considerations. For example, it is divided according to the method of storage into digital assets stored over the Internet and assets stored on physical devices. It can also be

divided into other types, but what served this research is dividing it according to its financial value or lack thereof, as it is divided into two parts as follows:

2.1.3.1. Financial Digital Estate

Digital financial estate means everything that does not have a physical existence, created according to the principles of electronics, and has a financial value, i.e. it can be evaluated in money, as the Iraqi civil legislator stipulated in Article (55) that: (Property is every right that has a financial value), i.e. it can be evaluated in money, and Islamic jurisprudence stipulates in determining the meaning of money that the thing be possible to possess, and the possibility of benefiting from it in a usual way (Muhammad Ali Mahjoub, Al-Wasit, n.d: 253). Based on the above, there is a group of digital assets that can be evaluated in money, either because they have an intrinsic value or because they bring money to their owner, as follows:

1- Digital financial assets with intrinsic value: This type of digital financial assets has intrinsic monetary value, as is the case with digital currencies such as Bitcoin, Dogecoin, Ethereum, Solana, and other digital currencies (Hassan Muhammad Omar, 2024: 2149). Non-fungible tokens (NFTs) are also digital assets with monetary value, as their total sales reached \$ 2.5 billion in. Electronic game accounts or some game elements can also be sold and valued for money, such as selling people, selling tools, or selling fake gold in the game World of Warcraft, which is called Gold Farming. It also includes files, programs, and some applications (Rana Saad, 2023: 316). Everything we mentioned has become known and can be valued for Money, but from a legal or legitimate perspective, we will discuss it in its place.

2- Digital assets that are a source of money: There are some digital assets that are considered financial assets, because they are a source of money, such as YouTube channels, social networking sites such as Facebook, TikTok, and websites where bring money by publishing videos, pictures and other posts, or by allowing commercials or other things to appear. It is worth noting that game accounts are sometimes a source of money by displaying the game on other sites, especially if the account is advanced and strong.

2.1.3.2. Personal Digital Estate

There is another category of digital assets, which are personal digital assets, which are attached to a specific person and his identity and usually contain a set of personal information and data that are not disclosed to the public or disclosed but are protected by the right of privacy (Hazam Fatiha, 2022: 667). This category includes images, videos, writings, and electronic files stored in cloud storage such as Google Drive, iCloud, or Dropbox, or stored on a computer, hard drive, flash drive, or in Google Drive.

Some require that images and videos be personal in order to be included in this category. This category of digital assets has a characteristic in that they do not have any financial value, i.e., they cannot be valued in money, but rather have a moral or emotional value, such as private messages on social media sites or his posts on those sites or on other sites. These messages may have an emotional value for the heirs, but rarely have a financial value, and therefore are excluded from the category of financial digital assets and are included within personal or non-financial digital assets (Rana, 2023: 351), However, these personal assets may sometimes have a financial value, which is why some call them digital assets with two similarities, so that they are neither purely financial nor purely personal (Hassan Mohammed Omar, 2024: 2167).

2.2. The Legal Organization of Digital Estate

There is no doubt that when new issues begin to emerge, the legislator does not care to organize them immediately after they appear, as the issue is sometimes left unresolved due to not reaching the stage of legislative maturity. However, the issue of digital inheritance has exceeded this stage and reached a point that requires legislative intervention to organize it and bridge the gap in this aspect (Aziza Khamis, 2023: 172). However, we find that the legislator in Arab countries in general and in Iraq in particular left the issue without a special legislative organization for it. Rather, we find that the Dubai International Centre issued Law No. 2 of 2024 regarding the organization of digital assets and explained their concept, characteristics, and identification of their types, and approved the inheritance of digital assets in paragraph 13 of Chapter Three, without entering into the organization of the inheritance issue, but rather referred it to general principles. It is worth noting that the Iraqi legislator issued the Electronic Signature and Electronic Transactions Law No. (78) of 2012, which addressed the definition of some issues that may be related to the subject of digital inheritance, such as the definition of electronic means, but the Iraqi legislator explicitly stated in (Article 3/First/A) that the law does not apply to personal status matters. One of the first laws that regulated the provisions of digital inheritance worldwide is the California Digital Assets Act No. AP 691 of 2016, which was later adopted by other states. (everplans.com, State-by-State Digital Estate Planning Laws).

3. Digital estate between the permissibility of inheritance and its impermissibility according to the law

Legal jurisprudence differed on the issue of transferring the digital estate into two sections. One section tended to recognize the transfer of the right to the digital estate. This trend is called the documentary school, as it sees the necessity of preserving digital data and accounts by companies that provide the service to enable the heirs to access that data and accounts. The physical estate should also be transferred to the heirs as part

of the financial estate of the deceased. There is also a trend that sees the necessity of cancelling that data and digital assets after a period from its publication or from the death of the account and data owner, which leads to not recognizing the transferability of those assets to the heirs. Accordingly, we present below the trend supporting the transfer and the trend rejecting it based on determining the nature of the deceased's right to digital assets, as follows:

3.1. Jurisprudential Trends for Recognition the Right of Transfer of Digital Estate

A large part of jurisprudence has tended towards the digital estate being transferred to the heirs or to the legatee, because they classify the digital estate either as property of the deceased or because the heirs have the right to transfer the estate, as follows:

3.1.1. Classifying Digital Estate as a Property Right

The Iraqi legislator stipulates the transfer of ownership by inheritance, so whenever we qualify the right of the deceased in the digital inheritance as a property right, this means recognizing its inheritability, as indicated by Article (1106) of the Iraqi Civil Code No. (40) of 1951, which states that "the heir acquires by inheritance the movable and immovable property and the rights existing in the inheritance." There are those who rely on the phrase "the rights existing in the inheritance" by saying that it includes the transfer of ownership of the digital inheritance by inheritance, as this phrase is flexible and can keep pace with developments and new cases, so Arab jurisprudence tends to qualify the right of the deceased in the electronic inheritance as a property right in the legal sense (Abdul Nasser Ziad Hayajneh, 2016: 6), but there are those who also qualify it as property, taking into account that it does not apply to material objects, so it approaches the elements of intellectual property (Rana, 2023: 336 and 337). It is concluded from the above that the digital inheritance is considered a property right and therefore, as a general rule, it is inheritable.

3.1.2. Classifying Digital Estate as a Right of Succession "Haq Al-Intiqal"

The will has a major role in the field of transactions, and this role, according to the laws in force, disappears a lot in the field of personal status law and inheritance issues in particular, so that the will does not have a role in the subject of inheritance, unlike the will, but there is a trend that gives an important role to the will in determining the fate of ownership of digital assets after the death of the right holder (Hassan Mohammed Omar, 2024: 2159), and this matter is very close to the concept of the right of transfer in the subject of the right of disposal. The Islamic state had many lands, and the Ottoman state gave the right to dispose of these lands to some people on the condition that they have the right to exploit those lands forever while keeping the ownership in the hands of the state, and determined the method of transferring this right after the death of its

owner, provided that the famous rule in inheritance is not applied, which is (the male has the share of two females), but rather the male and female are equal in this right, and the reason for the distinction between inheritance and the right of transfer for some is that the transfer is a grant from the state to some of the heirs of the disposer (Musaffa Majeed, 1978: 341 and 343), as the state is the one that gave this right And he has the right to determine the method of its transfer, and based on that we see that large companies such as Meta, Google and others, when they allow the user to open an account on their network, the company has the right to determine the method of transferring ownership of this service and benefiting from it, so we can call this right the right of transfer, and this is what differs from inheritance, because the matter is related to two aspects and not one aspect, where in abstract ownership, such as someone who owns a piece of land owned purely, there is no other party to the matter, but there is a right holder who leaves his right, this right is inheritable, but if another person has a right to the ownership of the property or to how to provide the service and create it or maintain the service and provide it, this means that another person has a relationship with the matter and accordingly it is possible to address it by giving the authority to companies to participate in how to determine the transfer of the service or right to the heirs.

3.1.3. Adapting digital inheritance as intellectual property right

By examining the provisions of the laws related to copyright and related rights, it becomes clear that it is possible to adapt the right of the owner of digital assets to intellectual property rights, and this is what some have gone to (Hassan Muhammad Omar, 2024: 2197), and this is what is clear from Article (Third / Paragraph 10) in the Copyright and Related Rights Law of the Kurdistan Region-Iraq No. (17) of 2012, which considered computer programs among the works covered by legal protection, and based on Articles Seven and Eight of this law, moral and financial rights are inheritable, so that the heirs have the right to withdraw from publishing everything that affects the personality of the author, and based on the above, it becomes clear that adapting the right of the author in digital assets to intellectual property rights leads to recognizing the possibility of transferring the digital estate to the heirs.

3.2. Jurisprudential trends prove the impermissibility of inheriting digital inheritance

3.2.1. Classifying Digital Estate As a right of usufruct

Some have tended to adapt the right of the testator in the electronic estate as a usufruct right and not a right of ownership, and this leads to the inability to inherit digital assets according to the Iraqi Civil Law No. (40) of 1951, as Article (1250) thereof

stipulates that “the right of usufruct is acquired by contract and by will...” Article (1253/1) also stipulates that the right of usufruct ends with the death of the beneficiary, and accordingly, no matter how we adapt the user’s right in digital assets as a usufruct right that cannot be inherited according to Iraqi law, Muslim jurists differed on the extent to which the right of usufruct can be inherited, as the Hanafis see that benefits cannot be inherited at all, and some see that benefits restricted by time are not inherited, while the majority tended towards the inheritability of the right of transfer if its cause is a lease or a will, and otherwise it is not permissible to inherit it (Abdul Rahim Muhammad, 2021: 2055 and 2056).

3.2.2. Classifying the Digital estate as a right of use

Some have tended to adapt the user’s right to digital assets to the right of use, and the argument for this is that there are some clauses stipulated in the usage contract for the use of Yahoo accounts and others on the right of the company providing the service to cancel the account when it is not used for a certain period, and this is evidence of removing the user’s right from the scope of the right of ownership, but rather entering the circle of the right of use (Rana Saad Shaker, 2023: 332), and it is worth noting that this matter is also included in the right of disposal, as it is forfeited if it is not used after three years according to Article (1233) of the Iraqi Civil Code, and by referring to the legal provisions, it becomes clear that the right of use is not transferable according to Articles 1265, 1250 and 1253 of the Iraqi Civil Code.

4. The dialectic of the relationship between the transfer of digital estate and the right to privacy

4.1. Definition of the right to privacy

The right to privacy is known by many and varied definitions, and on this basis some see the impossibility of defining privacy in a comprehensive definition of all its parts and components, but we have chosen some definitions that are consistent with the nature of our topic, and some have defined it as: "It is the right of the individual to decide for himself when and to what extent others can see his private affairs" (Zaid Luqman Ismail, 2023: 155). This definition made the individual's right to freely disclose his private matters with the right to privacy, so this definition is not successful. Also, there are those who defined it as: "The right of every person to deal with his private life as he sees it and to keep his secrets that others should not see" (Boukar Rashida, 2022: 68), and also defined it by part of American jurisprudence as: "It is seclusion, that is, the right of a person to a quiet life." It is worth noting that the previous definitions are not successful in determining the meaning of the right to privacy and clarifying its elements, as it is permissible to violate a person's security and his right to a quiet life

without affecting the right to privacy, but we found that the American judiciary defines it as: "A person spends his life "Away from publicity" (Adhraa Yasser, 259), this definition is based on one of the most important elements of the right to privacy, which is confidentiality and non-disclosure of all information and personal data and non-disclosure to the public. This may not be disclosed to people, such as secret correspondence exchanged between him and others, or the work he has done, or the information he has searched for. Disclosing this information is a violation of the person's privacy, so this definition is more accurate than the previous definitions. It is worth noting that the right to privacy according to the previous definitions applies in the case of life, so there is a problem about the extent to which the right to privacy extends beyond death, which should be clarified.

4.2. The extent to which privacy ends with death

Legal jurisprudence and the judiciary differed regarding the fate of the deceased's privacy after death in the absence of clear legislative treatments regarding the extent to which the right to privacy extends beyond death into two directions, which are:

The first trend: American jurisprudence and judiciary went to the end of the privacy of the deceased with his death, as this trend sees that American laws do not stipulate the extension of the right to privacy beyond death, but rather everything that exists aims to protect the individual's interest in controlling his personal data and information, and once he dies, he loses this control over that data, and therefore the right to privacy ends with death (Hazam Fatiha, 671), and this trend is reflected in the definition of the right to privacy as we explained previously, as it is that "a person spends his life away from publicity", so it is specific to the state of life and ends with death, and the French judiciary in the case (Francois Mitterand) in 1999 went to the fact that the right to privacy ends with death because this right is limited to the deceased and does not transfer to others (Hazam Fatiha, 2022: 673).

The second trend: This trend recognizes the privacy of the deceased absolutely, so it extends after death, and this is what French and Arab jurisprudence has gone to, except for Iraqi jurisprudence, and this trend was adopted by the French legislator in the Digital Republic Law of 2016, where Article (40/1) indicated that a person has the right to organize the fate of his digital estate after his death, but if the owner of the digital assets does not exercise this right, the right to manage the digital assets is transferred to the heirs (French Digital Republic Law of 2016). It is worth noting that English jurisprudence and German judiciary tend towards this trend so that they do not allow the transfer of the digital estate, but rather they recognize the privacy of the deceased on those assets, so they see it necessary to destroy that personal information and not

transfer it unless it is related to national security or a court ruling is issued allowing it to be transferred, otherwise it should be erased after a awhile of time. (Jubiry Yassin, 2022: 314).

Based on the above, it becomes clear to us that the trends are divided into two sections: the trend that rejects privacy absolutely, and the trend that rejects transfer absolutely. However, it is possible to reach a middle trend by referring to the position of Islamic jurisprudence, as Islamic jurisprudence has set controls for what is not permissible to transfer, by saying: “What is related to the soul of the deceased, his mind and his desires is not transferred to the heir” (Abu al-Abbas Shihab al-Din al-Qarafi: 3/276). This matter is an affirmation of the possibility of inheriting digital assets unless looking at them leads to revealing secrets related to his life, However, Islamic jurisprudence took a middle position represented in the ruling originally permitting the transfer of all assets of the estate, even if they are characterized by personality, but this transfer is restricted or conditional on the things that are transferred by the estate not including what degrades the reputation of the deceased or violates his sanctity, otherwise the transfer of such assets is prohibited, but they are not considered part of the inheritance; Because one of the conditions for something to acquire the status of an inheritance after death is that it be valuable, as previously stated (Al-Zuhayli. 1985: 2879), and accordingly, the origin in Islamic jurisprudence did not take into account the idea of extending privacy after death, which is similar to the Anglo-American trend, but privacy can be taken into account after death whenever its neglect or violation leads to the violation of the sanctity and dignity of the deceased, and thus it can be said that Islamic jurisprudence took into account the extension of the right to privacy after death as an exception, not as a principle.

4.3. The balance between the right to privacy and the transfer of personal digital assets

It is clear to us from the above that digital financial assets are transferred to the heirs, but the transferability of personal digital assets is controversial, as those who believe that privacy extends beyond death do not allow the transfer of those assets, and those who believe that privacy ends with death allow the transfer and inheritance of those digital assets. Islamic jurisprudence also permits the transfer of those assets to the heirs, but it should not lead to violating the sanctity of the deceased and revealing his secrets. Accordingly, it is possible to reach some mechanisms to find a kind of balance between the right to privacy of the deceased and the right of the heirs to inherit digital assets, and this can be presented as follows:

4.3.1. The consent of the deceased: The will of the person is a general restriction on the principle of the right to privacy, and through this restriction, any person with full legal capacity may agree to the violation of his privacy (Al-Jabouri, n.d.: 289-290); therefore, many websites or service providers have become accustomed to taking the opinion of the user who has

contracted with them regarding the issue of data and information related to private life and the extent of his consent to announce or publish it and to appoint a person to represent him after death. Among these companies that have done this are Facebook and Amazon. This company has established in 2015 the Legacy Account service, meaning inheriting the account after death by having the account holder choose another person to hold his account after his death (Cristiano Maciel and Vinicius Perera, 2015: 344). Amazon, a company that carries the most famous websites for selling books in the world, has also established a limited license service for the personal representative to inherit the deceased's subscription, provided that the website company is provided with a copy of the death certificate.

4.3.2. The interest of the heirs: The heirs may have an important interest that goes beyond cancelling the account of their deceased after his death, and this interest may be economic, such as if it were a commercial store, an account, a financial subscription, or advertising revenues that belong to the deceased from a website or YouTube, where the deceased's personality or family name is taken into account, which requires that it be transferred to the heirs and that it cannot be sold or valued in cash, and this interest is the basis for the transfer and there is no dispute over it (James D. Lamma, Christiano L. Kunz, Damien A. Riele and Peter John, 2014: 389), or the interest may be non-economic, i.e. emotional or literary, despite its financial origin, such as pictures, poems, videos, audio clips, etc., i.e. it expresses an important symbolic value in the souls of the heirs of the deceased or the legatee, and digital things that include emotional values are very common and are mostly represented in social media accounts such as Facebook, Twitter, and email (James D. Lamma, Christiano L. Kunz, Damien A. Riele and Peter John, 2014: 390). This type of inheritance is the result of the modern secretions created by digital technology, which has become an important legal and social phenomenon that required the intervention of legislation to find solutions for it, as in the case of the American soldier (Cropwell Alisoht) and the extent to which the court sought to find a balance between the deceased's family in obtaining his email because of the moral values it contains and the privacy and personal considerations of the deceased, but in the end the court favored the interests of the heirs and considered this a legal and logical justification that requires acknowledging the necessity of transferring the digital inheritance to those entitled to it, regardless of the principle of the right to privacy. (Branbo, 2012: 20).

However, the privacy of the deceased must be fully preserved and not violated. Therefore, whenever the court finds that digital assets result in money, they must be transferred to the heirs, because the heirs have more right to financial rights than the service provider company. However, personal, undisclosed and confidential messages and information must be closed, and the deceased's consent must be taken into account regarding the right of others to view information that is not disclosed to everyone. Even if the deceased did not express consent sometimes, the transfer of those personal digital assets must be allowed in consideration of the interests of the heirs. Therefore, the balance is achieved by approving the transfer of digital assets while preserving the privacy of the deceased and not violating his sanctity or viewing what he did not want to view during his life.

4.4. Legal obstacles associated with the transfer of the Digital estate

The digital estate, as we have previously explained, cannot be transferred to the heirs or to the legatee in some cases, as there are some legal obstacles that hinder the transfer of the digital estate, such as its conflict with public order or the indivisibility of the digital estate or its conflict with the service provision agreement, as follows:

4.4.1. The subject of the Digital estate violates the public order

There is a difference between countries in dealing with some digital assets, especially digital money such as Bitcoin, as this type of digital assets are financial assets that can be transferred as a general rule, but many countries prohibit dealing with them, or impose penalties on violators, including Algeria, Qatar, Saudi Arabia and Kuwait (Rand Muhammad Muhaimin, 2023: 69), and the Central Bank of Iraq issued a statement in 2021 warning against the use of these cryptocurrencies, indicating that it does not guarantee such currencies or provide legal protection for those who deal with these currencies (Central Bank of Iraq, 2021), and the Iraqi Fatwa House issued a fatwa prohibiting dealing with these currencies from the perspective of Islamic law, and based on Article 2 of the Iraqi Constitution, it is not permissible to enact a law that conflicts with the constants of the provisions of Islam, and based on all of the above, if the deceased has digital currencies, there is no legal protection for these currencies and no legal means to request their division by the heirs, due to their violation of public order. Likewise, the permissibility of the money obtained from YouTube and other digital assets that bring money to their owner depends on the extent of the legitimacy of the digital content or advertisements that appear on digital platforms. The content and advertisements must be permissible according to Islamic law so that the money obtained from them is legitimate. However, if the content is legitimate and the advertisements are forbidden, there are those who see it as permissible and those who see it as impermissible (Hassan Muhammad Umar, 2024: 2187).

4.3.2. The right of transfer conflicts with the right to privacy

If the digital inheritance is a personal digital asset, it cannot be transferred to the heirs because this would violate the privacy of the deceased's correspondence. For example, if the law stipulates that the deceased's personal account be transferred to his heirs, the heirs may view his personal messages (Haider Ghazi Faisal, 8). Article 40 of the Iraqi Constitution of 2005 states that "Freedom of communication and correspondence, whether postal, telegraphic, telephone, electronic, or otherwise, is guaranteed. It is not permissible to monitor, eavesdrop on, or disclose them except for legal and security necessity and by a judicial decision." It is worth noting that this article is absolute, and the absolute is applied in its absolute form unless there is evidence of compliance. Therefore, this protection extends beyond death, and the privacy of the deceased may not be violated except by a judicial decision and only in cases of necessity. Therefore, it is not correct to rule that everything that the deceased leaves to the heirs is admissible upon his death, because the general rule is that non-financial rights or those

related to the personality of the testator are not transferred to the heirs (Abdul Razzaq Ahmed Al-Sanhouri, 2011: Vol. 9, p. 90).

4.3.3. The indivisibility of the Digital estate

If we look at the types of digital inheritance, it becomes clear that some of them are not divisible, and this is an obstacle to dividing digital assets among the rightful heirs. However, if they can be valued in money, this is not a problem. Rather, the court sells them at a public auction and then divides their value among the heirs, i.e., it resorts to liquidation arrangements. However, sometimes these assets do not have a material value, but rather have an emotional or moral value, so they cannot be valued in money at all, as in the case of social media accounts that do not bring money. In this case, it is possible to resort to temporal arrangements to divide the benefit or use it. Therefore, the indivisibility of money may be an obstacle to the transfer of the digital inheritance, as the digital environment has a special nature (Hassan Muhammad Omar, 2024: 2188). However, the right of the heirs to joint management may be a solution to this case.

4.3.4. The right of transfer conflicts with the service provision agreement

Mostly when a user opens a personal account on social media platforms and other sites, he must agree to the company's usage policy, which is a contract concluded between the company and the user. Therefore, companies differ among themselves in setting terms and how to use them. Therefore, companies often give themselves the right to how to deal with the digital estate after the death of its owner. Therefore, there are those who allow trusted parties, even if they are not among the heirs, to access those accounts and the data contained therein in full, such as Google. There are other companies that only give specific powers to control digital assets, which is what Facebook calls the "recommended contact." Accordingly, this agreement signed by the deceased is a legal obstacle to the transfer of those digital assets according to the inheritance law. However, this matter is a new way to deal with the digital estate, and thus goes beyond the rules of inheritance. Accordingly, it is called the digital will (Aziza Khamis et al., 2023: 171). However, the sequence of sources of governance should not begin with the contract, followed by the law. Rather, there should be special legislative rules that precede the terms and provisions of the contract, because submission to this matter may lead to harm the heirs, and accordingly the terms of the contract should not be valid if they conflict with the law of the deceased's nationality, and this conflict occurred in the historical case that led to the emergence of the idea of the digital estate and its conflict with the right to privacy, so that after the killing of the American Marine Justin Ellsworth, Yahoo adhered to the usage policy and the terms of the agreement, so it adhered to the right to privacy and did not give the secret number to the family of the deceased, but after the court ruling was issued, it implemented the ruling and left the contract ruling (Matthew Shames, 2005), and accordingly the terms of the contract as long as they conflict with the applicable laws or with the court ruling It should be not apply against the heirs.

4.4.5. The right to be forgotten

Some have pointed out that this principle is an obstacle to the transfer of the digital estate to the heirs, because according to this principle, every person has the right to request the modification, correction, or complete deletion of his personal data, while the transfer of these assets means the continuity of the existence of this data and its non-deletion (Hassan Muhammad Omar, 2024: 2182), but this matter is not an obstacle to the right of transfer, because the deceased before his death has the right to request its deletion, but after death, the heirs do not have the right to delete the data related to and published before the deceased unless they have a legal justification that allows this, and accordingly, the right to be forgotten ends with the death of the right holder, and this right is not transferred to the heirs, meaning that they do not have the right to delete accounts and personal information if the nature of these accounts and information or digital assets in general was published to be eternal, such as publishing research, articles, opinions, and books electronically and on various platforms and websites, as it is possible that the deceased differed in his religious, political, and social orientations from the heirs, and accordingly, the right to be forgotten may not be exercised by The heirs, because this conflicts with the rights of the deceased. Accordingly, if the deceased has published digital assets, the heirs do not have the right to withdraw them from circulation. Rather, the financial rights arising from those digital assets are transferred to the deceased. In one case, the heirs, or some of them, may exercise the right to withdraw the digital assets and withdraw from the assignment contracts or dispose of their financial rights related to the digital assets if this is necessary to preserve the dignity and personality With compensation for those affected by this withdrawal (Article 8/6 of the Copyright and Related Rights Law in the Kurdistan Region No. 17 of 2012). Accordingly, the matter is in the hands of the heirs themselves, who decide whether or not to delete the digital assets in this case and not in others.

5. Conclusion

It includes the most important conclusions and recommendations as follows:

First: Findings

They can be summarized in the following points:

1. The idea of transferring the digital estate is new in its emergence and needs research and treatment, but due to the rapid developments taking place in the digital age arena, the issue should be treated with flexibility.
2. There is no legal regulation specific to the digital estate in Iraq and the Kurdistan Region.
3. Jurisprudence differs regarding the extent to which the digital estate can be transferred to the heirs. Some claim that the digital estate must be destroyed and deleted, taking into account the deceased's right to privacy, and some prefer the heirs' right to obtain the estate over the right to privacy, as the right to privacy extends after death for those who deny its transfer and ends with their death for those who document its transfer.

4. As a general rule, the digital financial estate is valid for transfer to the heirs, unless there is an obstacle preventing this, such as digital money that is not transferable due to its violation of public order, and this matter should be regulated with flexibility due to its lack of complete clarity, or the difference in its details.

5. Islamic jurisprudence permits the transfer of personal digital rights to heirs, provided that the dignity and confidentiality of the deceased is preserved and his privacy is not violated.

Second: Recommendations:

1. We recommend that the Iraqi legislator regulate the provisions of the inheritance of digital assets by a special law, taking into account the special nature of digital inheritance.

2. We recommend that the Iraqi legislator stipulate that the personal digital inheritance cannot be transferred to the heirs upon the death of the heir unless the heir declares it, and that this transfer does not lead to the violation of the sanctity and confidentiality of the deceased.

3. We recommend that the legislator consider, when regulating the digital inheritance, the balance between the interests of the deceased and the interests of the heirs, and the basis of the balance is the consent of the deceased or the interest of the heirs.

4. We recommend that the legislator stipulate that digital financial assets cannot be transferred in the event of a violation of public order.

5. Legislative provisions should be presented over the terms of the user policy agreement.

6. The judiciary should be given flexibility so that legal provisions do not lead to stagnation and the waste of rights.

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