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## Country Reports

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Kristin Nemeth & Jorge Morais Carvalho\*

### Digital Inheritance in the European Union

This issue of EuCML is one of two which will focus on the Member States' approach towards digital inheritance.

Like always in the country reports section we try to provide an overview of an issue which is of importance all over Europe but where EU Member States find different solutions within their national legal orders due to partial harmonization or a lack of harmonization all together.

In the previous issues the country reports focused e.g. on Uber, the Dieselgate scandal and – most recently – the implementation of the mortgage credit directive.

This issue will start with two reports from the United Kingdom and the Netherlands. The discussion of the topic of digital inheritance is becoming increasingly important. Digital media play a more and more vital role in everybody's lives. We accumulate digital assets during our lives; digital content is starting to be subject to regulation.<sup>1</sup> The questions around handing over these assets and data upon death, however, have not been dealt with on a European scale.

“Digital inheritance” can be used to describe the body of assets and data left behind when a person dies as well as to refer to the existing rules dealing with these matters. Issues involved are for example the question of who is entitled to request and/or receive sensitive data such as passwords for bank accounts or medical or social security information. The destination of the contents of email accounts is also a relevant problem, as well as the photos or other documents saved in a cloud, all of which can contain secrets related not only to the deceased, but also to other people with whom it was related. Does the right to privacy remain after death? Another issue regards social media accounts such as Instagram, Twitter or Facebook or media contacts in general. Do these accounts belong to the deceased, do they cease to exist upon death or

are the rights transferred to an heir or somebody the deceased has appointed during his lifetime? How much do the national solutions differ in this regard? Other areas concerned are online assets such as written texts, images or other media potentially protected by intellectual property rights. Sometimes people appoint somebody to deal with their digital assets after their death. But what if that does not happen?

It is evident that digital inheritance touches upon various fields of law. Which problems are dealt with by contract law? Do the contracts with the providers of digital services contain clauses regarding death (including maybe the automatic cancellation of personal data)? What is subject to inheritance law in the narrow sense? Which other fields of law are concerned? Can these problems be resolved through the traditional legal regimes or does the topic require legislative action?

On a European Union level this problem has so far not been touched. Yet, a lot of the problems will arise across the border. So it is in our view important to inform our readers about the different national states of the law regarding the issue. We hope that this topic will raise your interest and that the country reports shed some light on the legal challenges involved.

Enjoy the read! ■

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\* Kristin Nemeth, Assistant-professor at the University of Innsbruck (Austria), Department of Private Law, Innrain 52, A-6020 Innsbruck, Email: kristin.nemeth@uibk.ac.at; Jorge Morais Carvalho, Professor of Private Law, NOVA Faculty of Law, Lisbon, Portugal, Researcher at CEDIS – Centro de I&D sobre Direito e Sociedade, Email: jorgemoraiscarvalho@fd.unl.pt, Website: www.jorgemoraiscarvalho.com.

1 Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM(2015) 634 final.

Edina Harbinja\*

### Digital Inheritance in the United Kingdom

#### I. Introduction

Digital assets and inheritance have become significantly valuable to online users in the UK. In October 2011, the Centre for Creative and Social Technology (CAST) at Goldsmiths, University of London, released a study of Internet use in the UK entitled ‘Generation Cloud’. The study determined that British users have at least GBP 2.3 billion worth of digital assets stored in the cloud. The study shows that 24 per cent of UK adults estimate that they have digital assets worth more than GBP 200 per person in the cloud, which amounts to at least GBP 2.3 billion in total.<sup>1</sup> PricewaterhouseCoopers (PwC) conducted a similar survey in 2013 and found that the users value their digital assets at GBP 25

billion.<sup>2</sup> Given the alleged exponential growth between 2011 and 2013, this figure would be even higher now. However, there is a lack of very recent empirical data to evidence this at the moment.

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\* Dr Edina Harbinja, University of Hertfordshire, United Kingdom, Email: e.harbinja2@herts.ac.uk.

1 Rackspace Hosting ‘Generation Cloud: A social study into the impact of cloud-based services on everyday UK life’ (16 November 2011) [http://www.rackspace.co.uk/sites/default/files/whitepapers/generation\\_cloud.pdf](http://www.rackspace.co.uk/sites/default/files/whitepapers/generation_cloud.pdf) accessed 15 May 2016.

2 PwC, ‘Digital lives: we value our digital assets at £25 billion’, (PwC, 2013) available at <https://www.pwc.co.uk/issues/cyber-security-data-privacy/insights/digital-lives-we-value-our-digital-assets-at-25-billion.html> accessed 10 November 2017.