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**SUCCESSION IN THE DIGITAL AGE UNDER THE COMMON LAW: LEGAL  
CHALLENGES IN THE MANAGEMENT AND ADMINISTRATION OF DIGITAL  
ESTATES IN NIGERIA**

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**ABSTRACT**

*The rapid advancement of digital technology has transformed the nature of personal assets by introducing the concept of digital estates, which include online accounts, cryptocurrencies, social media profiles, digital currencies, and intellectual property existing in electronic form. The death of an individual raises complex questions regarding the management, transfer, and administration of such digital assets. This paper examines the adequacy of the Nigerian legal framework in addressing the administration of digital estates. Through a doctrinal analysis of existing Nigerian laws and international best practices, the paper identifies significant gaps and ambiguities in current legal provisions. It finds that there is an increased risk of digital asset loss, privacy breaches, and estate disputes in the absence of explicit legislation. By comparing international best practices, the paper proposes reforms to enhance the administration of digital estates, ensuring that digital assets are adequately protected and efficiently transferred. This reform is imperative for providing clarity, legal certainty, and protection of digital assets for heirs and administrators in Nigeria.*

**Keywords:** *Digital, Estate, Currency, Technology, Succession.*

## 1.1.Introduction

The 21st century has witnessed an unprecedented transformation in personal assets, driven by the proliferation of digital technologies. Individuals accumulate not just physical or financial assets, but also vast repositories of digital assets, ranging from cryptocurrency wallets and online investment portfolios to social media accounts, cloud storage, e-mail accounts, digital photo albums, other forms of intellectual property, and streaming service subscriptions.<sup>1</sup> Even physical assets are often managed through digital platforms; for example, we access and control our bank accounts online.<sup>2</sup> These digital footprints often carry significant financial or sentimental value.

Nevertheless, while the growth of digital assets has been exponential, legal systems, including Nigeria's, have been slow to adapt. Upon an individual's death, managing and transferring these assets has become a complex legal and practical challenge. Existing laws on inheritance, probate, and estate management primarily address physical and tangible assets, with little or no explicit consideration for intangible digital property. This gap has created numerous legal challenges in the context of succession and estate administration, most notably in the areas of property classification, statutory recognition, fiduciary obligations, and privacy protections.<sup>3</sup> Moreover, the traditional legal concept of estate succession has not adequately evolved to incorporate such assets, resulting in complications upon the death of the asset holder, exposing heirs and administrators to uncertainty, loss, and disputes.

The paper employs a doctrinal methodology of legal research, involving an analysis of law and literature, as it examines the legal challenges associated with managing and administering digital estates in Nigeria. It critically evaluates the adequacy of current Nigerian succession laws and comparative jurisdictions to propose actionable reforms. It further draws on international best practices to develop a framework for reforming Nigeria's digital estate succession regime.

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<sup>1</sup> Kharitonova, J. S. (2021). "Digital Assets and Digital Inheritance." *Law and Digital Technologies*, 1, p. 3.

<sup>2</sup> Ferges, T. M. (2018, November). "Estate Planning and Administration in the Digital Age." *Taxes – The Tax Magazine*. Retrieved from: [https://www.mccarter.com/wp-content/uploads/2019/10/PDF-TaxesMagazineEstatePlanning11-18\\_Ferges.pdf](https://www.mccarter.com/wp-content/uploads/2019/10/PDF-TaxesMagazineEstatePlanning11-18_Ferges.pdf) on 23/6/2025

<sup>3</sup>Mills, J. (2019). "Does the Common Law and Equity Provide an Adequate Framework for Digital Assets in Australia?" *Canberra Law Review*, 16(1), Retrieved from: <http://www.austlii.edu.au/au/journals/CanLawRw/2019/11.pdf> on 24/6/2025

The study is limited by its reliance on doctrinal legal analysis, which depends primarily on existing statutes, judicial decisions, and scholarly literature. The absence of explicit statutory provisions on digital estates in Nigeria restricts the depth of statutory analysis and necessitates reliance on analogical reasoning from traditional succession and property law. In addition, the lack of Nigerian judicial precedent on digital estate administration requires the use of persuasive authorities from foreign jurisdictions, whose applicability is constrained by differences in legal and socio-economic contexts. While comparative analysis offers useful guidance, it may not fully reflect Nigeria's institutional and technological realities. Finally, the doctrinal approach does not account for empirical insights from probate practice or stakeholder experience, which may affect the practical implementation of proposed reforms.

## **1.2 The Definitional Uncertainty of Digital Estate**

Jurisdictions and scholars vary in the conceptualisation of digital assets. Some adopt a broad definition encompassing all electronically stored content with perceived value, such as photos, emails, playlists, and documents, while others advocate a narrower interpretation, focusing solely on economically significant, transferable assets such as cryptocurrencies, NFTs, and domain names.<sup>4</sup> This definitional uncertainty complicates legal classification, succession planning, and the development of enforceable policies. The beginning of this uncertainty lies in whether digital assets are legally classified as “property” under succession laws. “It remains unclear whether digital assets are considered property in the same sense as legislation that governs the disposal of property.”<sup>5</sup> Without clear classification, digital assets face the danger of falling outside the scope of inheritance laws like wills, succession, and administration statutes.

This means that the foundational challenge of digital assets is conceptual, involving their very definition as property. Traditional legal systems, including Nigeria's, often rely on physicalist models of property ownership, models which associate property rights with tangible dominion over things. However, digital assets challenge this framework. They are intangible, dispersed, and often controlled through third-party contracts or user agreements. As such, modern theorists argue for a shift toward a model that emphasises legal relations and control over utility. As posited by Mills, “the ripple effects of this paradigm shift are observable in the Information Age” as “global

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<sup>4</sup> Kharitonova, J. S., *Op. Cit.*, pp 5-6

<sup>5</sup> Mills, J., *Op. Cit.*, p. 179

jurisprudence teeters on the edge of recognising another form of intangible property.”<sup>6</sup> Nigeria’s property jurisprudence must undergo a similar transformation to accommodate this new form of asset.

According to Nelson, digital assets are defined as intangible property interests that are created, stored, and managed electronically, encompassing items such as email accounts, virtual currencies, online game assets, and domain names.<sup>7</sup> These assets carry symbolic, economic, and sentimental value, and while their administration can be likened to traditional property succession, they present distinct legal and practical complexities due to issues such as licensing restrictions, privacy laws, and a lack of a unified regulatory framework.<sup>8</sup> Digital assets may be subject to user agreements, privacy policies, and terms of service that restrict transferability upon death, complicating their administration.

### 1.3 Gaps in Statutory and Judicial Recognition

The closest attempt at a statutory definition of digital asset available in Nigeria is that which has been issued by the Securities and Exchange Commission (SEC), to mean “a digital token that represents assets such as a debt or equity claim on the issuer”.<sup>9</sup> This definition is narrow and inadequate, as it confines digital assets to tokenised financial instruments, excluding the broader range of non-financial digital assets, such as emails, social media accounts, or cloud-stored intellectual property, relevant to digital estate succession.

While judicial and statutory guidance on digital assets remains limited, emerging case law from advanced jurisdictions offers valuable insight. In the New Zealand case of *Henderson vs Walker*,<sup>10</sup> Thomson J observed that, “it seems obvious that digital assets should be afforded the protection of property law... especially now that digital media has assumed a ubiquitous role in modern life.” This reflects a growing judicial recognition of digital assets as property deserving of legal protection. Further, *Ruscoe vs Cryptopia Limited (in Liquidation)*,<sup>11</sup> The New Zealand High Court

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<sup>6</sup> Ibid., p.181

<sup>7</sup> Nelson, D. A. (2013). “*The Challenge of Digital Estate Administration for Executors.*” (Widdifield Award paper, pp. 1–5). Ontario Bar Association. Retrieved from: <https://www.oba.org/getmedia/7c6ba5b9-3abd-4e30-bca2-f9df35c45586/2013-Daniel-Nelson-Widdifield-Award.pdf> on 5/6/2025

<sup>8</sup> Ibid.

<sup>9</sup> Securities and Exchange Commission. (2022, May). “*Rules on Issuance, Offering Platforms and Custody of Digital Assets.*” Retrieved from <https://sec.gov.ng/wp-content/uploads/2022/05/Rules-on-Issuance-Offering-and-Custody-of-Digital-Assets.pdf> on 23/6/2025

<sup>10</sup> [2019] NZHC 2184

<sup>11</sup> *Ruscoe vs Cryptopia Limited (in Liquidation)* [2020] NZHC 728

affirmed that cryptocurrencies qualify as property under the Companies Act 1993<sup>12</sup> and are “probably more generally” regarded as such. The court further held that digital assets like cryptocurrencies are capable of being held on trust, reinforcing their status as property in legal and commercial contexts.

In reaching its decision, the court relied on the principles established in *National Provincial Bank Ltd v Ainsworth*,<sup>13</sup> a leading House of Lords case on the definition of property. The court held that a digital asset qualifies as property if it meets four criteria: it must be definable, such as having a unique digital key; identifiable by third parties, for example, through password protection; transferable, meaning it can be assumed by others like cryptocurrencies; and possess a degree of permanence or stability. This test affirms the legal recognition of digital assets, especially cryptocurrencies, as property. However, until the law evolves to fully address the realities of the digital age, it has been proposed that digital assets, for estate administration purposes, be broadly defined to include: “the entirety of the electronically stored data of the deceased, regardless of whether such data is stored locally, on the internet, or in the cloud - including hardware, software, online services, and related contractual rights.”<sup>14</sup>

Flowing from this, a digital estate, thus, refers to the aggregate of digital assets and rights owned or controlled by an individual at the time of death. These assets, which may possess financial, sentimental, or intellectual value, can be classified into several categories. Digital assets can be broadly categorised into those with monetary value, such as online bank accounts, investment platforms, and domain names, and those with sentimental value, including digital photos, emails, and social media profiles that hold emotional significance rather than financial worth.<sup>15</sup> Although the latter may lack financial value, it carries immense emotional significance for bereaved families.

Digital assets are intangible, non-physical resources that exist in electronic or cloud-based formats. Their control depends on digital credentials such as passwords and encryption keys, rather than physical possession. Moreover, due to cloud storage and global platforms, digital assets often

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<sup>12</sup> Of New Zealand

<sup>13</sup> *National Provincial Bank Ltd v Ainsworth* [1965] AC 1175 (HL) at 1247–1248.

<sup>14</sup> Abdinor, G., & Mueller, B. (2015, September 21). “Cyber Law – What Happens to Your Bits & Bytes When You Die?” [Webinar description]. New Zealand Law Society. Retrieved from Lawyers Education resource; <https://www.lawyerseducation.co.nz/shop/Books/Cyber+Law+-+what+happens+to+your+bits++bytes+when+you+die.html> on 3/6/2025

<sup>15</sup> *Ibid.*, p.4

transcend national jurisdictions, raising legal and regulatory complexities in ownership, access, and succession.<sup>16</sup> In Nigeria, where platforms like Flutterwave and OPay are commonly used, such assets represent a growing component of individual estates. Intellectual property and creative works include copyrights, trademarks, and patents managed or monetised digitally. This category also covers digital music libraries, e-books, and domain names, which may carry substantial monetary value.<sup>17</sup>

#### **1.4 Administration of Digital Estates in Nigeria: Old Laws, New Digital Succession Challenges**

Digital assets challenge traditional legal understanding of succession. First, although intangible, they may be treated as personal property under succession law. Secondly, the law assumes that upon death, property devolves to heirs via wills or intestate provisions; and thirdly, many digital assets are governed by user agreements that often prohibit third-party access, creating conflicts with estate laws.

One of the foremost legal issues, as discussed in the preceding section, is the absence of clear statutory recognition of digital assets as “property” under Nigerian succession laws. A variety of laws and regulations in Nigeria, including the Wills Act,<sup>18</sup> and the Wills laws of various states, the Administration of Estate Laws of the various states, and Probate Rules govern the disposition of an estate following death. They were largely based on colonial-era legal frameworks, and remain silent on the nature, value, and transmissibility of digital assets. The Wills Act is a British statute that applies only in Nigerian states that continue to adopt received English law, primarily in the southern region. However, many Nigerian states have enacted their own local Wills Laws, which either modified or replaced some of their provisions.<sup>19</sup>

The Lagos version of the Wills Law provides that, “it shall be lawful for every person to bequeath or dispose of, by his Will executed in accordance with the provisions of this law, all

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<sup>16</sup> Organisation for Economic Co-operation and Development (OECD). (2021). *"The Tax Treatment of Virtual Currencies."* Retrieved from: <https://www.oecd.org/tax/the-tax-treatment-of-virtual-currencies.htm> on 20/6/2025

<sup>17</sup> Conway, H., and Grattan, S. (2017). *"The 'New' New Property: Dealing With Digital Assets on Death."* In H. Conway & R. Hickey (Eds.), *Modern Studies in Property Law, Volume 9* (1st ed., pp. 99–115, p. 3-4). Hart Publishing. Retrieved from <https://www.bloomsburyprofessional.com/uk/modern-studies-in-property-law-9781782257547> on 26/6/2025

<sup>18</sup> The Wills Act (Cap W1, LFN 2004)

<sup>19</sup> Ogunbiyi, T. (2018). *Law of succession in Nigeria: Principles and Practice*. Lagos: Princeton Publishing Co., p.4

property to which he is entitled, either in law or in equity, or at the time of his death.”<sup>20</sup> The process is that when a person dies testate, that is, with a valid will, an application is made to the Probate Registry, especially if the will was deposited there, for its reading. After identifying the dispositions, the named executors apply for the grant of probate. Once granted and the requisite estate fees are paid, the executors can lawfully administer and distribute the estate according to the Will. On the other hand, if the deceased dies intestate - without a Will, the process is more complex. The deceased’s relatives apply to the Probate Registry for Letters of Administration, submitting documents such as the death certificate, property titles, and bank details. The Registry verifies these, including writing to banks, before issuing the Letters.

Only assets listed in the application form are part of the estate; any omitted assets cannot be distributed without further legal action. While Nigerian probate procedures enable access to physical and financial assets, they are inadequate for digital estates, as they offer no legal authority or framework for executors to access or manage digital assets despite their inclusion in a will. Thus, at the moment, the only widely accepted method is to include digital assets in a will, but this offers limited protection and does not guarantee lawful access under current frameworks.

The Nigerian Data Protection Regulation (NDPR) 2019<sup>21</sup> primarily addresses data privacy and individual control over personal information, rather than succession. However, it has indirect implications for the management of digital assets after death, particularly in determining lawful access to personal data such as email accounts, cloud storage, and social media profiles.<sup>22</sup>

Consequently, Nigeria has no specific legislation exclusively dedicated to digital assets within the framework of estate law. Yet these assets often carry substantial emotional, social, and monetary value. This absence represents a significant legislative gap, particularly as digital assets such as cryptocurrencies, online accounts, and cloud-based content increasingly form part of personal estates.<sup>23</sup> As noted by Genders and Steen, “most estate laws were written in the pre-digital

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<sup>20</sup> Section 1(1) Wills Law, Cap. W2 Laws of Lagos State of Nigeria 2003. See generally, *Administration of Estates Law of Lagos State* (Cap A3, Laws of Lagos State 2015), which provides for the administration of both testate and intestate estates, including procedures for obtaining probate or letters of administration.

<sup>21</sup> National Information Technology Development Agency (NITDA). (2019, January 25). “*Nigeria Data Protection Regulation (NDPR)*.” Retrieved from <https://nitda.gov.ng/wp-content/uploads/2020/11/NigeriaDataProtectionRegulation11.pdf>

<sup>22</sup> National Information Technology Development Agency (NITDA). (2019, January 25). “*Nigeria Data Protection Regulation (NDPR)*.” Retrieved from <https://nitda.gov.ng/wp-content/uploads/2020/11/NigeriaDataProtectionRegulation11.pdf> on 4/7/2025

<sup>23</sup> Okoro, C. (2023). *Digital inheritance: Legal issues in accessing digital assets under Nigerian law*. *Nigerian Journal of Private and Property Law*, 7(2), 101–115.

age”,<sup>24</sup> reflecting a time when property was predominantly physical and tangible. Therefore, these laws often fail to account for the unique nature of digital assets, leaving significant gaps in succession planning, administration, and enforcement.<sup>25</sup>

Without a proper supporting legal framework, these assets can be lost or become inaccessible after the owner’s death. This can create serious challenges for loved ones who may not know about the existence or location of these digital assets. In addition, the laws governing digital assets are still developing, making it essential to have a clear plan in place.

Equity, too, has not fully caught up with the digital age. Nigerian courts have not yet developed equitable remedies tailored to digital property, such as the imposition of constructive trusts or the recognition of “information fiduciaries”, a concept proposed by U.S. scholars to describe the special duties owed by service providers holding sensitive user data.<sup>26</sup> Nigeria’s robust, equitable tradition offers a promising platform for this development, but judicial activism or legislative encouragement will be required to unlock its potential.

Nigeria’s reliance on customary laws for intestate succession exacerbates the already complex legal terrain surrounding digital assets. Some of these customary rules, often discriminatory against women,<sup>27</sup> widows, and children born outside wedlock, compound the difficulty of determining rightful heirs to digital property, which lacks physical presence and is governed by globalised service agreements.<sup>28</sup> Without appropriate legal frameworks, heirs, particularly those unfamiliar with digital technology, may be effectively disenfranchised from accessing digital assets, further deepening existing social and economic inequalities. For instance, a widow already excluded from inheriting physical property like land under customary law may also find herself unable to access her late spouse’s online banking accounts, digital royalties, or

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<sup>24</sup> Genders, R., and Steen, A. (2017). “Financial and Estate Planning in the Age of Digital Assets: A Challenge for Advisors and Administrators.” *Financial Planning Research Journal*, 3(1), p.79.

<sup>25</sup> Harbinja, E. (2017). *Legal Aspects of Transmission of Digital Assets on Death* [Doctoral dissertation, University of Strathclyde]. Retrieved from: [http://digitool.lib.strath.ac.uk/R/?func=dbin-jump-full&object\\_id=28644](http://digitool.lib.strath.ac.uk/R/?func=dbin-jump-full&object_id=28644) on 5/6/2025

<sup>26</sup> Mills, J., Op. Cit.,

<sup>27</sup> For instance, in *Mojekwu vs Mojekwu* (1997) 7 NWLR (Pt. 512) 283, the Court of Appeal (Enugu Division) struck down the Nnewi customary law of *Oli-ekpe*, which allowed only male relatives to inherit property, as repugnant to natural justice, equity, and good conscience. The Court held that the custom was discriminatory against women and therefore inapplicable in a modern legal system that upholds gender equality.

<sup>28</sup> Onuoha, R. A. (2008, April). "Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue." *The International Journal of Not-for-Profit Law*, 10(2). Retrieved from: <https://www.icnl.org/resources/research/ijnl/discriminatory-property-inheritance-under-customary-law-in-nigeria-ngos-to-the-rescue> 16/5/2025

other intellectual property, either due to restrictive service provider policies or a lack of legal recognition of digital assets within Nigeria's succession laws. This dual exclusion underscores the urgent need for legislative reform and digital literacy to ensure equitable access and administration of digital estates.<sup>29</sup>

It is noteworthy that there is an absence of judicial precedent in Nigeria on the administration of digital estates. No appellate court has yet ruled on whether digital assets are transmissible, whether service providers can be compelled to release access credentials, or what standard of care is expected of estate administrators in this regard. Moreover, the application of traditional torts and property doctrines to digital assets is extremely limited. Torts such as conversion, detinue, and trespass to goods presuppose a physical object or direct possession, criteria that do not neatly apply to cloud-based or virtual property, effectively removing them from the reach of local legal remedies.<sup>30</sup>

### **1.5 Posthumous Access Restrictions and Authentication Issues**

Another key issue in managing digital estates lies in the distinction between property and license, as many digital assets are governed by license agreements rather than ownership rights, meaning they often expire upon the user's death; this stands in contrast to traditional succession law, which is premised on the assumption that property rights are transmissible to heirs.<sup>31</sup>

In other words, the common law concept of property struggles to accommodate digital assets. Many digital assets are licenses rather than property, meaning they terminate upon the account holder's death. This creates a legal vacuum where valuable assets simply vanish.<sup>32</sup> Moreover, this situation normally presents two key problems. First, these terms were typically not drafted with posthumous access in mind and often fail to adequately address the issue, if at all. Second, many digital service providers are based in jurisdictions such as the United States, where stringent privacy laws are in effect. Out of concern for legal liability, providers frequently refuse to grant access to anyone other than the original account holder, and many explicitly prohibit password sharing or the transfer of user rights under their terms of service.<sup>33</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> Mills, J., Op. Cit.

<sup>31</sup> Conway, H., and Grattan, S. Op Cit., pp. 5-6

<sup>32</sup> Ibid., p.5

<sup>33</sup> Stevens and Bolton LLP. (2022, May 3). "Estate Administration: The Digital Assets Dilemma." Retrieved from <https://www.stevens-bolton.com/site/insights/articles/estate-administration-the-digital-assets-dilemma> on 5/6/2025

Furthermore, privacy laws further complicate access to digital assets, as executors or heirs who attempt to manage the deceased's accounts may inadvertently breach terms of service or violate data protection regulations by using the deceased's login credentials without proper legal authorisation.<sup>34</sup> When service providers obstruct access or act in a way that interferes with the proper administration of the estate, they risk being classified as *executors de son tort*,<sup>35</sup> potentially incurring legal liability for unauthorised interference with the estate.<sup>36</sup> Without explicit user consent or court orders, platforms normally refuse to release content or data.

This can create conflicts with intellectual property laws and the moral rights of the deceased, for instance, where a deceased person's creative works are stored online but cannot be retrieved or managed without violating service agreements.<sup>37</sup>

These issues mirror Nigeria's legal vacuum, where executors lack statutory authority to manage digital estates, risking asset loss and disputes. Under the Nigerian copyright laws, for instance, copyright in creative works, including those stored digitally, is transmissible by testamentary disposition.<sup>38</sup> Meaning heirs can legally inherit and control such works via a valid will.<sup>39</sup> Service contracts like Facebook's typically forbid password sharing and posthumous account access,<sup>40</sup> despite executors having statutory estate administration powers under laws like the Wills Act and various State Administration of Estate Laws<sup>41</sup> Authors have exclusive rights to reproduce, distribute, and publicly display their creative works. These rights survive death for 70

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<sup>34</sup> Conway, H., and Grattan, S. Op Cit.,p.8

<sup>35</sup> A person not lawfully appointed but who has taken it upon himself to administer the estate or intermeddle with the administration of the estate. An intermeddler is called an executor de son tort and is accountable as if he had authority. "Executor de son tort." (n.d.). In *Merriam-Webster.com Dictionary*. Retrieved July 6, 2025, from: <https://www.merriam-webster.com/dictionary/executor%20de%20son%20tort> on 4/7/2025

<sup>36</sup> Nelson, D. A., Op. Cit., p.8

<sup>37</sup> Nelson, D. A., Op. Cit., p.7

<sup>38</sup> Section 11(1), Copyright Act, 2022.

<sup>39</sup> Agi, A. U. (2021, November). "An Exposition of the Concept of Digital Death and the Place of Estate Law." *AJU Law Journal*. Retrieved from <https://ajulawjournal.arthurjarvisuniversity.edu.ng/wp-content/uploads/2021/11/Arthur-Jarvis-AN-EXPOSITION-OF-THE-CONCEPT-OF-DIGITAL-DEATH-AND-THE-PLACE-OF-ESTATE-LAW.pdf> [researchgate.net](https://researchgate.net)+2 on 3/7/2025

<sup>40</sup> Clause 4, paragraphs 8 and 9 and Clause 18, paragraph 6 of Facebook's Statement of Rights and Responsibilities reads: "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 jeopardise the security of your account.

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

"You will not transfer any of your rights or obligations under this statement to anyone else without our consent." Facebook, Statement of Rights and Responsibilities, [#https://web.facebook.com/legal/terms/previous?\\_rdc=1&\\_rdr#](https://web.facebook.com/legal/terms/previous?_rdc=1&_rdr)

<sup>41</sup> Securing Your Legacy: Estate Planning for Digital Assets in the Digital Age <https://trustedadvisorslaw.com/securing-your-legacy-estate-planning-for-digital-assets-in-the-digital-age/>

years and can be exercised by heirs, but are potentially blocked when platforms delete or memorialise accounts as per their terms of service.

Another challenge is that executors and administrators are often unaware of the existence of digital property, and even when they are, they may lack the legal means to access or transfer it. Also, where digital assets are stored anonymously or secured through private keys, they may be unable to prove ownership or retrieve them, resulting in permanent loss. These laws do not specifically address such a situation.<sup>42</sup> In the Nigerian legal framework, there is no provision allowing executors to compel service providers to release login credentials or decrypt digital holdings, even when those assets form part of the deceased's estate.

Without proper digital estate planning, these assets risk becoming permanently inaccessible to heirs upon the owner's death.<sup>43</sup> Of particular importance are blockchain-based assets like Bitcoin,<sup>44</sup> Ethereum,<sup>45</sup> and NFTs,<sup>46</sup> which require careful planning due to their decentralised nature. While self-custody is possible, it carries risks of permanent loss if access credentials are unavailable. Services like Unchained and Nigeria's Everlasting offer Multisignature (multisig) wallets, distributing access among the owner, a provider, and a trusted third party.<sup>47</sup>

To ensure smooth administration, it is crucial that such arrangements are referenced in the will and that executors are informed. Although the law is still evolving, courts are increasingly recognising the property status of digital assets. Therefore, individuals are strongly advised to include digital asset instructions in their will and access plan, ensuring these assets are properly managed and transferred in line with their wishes. For individuals who operate online businesses or hold professional digital assets, it is critical to establish mechanisms for the continuity, management, or lawful transfer of these assets to designated partners, employees, or successors.

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<sup>42</sup> Mills, J., Op. Cit., p.190

<sup>43</sup> 1st Fiduciary. (n.d.). "Digital Estate Planning and Management of Online Asset." Retrieved October 19, 2023, from <https://firstfiduciary.ng/digital-estate-planning-and-management-of-online-assets/> on 23/6/2025

<sup>44</sup> Nakamoto, S. (2008). "Bitcoin: A Peer-to-Peer Electronic Cash System." Retrieved from <https://bitcoin.org/bitcoin.pdf> on 3/7/2025

<sup>45</sup> Buterin, V. (2014). "Ethereum: A Next-Generation Smart Contract and Decentralized Application Platform." Retrieved from <https://ethereum.org/en/whitepaper/> on 3/7/2025

<sup>46</sup> A Non-Fungible Token (NFT) is a unique digital asset that represents ownership or proof of authenticity of a specific item on a blockchain, typically using Ethereum's ERC-721 standard. See Wang, Q., Li, R., Wang, Q., & Chen, S. (2021). "Non-Fungible Token (NFT): Overview, Evaluation, Opportunities and Challenges." *arXiv Preprint arXiv:2105.07447*. Retrieved from <https://arxiv.org/abs/2105.07447> on 3/7/2025

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## **1.6 Jurisdiction and Conflicts of Laws**

With digital platforms often headquartered overseas, governed by foreign laws,<sup>48</sup> Nigerian courts face challenges in enforcing domestic succession laws against multinational corporations. For example, Meta (Facebook) is governed by California law, making it difficult for Nigerian courts to compel compliance with local probate proceedings. An additional layer of complexity is introduced by end-user license agreements (EULAs), “with little to no rights to the asset afforded to the individual,” and jurisdictional limitations imposed by multinational service providers.<sup>49</sup> These contracts often prohibit posthumous access, delete accounts upon notification of death, or require probate orders from foreign courts. Such restrictive agreements may override local succession law, leaving beneficiaries with no practical recourse. The consequences of this vacuum are far-reaching. Executors may unintentionally breach their fiduciary duties by failing to discover, preserve, or transfer digital assets, potentially exposing themselves to legal liability.

Even with the enactment of comprehensive digital estate laws in Nigeria, weak enforcement mechanisms remain a significant obstacle to their effectiveness, as the existing legal system is already hampered by corruption, bureaucratic inefficiencies, and widespread legal illiteracy, factors that may lead to delays, increased costs in obtaining court orders for access to digital assets, or the improper and incomplete administration of estates, thereby constituting a breach of personal representatives’ fiduciary duties.<sup>50</sup>

Besides, enforcement would demand an even higher level of digital literacy, both among legal professionals and the general public, as well as technological infrastructure such as secure, digitised probate systems capable of handling complex assets like cryptocurrency wallets and cloud-stored intellectual property. Without these foundational elements, legal reforms risk becoming ineffective in practice, leaving vulnerable heirs, especially in rural and underserved communities, without meaningful access to digital inheritance.

## **1.7 Contractual Limitations**

As noted earlier, most digital service providers bind users to contracts restricting access or transferability after death. Without Nigerian statutory intervention, these terms may override heirs’

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<sup>48</sup> Conway, H., and Grattan, S. Op Cit., p. 19

<sup>49</sup> Mills, J., Op. Cit., p.178

<sup>50</sup> Mills, J., Op. Cit., p.90

claims. Contractual barriers pose significant challenges to digital estate succession, as service agreements and terms of use frequently restrict posthumous access, thereby rendering digital assets non-transferable or inaccessible to heirs or personal representatives.<sup>51</sup> For example, Apple’s terms prohibit transferring iTunes accounts,<sup>52</sup> while X denies executors access to the deceased user’s accounts.<sup>53</sup>

Compounding the problem is the issue of privacy and data protection. In the absence of a structured mechanism for posthumous access, estate administrators risk breaching privacy norms or data protection laws when attempting to access the digital footprint of a deceased person. As posited by Mills, “there remains no common law cause of action for breaches of privacy.”<sup>54</sup> By extension, no clarity about the legal boundaries of digital access. The Data Protection Act 2023 has only begun to engage with these complex questions, and it does not yet regulate access to digital data after death. They establish principles regarding consent, access, and privacy that complicate traditional estate planning and inheritance processes, thereby raising novel legal and ethical challenges.

As such, succession of digital estates in Nigeria is fraught with legal ambiguities due to the absence of specific statutory provisions, creating uncertainty regarding the ownership and transferability of digital assets, the authority of personal representatives to access or deactivate online accounts, the balance between the privacy rights of the deceased and the interests of heirs, the challenge of conflicting jurisdictions, and the restrictive terms often imposed by service providers through contractual agreements.

## **1.8 Comparative Lessons in the Regulation and Administration of Digital Estates**

Comparative legal systems offer instructive models that illuminate both the opportunities and challenges of adapting succession law to the realities of the digital age. One critical insight is the frequent inaccessibility of digital assets in the absence of proper estate planning mechanisms. A widely cited example is the case of Gerald Cotten, the CEO of the Canadian cryptocurrency

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<sup>51</sup> Conway, H., and Grattan, S. Op Cit., pp. 5–6

<sup>52</sup> Apple Media Services Terms and Conditions <https://www.apple.com/legal/internet-services/itunes/#:~:text=%2D%20For%20any%20Service%2C%20you%20can,apple.com/HT201251>).

<sup>53</sup> X, formerly known as Twitter, and many other social media platforms generally do not grant executors access to a deceased user's account. While they may allow for memorialization or account deletion requests, accessing the account itself to manage it is typically not permitted due to privacy concerns.

<sup>54</sup> Mills, J., Op. Cit., p.186

exchange QuadrigaCX, who died unexpectedly without disclosing the passwords to digital wallets containing over \$190 million in cryptocurrencies. As a result, his heirs were permanently locked out, underscoring the urgent need for legal frameworks that anticipate and address the complexities of digital asset succession.<sup>55</sup>

The United States, for instance, has responded with the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA),<sup>56</sup> which grants fiduciaries access to a decedent's digital accounts, subject to privacy limitations and user instructions. In essence, it provides a comprehensive framework for executor access while balancing privacy concerns. It also provides clear definitions of digital assets, default rules for fiduciary access, and mechanisms to respect user intent.<sup>57</sup> The law further gives top priority to online tools provided by service providers that allow users to specify who can access their digital assets in the event of death or incapacity. These designations override directions in a will or trust unless explicitly revoked.<sup>58</sup>

If no online tool is used, it permits fiduciaries (executors, agents, trustees) to access digital assets only if express authorisation is provided in estate planning documents.<sup>59</sup> It additionally stipulates that if neither an online tool nor estate documents provide access, then the provider's terms govern.<sup>60</sup> This often means access is denied or restricted, even to legally appointed fiduciaries.

Similarly, in the Netherlands, the notarial system now includes digital repositories, secure locations where individuals can store digital asset credentials and designate beneficiaries.<sup>61</sup> These reforms reflect a growing international consensus that succession law must recognise digital possessions as part of the estate and provide structured methods for their transfer.

While the European General Data Protection Regulation (GDPR)<sup>62</sup> does not directly apply to deceased persons; it leaves member states to fill the gap. Italy, for example, enacted the Italian

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<sup>55</sup>Kharitonova, J. S., Op. Cit., p. 15

<sup>56</sup> Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). (2014). "Revised Uniform Fiduciary Access to Digital Assets Act." Retrieved from <https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml> on 5/6/2025

<sup>57</sup> See generally the RUFADAA

<sup>58</sup> Section 4, RUFADAA

<sup>59</sup> Section 5-8, Ibid.

<sup>60</sup> Section 5(c), Ibid.

<sup>61</sup> Berlee, A. (2017). "Digital Inheritance in the Netherlands." *Journal of European Consumer and Market Law*, 6, 256–260. Retrieved from <https://ssrn.com/abstract=3082802> on 4/6/2025

<sup>62</sup> The European Union. (2016, April 27). "Regulation (EU) 2016/679 (General Data Protection Regulation)." Official Journal of the European Union, L 119, 1–88. Retrieved from <https://gdpr-info.eu/> [tandfonline.com](https://tandfonline.com)+14gdpr-info.eu+14tex.stackexchange.com+14 on 5/6/2025

Personal Data Protection Code to extend certain post-mortem data rights to heirs and interested persons.<sup>63</sup>

The global trajectory suggests a gradual shift toward recognising and formalising digital assets within succession frameworks. Nigeria, however, remains behind the curve, lacking statutory or judicial guidance. As the use of cloud-based and digital platforms increases, so too must the legal architecture evolve to address the challenges of fiduciary access, user intent, privacy protection, and cross-border enforcement. Comparative frameworks like RUFADAA and European notarial practices offer viable models for reform.

## 1.9 Findings and Recommendations

1. The paper finds that Nigerian succession laws do not recognise digital assets as property, leading to uncertainty about whether such assets can be included in the deceased's estate. Implicit in this is the uncertainty surrounding the legal classification of digital assets as property, which complicates their recognition, transfer, and protection within Nigeria's succession framework. This legislative gap affects digital currencies, online accounts, and cloud-stored content, which remain undefined and unregulated under the Wills Act, the Administration of Estates Law, and the Probate Rules. This lack of recognition raises the risk of asset loss and legal ambiguity.
2. There is no law giving executors or administrators explicit authority to access or manage digital assets. As a result, even with a Will, personal representatives often encounter obstacles from digital platforms that enforce their Terms of Service (ToS), leading to deadlock and potential breaches of fiduciary duty. This hampers the effective execution of testamentary wishes and the distribution of intestate estates.

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<sup>63</sup> Patti, F. P., & Bartolini, F. (2019). "Digital Inheritance and Post Mortem Data Protection: The Italian Reform." *European Review of Private Law*. Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3397974](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3397974) 23/6/25

Italy's Legislative Decree No. 101/2018 was enacted to align the Italian Personal Data Protection Code with the European Union's General Data Protection Regulation (GDPR). This decree, published in the Official Gazette on August 10, 2018, and effective from September 19, 2018, amended the existing Italian Privacy Code to ensure compliance with the GDPR's requirements. The decree included provisions to harmonize national legislation with the GDPR, address specific areas where the GDPR allowed for member state discretion, and regulate transitional measures. The Italian regulation aligns to the GDPR 07 Sep 2018 [http://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2018-09-04&atto.codiceRedazionale=18G00129&elenco30giorni=false](http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2018-09-04&atto.codiceRedazionale=18G00129&elenco30giorni=false)

3. The paper also highlights a significant procedural gap: there are no probate rules requiring or guiding the documentation of digital assets in the estate inventory. This omission results in incomplete disclosures, increasing the risk that digital assets may be overlooked, abandoned, or misused by unauthorised parties, fuelling disputes and loss.
4. The legal rights of heirs to inherit digital assets are unclear and often conflicted by restrictive Terms of Service imposed by service providers. These contractual terms frequently prevent posthumous access or transfer of digital content, frustrating the deceased's intentions and limiting beneficiaries' access. This tension between private contractual rights and succession law highlights a critical need for legislative reform.

Based on these findings, the paper advocates for proactive legal reform. Nigeria faces a pivotal moment where timely legal reforms can prevent the "digital abyss" that risks swallowing valuable assets and personal legacies. By drawing lessons from international models like RUFADAA and customising them to local contexts, Nigeria can establish a solid framework for digital estate management that protects both financial assets and sentimental assets.

These issues collectively underscore the urgent need for comprehensive law reform. Nigeria must develop a legal structure that explicitly recognises digital assets as part of a deceased person's estate, empowers executors to access and manage them, safeguards privacy and data integrity, and offers clear, fair remedies for breaches.

A robust digital estate legal framework is essential, complemented by specific amendments to estate management, probate, and wills laws to explicitly define digital assets as inheritable property. These laws should also clarify the obligations of service providers and custodians in granting access to digital accounts. International examples, such as the U.S. Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) or the European GDPR, offer tested solutions that Nigeria can adapt to its unique legal, cultural, and constitutional environment. Nigeria should amend existing inheritance laws and enact dedicated statutes to protect digital estates. Such reforms will enhance legal certainty, protect privacy, and ensure that digital wealth is preserved for future generations.

In cases of wills, the framework should allow testators to appoint digital executors and list their digital assets in a secure, confidential annex. For intestate estates, administrators should be authorised to compel service providers to disclose or transfer control of digital assets upon proof of death and probate approval. Courts should also issue guidelines on digital estates and promote

recognition of digital wills and online testaments. This will help develop consistent jurisprudence in this area.

Alongside legislative changes, capacity building and public awareness are vital. Many legal practitioners, judges, and executors are unaware of the significance or value of digital estates. Law schools, bar associations, and probate registries must incorporate digital succession topics into their training, procedures, and continuing legal education.

### **1.10 Conclusion**

As Conway and Grattan rightly noted, “death has become more complicated than it used to be, in large part due to the digital age.”<sup>64</sup> As more individuals live and conduct transactions online, their deaths will inevitably leave complex digital footprints. Without clear laws and institutional guidance, these assets risk becoming permanently lost or inaccessible to legal recourse. This rise of digital estates calls for a re-evaluation of succession laws in Nigeria. Currently, Nigeria's legal system lacks adequate provisions for handling digital estates, exposing estates and heirs to significant legal and practical risks. The rapid digital revolution requires urgent legal reforms to ensure that digital assets are properly recognised, managed, and transferred upon death.

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<sup>64</sup> Conway, H., and Grattan, S. Op Cit., p.4