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Alp Toygar

California State University San Bernardino

C.E. Taibe Rohm Jr.

California State University San Bernardino

Jake Zhu

California State University San Bernardino

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A New Asset Type: Digital Assets

Alp Toygar

C. E. Tapie Rohm Jr.

Jake Zhu

California State University San Bernardino
USA

ABSTRACT

Is there a need for a new “asset” type? What are “digital materials?” Can digital materials be designated as “Digital Assets?” What is the driven source of the “Digital Asset?” Is the “Digital Asset” concept mature enough to be defined as a new asset type? For example, under what name or ownership should we regard all social media accounts (Facebook, Twitter, LinkedIn etc.), online photo albums(Flickr, Picasa etc.), blogs, domain names, websites, email accounts, smart phones or any information stored in the cloud or computers? In reality, digital images, photos, documents, audio and video files should be considered “assets” because they are real and contains monetary and personal values. In addition, what will happen to these “Digital Assets” after death? Does the “Digital Society” or “Cyber Citizenry” need better cyber law and regulations particularly related to the “Digital Assets” concept? Today, the concept of Digital Asset is real. However, it is not effectively defined and regulated by law and better regulation is necessary in order to protect people’s “Digital Assets” and rights. Similar to other asset types, people should be able to legally keep, transfer, use, sell or inherit “Digital Assets.” This study examined and elaborated on the “Digital Asset” concept and defined it as a new asset type titled “Digital Asset.”

INTRODUCTION

What is a digital asset? Digital asset is an ownership with any kind of data in binary form stored in your computer or over the internet in a cloud somewhere. Van Niekerk (2006) clearly identifies what is a digital asset: “A digital asset is any item of text or media that has been formatted into a binary source that includes the right to use it.” At this point the concept of “Digital Asset” was born not because of the driving power of the Information Technology, but because of the power of the “Digital Citizenry” also forced the “Digital Asset” concept come to the life. Another approach to be addressed is what makes a digital file an asset? (Moon, 2009). A simple question and a deceptively simple answer: reusability. What makes digital files reusable? The creator and user of the file should be able to use it again and again. The digital asset is long lasting and not quickly consumable. Repositories cease to think about digital images as objects and consider them more as digital assets. Elizabeth Yakel, (2004). Digital materials have long term values and reusable similar to other asset types. In addition, the digital materials are recognizable and reusable from others, not only by the owner or creator of the digital assets.

Who really owns your digital assets? (Warwick-Ching, 2012). Today digital assets have become part of life and have become permanently embedded in the digital society and include any digital form of information stored in computers, smart phones, digital media or clouds. Not long ago,

assets were considered only tangible assets in a physical form such as cash, machinery, buildings, lands, livestock etc. and intangible asset that considered nonphysical assets, such as any intellectual property, copyrights, patents, trademarks, trade secrets and goodwill (Best, 2010, p.115). Starting in the late 20th century, digital revolution dramatically changed the life of society. Although some consider the digital assets as part of intangible assets (Goldfinger,1997). The facts show that fast growing, inventive and independent Information Technology makes “Digital Assets” totally unique and separate from the intangible assets.

Inventive and independent Information Technology created new form of digital world population or “Cyber Citizens.” Many digital world citizens (Cyber Citizens) are generally aware and accept that “Digital Asset” as a reality and of possible worth, significant value, or money; such as digital photo albums and digital music albums. Some digital accounts, for example eBay and PayPal, might have some monetary value after the account owner dies. Emails and social media accounts might contain important private information that closely related to users’ family and friends, and these accounts could be priceless for the owners of the account and their beneficiaries. The fast developing “Cyber World” and “digital asset” concept along with the increasing economic and social values carries new unknowns and impediments into the digital society.

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

METHODOLOGY

In the fast growing digital society, many digital activities are unveiled every day. Digital activities may contain some form of social and economic values. Although “Digital Asset” is a new concept, it is already a widespread term and contains many different digital activities and properties in the cyber world today. In this study, particular major *social networks and email accounts* are researched under the “Digital Asset” concept. Digital photo album accounts Flickr, Picasa and Social media accounts such as Facebook, Twitter, LinkedIn, and some major email accounts. For instance, Hotmail, Gmail and Yahoo are analyzed, compared, and contrasted in order to find answers to the definition of a “Digital Asset?”

In this research the concept of the “Digital Asset” is broadly elaborated using different sources and proven that there is a new asset formation called “Digital Asset” that is driven by the Information Technology.

SOLUTIONS

Digital asset is a global concept and reality now. The ambiguity and gray areas in the digital asset upset many “Digital Asset” users around the globe. Several inconveniences and hardships also upset the digital asset owners and their beneficiaries by the inability to assess their loved ones digital accounts after they have pass away. Today there are several companies for instance Assetlock Internet Company, <http://www.assetlock.net> or Legacy Locker, <http://legacylocker.com>, that provide services that allow people to access, delete, update, or transfer digital account information. However, the procedure is costly and time consuming. Instead of going to court system and seeking costly legal procedures or paying high fees to digital assets management companies, it would be better to enact new cyber law to regulate the “Digital Assets” that can help people to protect, transfer, sell or convey their rights to their beneficiaries smoothly without any extra financial cost or burden. However, there are several obstacles before enacting laws about the digital assets. First of all, the numbers of digital asset owners in the digital society are the clients of digital service providers and these clients are considered “end users.”

The new legislation should define what a “Digital Asset” is first and subsequently who are the digital asset owners. Digital citizens do not own the digital service providers’ services such as Hotmail, Gmail, Yahoo, Flickr, Facebook and Twitter but they are the “end users” of these services. When people open an email account or a social media account the service providers dictate the rules via the TOS and the end users usually accept them with no choice. Currently, the digital account users have no right to negotiate the way of account set up and/or make a decision about the fate of the account. It is called a “contract” between the digital service providers and the end users; however, a contract should contain some options and negotiation powers between the parties. In the current TOS, consumers’ rights are obviously ignored and violated. In this case, the current legal concept of TOS is also questionable and should not be legally binding to the “end users.” A new legislation should clearly define and regulate the digital accounts and digital assets. The law should explain and protect the rights of digital account owners and consequently how to protect, use, transfer, sell or convey the digital accounts or digital assets to the beneficiaries or third parties.

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

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

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

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

- Do you want to inherit the usage of your account if you die?
- Who are the account beneficiaries?
- Phones, emails and addresses of beneficiaries?
- Do you want to memorialize your account?
- Or do you want to close and totally remove your account after you died?

In the latter case, the account should be deleted by the service provider after the account owner's death is legally proven or not accessed for a certain amount of time by the user. The amount of time should be declared in the account contract (state or federal laws overwrite the time limit). While establishing a digital account, if there would not be any account set up information about the beneficiaries, then the potential beneficiaries should provide legal documents, such as court order and wills before taking over the accounts and establishing their own password or access code. Same procedure should be valid for international beneficiaries as well.

After reaching some monetary and social value, a digital account becomes an "asset" and ignoring or disregarding this asset by the digital service providers is neither fair nor ethical. The digital accounts/assets should be treated like a bank account or valuable, similar to tangible and intangible assets. The digital asset/account owners and beneficiaries should know that their rights are protected by law with no doubt.

Unfortunately, there is no current federal law and regulation to protect people's "Digital Assets." However, at this time five states have enacted law regarding to digital assets and expecting more states in the near future (Digital Estate Resource, Law).

- Oklahoma HB2800: Control of certain social networking, micro blogging or e-mail accounts of the deceased (Oklahoma House Bill No. 2800, 2010).
- Connecticut Public Act No. 05-136: An Act Concerning Access to Decedents' Electronic Mail Accounts (Connecticut Substitute Senate Bill No. 262, 2005).

- Rhode Island HB5647: Access to Decedents' Electronic Mail Accounts Act (Rhode Island House Bill 5647, 2007).
- Indiana Code 29-1-13 (SB 0212, 2007). Electronic documents as estate property (Indiana Code 29-1-13, 2007).
- Idaho SB1044, Control of certain social networking, micro blogging or e-mail accounts of the deceased (Idaho Senate Bill 1044, 2011).

Rhode Island and Connecticut are limited to regulate the email accounts. On November 1, 2010, Oklahoma State passed a law to allow executors to access, delete, or administer digital accounts of deceased people. The law says: "The executor or administrator of an estate shall have the power, where otherwise authorized, to take control of, conduct, continue, or terminate any accounts of a deceased person on any social networking site, any micro blogging or short message service website or any email service website." (Bill No. 2800, is sponsored by Rep. Ryan Kiesel, and Dorman and Murphey of the House and Rice of the Senate, Oklahoma State).

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

This legislation is an important milestone to show the future characteristics of digital assets. New laws are going to change the Terms of Services of most digital account service providers and social media accounts, such as Facebook, Twitter, LinkedIn, Yahoo, Google and others. Most importantly the law indicates that the digital account owners and their beneficiaries have the rights and ownership to any content on the websites.

CONCLUSION

It is not easy to predict the future of the digital assets, but it is easy to say that digital assets are already part of the digital society. Especially, increasingly popular social media accounts, cloud storages, and digital information stored in libraries and financial services over the internet make digital assets more attractive, convenient, valuable and consequently more important than before. These "Digital Assets" are similar to tangible and intangible assets the people want to protect, transfer, sell or inherit. Because of lack of legislations and regulations, the concept of "Digital Asset" causes ambiguity between the digital account service providers and the account users. The ambiguous digital environment makes the concept problematic, unfair and unproductive. So far five states have enacted laws that relate to digital assets and estate planning. Oklahoma

State's law is an especially important milestone that covers the broader concept of digital asset, but not enough to solve and regulate digital world's mounting problems. Consequently, enacting "Federal Cyber Law Act" is imminent in order to regulate the "Digital Assets" and other cyber problems in the United States.

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

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