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Digital Inheritance in the Netherlands

I. Introduction

Our accumulation of assets is increasingly digital: our written letters turn into text messages, e-mails, and e-cards; our physical photo-albums are replaced by Instagram albums or stored on cloud-services such as iCloud, Dropbox, and Google Photos; and our (music) library is only a click or tap away, rather than stored in CD-collections,[1] or bookcases.

What happens to these digital assets upon our death? In the following, the topic of a digital inheritance is discussed in the Netherlands. Section II starts with a brief overview of the general rules regarding succession. Their application to digital assets is discussed next. As we shall see, there is not one type of digital asset. A photo taken by the deceased is subjected to different rules than the music collection stored on a hard drive, which should in turn be distinguished from the music collection held in a Spotify library. Much of this data also constitutes personal data, which possibly triggers the application of data protection law. Whether the fundamental and constitutional right to privacy extends to the deceased and if data protection law plays a role in the winding up of a digital inheritance is discussed in section III. Before the conclusions, a more practical approach is looked at. The topic of digital inheritance in the Netherlands has not led to a large body of scholarly literature or government initiatives. Much more prevalent are the private initiatives from notaries and companies for example that specialize in digital vaults and password managers. These are discussed in section IV.

II. Dutch succession law

1. General rules regarding inheritance and assets

On the death of a person, the heirs succeed by operation of law to the rights capable of transmission and to whatever the deceased possessed or held.[2] This entails that heirs need not be transferred the individual assets or the patrimony as a whole, copyrights need not be transferred,[3] nor is there a need for the contracts to be assigned to the heirs.[4] No delivery of the patrimony is required.[5] Rather, the heirs 'step into the shoes' of the deceased as it were, also referred to as the principle of *saisine*.

Property can be acquired in one of two ways in Dutch law: by general or particular title.[6] This distinction is important in relation to claims that may be part of a will. Succession is an example of acquisition by general title,[7] whereas acquisition based on a transfer is one of the most common

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[1] Although vinyl records and polaroid photos are experiencing somewhat of a renaissance.

[2] Article 4:182(1) Burgerlijk Wetboek (BW). Certain patrimonial rights are excluded such as the *usufruct*, Article 3:203(2) BW.

[3] Article 2(1) Auteurswet.

[4] Article 6:249 BW.

[5] Also referred to sometimes with the German term *Universalsukzession*. See GS Erfrecht, commentaar op art. 4:182 BW.

[6] Article 3:80(1) BW, translation from H. C. S. Warendorf, R. L. Thomas and Ian Sumner, *The Civil Code of the Netherlands* (Kluwer Law International 2013). Unless specifically stated, all translations of the Dutch Civil Code are from this book.

[7] Article 3:80(2) BW, other examples such as merger are enumerated in Article 3:80(2) BW.

forms of acquisition by particular title.[8] Another example of acquisition by particular title is the bequest (*legaat*),[9] which is the testamentary disposition by which a testator grants one or more persons a right of claim.[10] The (joint) heirs will still succeed by operation of law to the rights capable of transmission, including any and all claims, however the (joint) heirs will have to deliver the specifically bequested claims to the legatee.[11] This acquisition of property by the legatee is acquisition by particular title.

The distinction in type of acquisition title is important in relation to the inheritance of claims. This is because the *transferability* of claims may be excluded by agreement between the obligor and obligee.[12] Such a non-transferability clause[13] has the effect that the assignment of the claim is made impossible, acquisition by particular title is therefore excluded. A non-transferability clause will not, however, affect the acquisition by general title. An heir will still take the position of obligor or obligee that the deceased had, however, he will be unable to assign the claim to another, for example a legatee. A bequest of a claim which was made non-transferrable is therefore impossible. This is particularly relevant in relation to licenses that are part of an inheritance as these are often construed as a claim. These will be discussed in more detail in section II, 2, b).

The testator may also dispose of very specific categories of assets in his patrimony, which are enumerated exhaustively in Article 4:97 BW, by virtue of a holograph document (*codicil*) written in its entirety by the testator by hand, which is dated and signed, without further formalities, for bequests of very specific objects.[14] Moreover, it is possible to appoint by way of a *codicil* an individual to succeed in the moral rights of the maker of copyright protected work.[15] These moral rights are a type of personality right which allow the maker of a work, for example, to object to publication of his work without attribution.[16] By way of *codicil* he may appoint someone to succeed in these moral rights.

The possibility to appoint someone to succeed in the personality rights of a maker of a copyright protected work is an exception to the general rule that personality rights lapse upon death. Personality rights are generally not heritable rights, and as such are not susceptible to transmission from the deceased. This is important to note in relation to digital assets which are also protected by the right to privacy when the person was still living, as privacy rights are generally also classified as personality rights.[17] The privacy aspects of a digital inheritance are discussed in more detail in Section III.

2. Qualification of digital assets

[8] Article 3:80(3) BW, other examples such as acquisitive prescription and expropriation are enumerated non-exhaustively in Article 3:80(3) BW.
[9] HR 11 May 1984, ECLI:NL:HR:1984:AG480, *NJ* 1985/374 with note by W.M. Kleijn (*Verhoeven/Peters*).
[10] Article 4:117(1) BW.
[11] Article 4:117(2) BW. The legatee may refuse the bequest, after which the claim to delivery will extinguish. Asser/Perrick 4 2013/560.
[12] Article 3:83(2) BW.
[13] When it has proprietary effect, see HR 21 March 2014 ECLI:NL:HR:2014:682 (*Coface/Intergamma*), and HR 17 January 2003, ECLI:NL:HR:2003:AF0168 *Ars Aequi* AA20030191 with note by R.D. Vriesendorp (*Oryx/Van Eesteren).*
[14] The objects have to be listed in the codicil, you cannot bequest all whole patrimony at once in this manner. Article 4:97 *sub* a BW. They concerns books, and other tangible objects.
[15] The same provision exists for neighbouring rights. Article 4:97 BW *sub* c jo. 5(2) Wet op de naburige rechten.
[16] Article 4:97 BW *sub* c jo. 25(2) Auteurswet.
[17] KST *II* 1998/199, 25 892, nr. 6, pp. 28-29. KST *II* 1998/99, 25 982, nr. 3, pp. 10-11.

There are no specific rules that apply solely to the winding up of a digital inheritance. Digital assets are therefore inherited in the same manner as any other type of asset. Heirs succeed by operation of law to the rights capable of transmission and to whatever the deceased possessed or held, whether this was digital or material. Contracts are continued under the same conditions by the (joint) heirs, unless specifically stated otherwise in the contract,[18] and property is held or possessed by the (joint) heirs under the same conditions.[19] A specific issue arises when the deceased has bequested certain digital assets. This is not always successful when it concerns a digital asset which has been made non-transferrable. For example, a claim in relation to specific digital content may therefore pass to the heirs but cannot be the subject of a bequest. Contracts for digital services are discussed first, after which the issue of licenses and legatees are discussed.

a) Contracts for digital services

Heirs succeed by operation of law into the position of the deceased in the contract, unless the contract stipulates otherwise.[20] Terms and conditions that apply to the specific contract for digital services must therefore be checked to see what the rights of the heirs are under the contract. If the contract is mute on what happens to the account after the death of the user, then the provider must provide access to the service to the heirs under the same conditions as it did to the now deceased user. The heirs may then decide what to do with the account of the deceased: close it or keep it open for a while longer. Where the specific digital service contains privacy sensitive data, such as (private) communication the deceased had with others, or pictures; the question of whether the deceased may 'snoop' is a matter of privacy law, discussed further in section III.

Service providers may also stipulate in the contract what happens to the account and the digital assets after the death of the user. Examples are termination of the contract, and the removal of all information upon the death of the user, or providing the heirs with an option of turning a specific social media profile, such as a Facebook profile, into a 'remembrance page'. While it is often the death of the user which triggers the application of these provisions, in practice the provisions are only enforced when the service provider is informed of the passing of one of its users. Often the heirs inform the service provider. The heir will then have to provide some form of evidence of their relation to the deceased and the fact the individual passed away.[21] Avoiding the hassle to prove their status as an heir by accessing the account with login details of the deceased - either by figuring them out, or because the deceased left these for their heirs - would then constitute a breach of contract by the heir. The heir would then have access to the full account, whereas they would only be entitled to a limited set of choices under the contract that they took over from the deceased. It is however doubtful whether such a breach of contract claim would be instituted.[22]

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[18] Unless the contract stipulates differently, see Article 6:249 and section II, 2, a).

[19] This entails that heirs for example continue to the good faith possession of the deceased – the prescription period is continued, not started anew – irrespective of their own good or bad faith. See extensively Leon Verstappen, 'Rechtsopvolging onder algemene titel (diss.)', Kluwer 1996).

[20] Article 6:249 BW.

[21] These differ depending on the service. The European Certificate of Succession may be of use here. A birth-certificate is also sometimes required. See for instance Instagram <https://perma.cc/DQ9L-86CT> accessed 14 November 2017.

[22] Especially where the heir makes use of the option to close the account, perhaps after leaving a final note to the connections on the social media platform, informing them of the death. The institution of the claim also presupposes that the service provider is aware of the unauthorized access to the account, which is doubtful where the heir was provided login details by the deceased by virtue of a note of some sort.

b) The issue of licenses and legatees

Certain digital services are provided by way of a license, for example, media streaming services such as Spotify[23] or Netflix.[24] Other services such as Instagram require licenses granted by their users – the copyright holders – in order to operate.[25] These are licenses for the use of copyrighted materials, such as music, pictures, but also software. Here too the heirs will succeed in the rights of the deceased insofar as these are capable of transmission.

Few problems arise when the deceased is a supplier of copyright protected materials, *i.e.* a copyright holder of their own photos uploaded to an Instagram profile, or their own compositions uploaded to SoundCloud. Often the licenses granted *by* the user to the service provider are non-exclusive, transferable, sub-licensable, royalty-free, worldwide licenses to use any IP content that is posted on or in connection with the particular service.[26] The heirs of the deceased who was a copyright holder of any music, picture or other work uploaded to the service will inherit the copyright.[27] If a license was granted to the provider in relation to this work prior to the death of the user and copyright holder, the license will simply continue. Sometimes even after the heirs end the contract with the service provider.[28]

The licenses granted *to* the user by the service provider on the contrary are generally made non-transferrable.[29] Amazon's Audible for example restricts the transfer of licenses of audiobooks purchased by its users.[30] This influences the possibility of making a bequest of the content and even the device the content is on.[31] Under Dutch law, the possibility to make property non-transferrable is restricted to claims.[32] Ownership, limited property rights (for example of use) and claims are transferrable, unless the law or the nature of the right resists such transferability.[33] For claims, transferability may be excluded by way of a stipulation between the obligor and obligee,[34] *e.g.* between the user and service provider. These licenses, when considered claims, are therefore

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[23] <https://perma.cc/T6Z9-PU93> accessed 14 November 2017.
[24] <https://perma.cc/HH8R-JBAV> accessed 14 November 2017.
[25] <https://perma.cc/T6AB-URTG> accessed 14 November 2017.
[26] Facebook's Terms of Service Article 2(1), <https://perma.cc/6EGQ-3RXZ> accessed 14 November 2017, see 'Your Content in Our Services' for Google, <https://perma.cc/LD59-Y752> accessed 14 November 2017.
[27] Article 2(1) Auteurswet.
[28] For Google for example: 'This licence continues even if you stop using our Services (for example, for a business listing that you have added to Google Maps).' <https://perma.cc/LD59-Y752> accessed 14 November 2017.
[29] For example, 'Google gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive licence to use the software provided to you by Google as part of the Services. This licence is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Google in the manner permitted by these terms. You may not copy, modify, distribute, sell or lease any part of our Services or included software, nor may you reverse engineer or attempt to extract the source code of that software, unless laws prohibit those restrictions or you have our written permission.' <https://perma.cc/LD59-Y752> accessed 14 November 2017.
[30] <https://perma.cc/836L-ZNXN> accessed 14 November 2017.
[31] For example, Apple's license in relation to apps states 'You may not transfer, redistribute or sublicense the Licensed Application and, if you sell your Apple Device to a third party, you must remove the Licensed Application from the Apple Device before doing so.' <https://perma.cc/76D9-G77S> accessed 14 November 2017.
[32] Article 3:83(2) BW.
[33] For example, an unemployment benefit is a claim which the law considers to be non-transferrable, Article 40 Werkloosheidswet, and the claim for immaterial damage arising out of tort for example is also excluded by law, Article 6:106(2) BW.
[34] Article 3:83(2) BW. See extensively on the topic F.E.J. Beekhoven van den Boezem, *Onoverdraagbaarheid van vorderingen krachtens partijbeding* (Kluwer 2003).

non-transferable. As a bequest requires the transfer of the property from the heirs to the legatee, a valid non-transferability clause impedes any bequest of a license.[35] The heirs succeed in the contract because the succession is not a transfer and therefore not susceptible to a non-transferability clause. The heirs are therefore the licensees, but they cannot fulfill the claim that the legatee has on the heirs to a transfer of the license.[36]

Where the license is provided for software which is downloaded, the CJEU ruling in *UsedSoft* is important.[37] In that case, the CJEU qualified certain software licenses for the use of a copyrightable work as a sale within the meaning of the Software Directive.[38] When such a sale occurs for the first time, the exclusive distribution rights of the right holder are exhausted.[39] And when the IP rights are exhausted, the particular copy of the software may be freely transferred and further distributed; the right holder cannot restrict the further sale of those copies based on his copyright.[40] In these cases non-transferability clauses based on the IP rights are therefore void.[41] This leaves open the question if non-transferability may be based on the freedom of contract,[42] and if there is a possibility to establish a non-transferability clause for claims with proprietary effect.[43]

Downloaded software that is licensed is construed as a sale if the license is granted 'for an unlimited period in return for payment of a fee intended to enable the right holder to obtain a remuneration corresponding to the economic value of that copy of his work'.[44] There has been some discussion in the Netherlands, whether this ruling of the court introduced a 'sui generis' property right on 'bits and bytes'.[45] The question of whether a licensor can restrict the possibility

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[35] There is no equivalent to Article 2:195(7) BW in succession law. This article allows for the non-transferability of a share to be lifted by the court upon request of an interested party of a bequest.

[36] The formulation of the non-transferability clause will have to be such that non-transferability is excluded with proprietary effect. Otherwise the non-transferability clause only has an effect in the law of obligations, meaning the legator *may* not transfer the license, but he still can. The transfer will then be valid, however, the heirs default on the contract and are liable against the service provider. See HR 21 March 2014 ECLI:NL:HR:2014:682 (*Coface/Intergamma*), and HR 17 January 2003, ECLI:NL:HR:2003:AF0168 *Ars Aequi* AA20030191 with note by R.D. Vriesendorp (*Oryx/Van Eesteren).*

[37] CJEU 3 July 2012, ECLI:EU:C:2012:407, Case C-128/11 (*UsedSoft GmbH v Oracle International Corp*.).

[38] In the Netherlands the question of whether the provisions concerning a sale are also applicable to software had been decided only a few months earlier by the Dutch Supreme Court with HR 27 April 2012 ECLI:NL:HR:2012:BV1301, *JOR* 2012/313 with note by J.W.A. Biemans, *TvC* 2013/1, with note by M.Y. Schaub.

[39] Article 4(2) Directive 2009/24/EC.

[40] In the Netherlands this was already elaborated on for copyrightable material on a *physical* carrier with HR 26 January 1952, *NJ* 1952/95 (*Leesportefeuille*) and HR 20 November 1987, ECLI:NL:HR:1987:AD0052, IEPT19881120 with note by Wichers Hoeth (*Free Record Shop*).

[41] This might leave open the question of whether a non-transferability clause may still have effect in contract law. Transfer of the digital asset, if possible in light of Article 3:83(3) BW, in breach of a contractual non-transferability clause might still have effect, but will result in a breach of contract.

[42] Which would have as a consequence that the license *can* be transferred but would result in a breach of contract. See HR 21 March 2014 ECLI:NL:HR:2014:682 (*Coface/Intergamma*). Contrary see: R.M. Wibier and J. Diamant, 'UsedSoft vs. Oracle gaat niet over eigendom maar over contractsvrijheid' (2012) Nederlands Juristenblad 2416.

[43] Which would result in the fact that the claims *cannot* be transferred. HR 17 January 2003, ECLI:NL:HR:2003:AF0168 *Ars Aequi* AA20030191 with note by R.D. Vriesendorp (*Oryx/Van Eesteren).*

[44] CJEU 3 July 2012, ECLI:EU:C:2012:407, Case C-128/11 (*UsedSoft GmbH v Oracle International Corp.*) para. 88.

[45] Proposed by Van Engelen, see D. van Engelen, 'UsedSoft v Oracle: the ECJ quietly reveals a new European property right in "bits & bytes"' (2012) 1 European Property Law Journal also D. van Engelen, 'Twee voor de prijs van één : een markt voor tweedehands software licenties en een nieuw Europees eigendomsrecht op "bits & bytes"' (2012) Nederlands Juristenblad 2676, see also C. Drion, 'Vooraf: Tweedehands software' (2012) Nederlands Juristenblad 2113, contrary: Wibier and Diamant, 'UsedSoft vs. Oracle gaat niet over

to bequest a copy of software based on their IP rights has however not led to any disagreement. Transferability may only be excluded based on the IP rights of the copyright holder in the event a license is either granted for a limited period of time, or where the remuneration does not correspond to the economic value of the copy of the work, or the software was not downloaded, but the license concerns an access right to a cloud environment for example where the software was running. If the license to use a copy of a copyrighted work is granted for an unlimited period of time and the remuneration matches the economic value of the work, then the license is treated as a sale within the meaning of the Software Directive and the distribution rights are exhausted in relation to that copy.[46]

The specifics of each license will therefore have to be looked at to see whether the license is for software which is downloaded, or only for software which grants access to a cloud service. In case of the former, the license might be subject to a non-transferability clause, and if so, the clause should be scrutinized in light of *UsedSoft*. If it is still a non-transferable license, then the heirs are unable to deliver the license to a legatee without permission of the licensor. Where the license is for the use of software in a cloud service for example, and not downloaded, then the license is construed as a contractual right to access which may be subject to a non-transferability clause.[47]

III. Data Protection law and privacy after death

When service providers have not provided in their contracts with their users specifically what happens with an account upon the death of the user, the heirs succeed in the contract and are allowed access to the account, based on succession law. However, succession law deals with the winding up of the financial aspects of the relationship between the user and the provider of the digital content. Digital assets can also be very personal in nature. When heirs, often relatives, get access to these accounts, much more is revealed to them than the deceased was willing to share while they were still alive. We can think of personal communication with others, but also digital receipts in email inboxes for specific services, purchases or donations. These can reveal very personal information such as sexual or political preference. The question therefore has arisen in academic literature whether the right to privacy continues after death of an individual and if data protection law also protects the deceased, specifically in relation to email.[48]

1. The right to privacy

It is generally assumed that the right to privacy, as it is a personality right,[49] is not heritable. Upon death the personality rights generally end. However, based on several specific arrangements made in the law,[50] authors have argued that the right to privacy may nevertheless persist in certain cases.[51] If one considers that constitutional rights may sometimes extend to the dead as well, it is interesting to note that the constitutional right to protection of private communication embodied

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eigendom maar over contractsvrijheid', response D. van Engelen, 'Naschrift' (2012) Nederlands Juristenblad 2416.

[46] The court uses the phrase 'a transfer of ownership of the copy of the computer program', see also CJEU 17 April 2008, ECLI:EU:C:2008:232, Case C-456/06, (*Peek & Cloppenburg*).

[47] See also L.A.G.M. van der Geld, 'De digitale nalatenschap' (2013) Kwartaalbericht Estate Planning 16.

[48] P.H. Blok, 'Is er privé-leven na de dood?' (2003) Nederlands Juristenblad 273. F.J. Zuiderveen-Borgesius and D.A. Korteweg, 'E-mail na de dood: juridische bescherming van privacybelangen' (2009) 12 Privacy & Informatie 212. E.N.M. Visser, 'Who owns your bits when you die?' (2007) Computerrecht 113.

[49] KST *II* 1998/99, 25 892, nr. 6, p. 27-28.

[50] For example, the right to bodily integrity which is afforded constitutional protection, may also extend to the dead in certain instances.

[51] See extensively on this topic P.H. Blok, 'Is er privé-leven na de dood?' (2003) NJB 273.

in Article 13 of the Dutch Constitution, the so-called postal-secret, is currently in the process of being amended to explicitly include electronic communication as well.[52]

2. Data protection law

The Dutch data protection law does not apply to data regarding the deceased only. The Dutch law on data protection consists of the implementation of the Data Protection Directive,[53] which left it to the Member States to decide whether to apply the legal framework to the deceased as well.[54] The Netherlands has opted to restrict application of data protection law only to natural *living* persons.[55] However, information about a deceased may in certain situations also provide information regarding a living natural person.[56] In relation to online communication it should furthermore be made clear that the data protection legislative framework still applies fully where the communication of the deceased was with currently living natural persons.[57] Transcripts of such communication, would then concern personal data of the communication partners of the deceased. Therefore, Korteweg & Zuiderveen-Borgesius have remarked that providing access to surviving heirs of (webbased) email of the deceased,[58] would constitute processing of personal data – of the communication partners of the deceased – subject to data protection legislation. This processing therefore requires a legal basis.[59] Perhaps the legal basis can be found in the aforementioned acquisition of general title by way of succession law, if not, consent of the communication partners has to be provided.[60] Korteweg & Zuiderveen-Borgesius subsequently question whether providing (full) access to the surviving relatives to emails written or received by the deceased is a legitimate processing of the personal data of those with whom the deceased was communicating.[61]

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[52] See KST *II* 2013/14, 33 989, p. 20 et seq. on the horizontal application of the right.

[53] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, p. 31-50.

[54] Due to the lack of consensus on the matter, *see* G Overkleeft-Verburg, *De wet persoonsregistraties: norm, toepassing en evalutatie (diss. Tilburg)* (Tjeenk Willink 1995), p. 642.

[55] KST *II* 1997/98, 25 892, nr. 3, p. 47. Rb. Amsterdam (*Vzr.)* 11 December 2003, ECLI:NL:RBAMS:2003:AN9893, WBP 2009/4 with note by G.J. Zwenne (*Stichting Digitaal Monument Joodse Gemeenschap in Nederland*). Blok argues application should be extended to the deceased, Blok, 'Is er privé-leven na de dood?', p. 277-278.

[56] Apart from the obvious mentioning of name and details about the surviving relatives in an obituary, see Registratiekamer 14 June 2001, z2001-0054 (Rouwkrant en privacybescherming), although this involves a case about the lapsed *Wet persoonsregistraties*, it follows the definition of personal data in the Directive. Moreover, see the examples provided by Article 29 Data Protection Working Party (2007), Opinion 4/2007 on the concept of personal data, WP 136, p. 22-23.

[57] Zuiderveen-Borgesius and Korteweg, 'E-mail na de dood: juridische bescherming van privacybelangen', p. 218.

[58] Though the same would apply to Facebook, Instagram, Snapchat, Hangouts, Skype, and Twitter direct messages.

[59] Zuiderveen-Borgesius and Korteweg, 'E-mail na de dood: juridische bescherming van privacybelangen', p. 218.

[60] Article 8 *sub* a Wbp.

[61] Referring to CJEU 20 May 2003, ECLI:EU:C:2003:294, Joined Cases C-465/00, C-138/01 and C-139/01 (*Rechnungshof v. Österreichischer Rundfunk and Others*) at 74, 'It necessarily follows that, while the mere recording by an employer of data by name relating to the remuneration paid to his employees cannot as such constitute an interference with private life, *the communication of that data to third parties, in the present case a public authority, infringes the right of the persons concerned to respect for private life, whatever the subsequent use of the information thus communicated*, and constitutes an interference within the meaning of Article 8 of the Convention.' Emphasis added.

For surviving relatives, data protection law therefore only provides recourse if the information about the deceased is also information relating to them.[62] However, under certain circumstances the surviving relatives might nevertheless have a claim in tort concerning information about the deceased which is made public. This would be the case when publicizing information about the deceased would mean that no due care was exercised as may be expected in society (*zorgvuldigheid die het maatschappelijk verkeer betaamt*). The surviving relatives may have a claim in tort law, for example, for injunctive relief against the person publicizing information about their deceased relative.[63] Moreover, the surviving relatives may also institute a claim for compensation where the damage consists of the besmirching of the deceased's memory.[64]

IV. Practical solutions to getting access

While there has been fairly little attention paid to the legal implications of a digital inheritance in scholarly literature[65] and by the legislator,[66] the matter has been featured on numerous occasions in the newspaper,[67] and professional magazines for notaries for example.[68] Even in TV-commercials the matter of one's digital inheritance was discussed.[69] These articles and initiatives do not resolve or discuss the legal issues so much, rather they provide practical solutions to the plethora of digital accounts of the deceased in existence and access thereto.

For example, it has been advanced that notaries could discuss the insertion of a 'social-media-executor' clause into the will, *i.e.* someone who is responsible for the winding up of these accounts.[70] Alternatively, the client could add a list of accounts and passwords to the will,[71] and the Royal Dutch Association of Civil-law Notaries has supported the development of a 'digital vault' where clients can store their data.[72] These services of online vaults for passwords are also provided by companies which offer password managers, such as LastPass and 1Password.[73] Some years prior, certain Dutch banks also provided the option of a digital vault, but they have since abandoned this practice.[74]

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[62] Which identifies or is also identifiable to them.
[63] Rb. Amsterdam (*Vzr.)* 11 December 2003, ECLI:NL:RBAMS:2003:AN9893, WBP 2009/4 with note by G.J. Zwenne (*Stichting Digitaal Monument Joodse Gemeenschap in Nederland*). KST *II* 1998/99, 25 892, nr. 6, p. 27-29.
[64] Article 6:106(1)(c) BW. KST *II* 2003/04, 1928, p. 4079.
[65] With Van der Geld as the notable exception, who has published on the topic on numerous occasions. See also L.A.G.M. van der Geld, 'De executeur in een nalatenschap met bitcoins en andere 'digitale bezittingen'' (2014) Tijdschrift voor Erfrecht 122.
[66] KST *II* 2003/04, 1928, p. 4079.
[67] For example,, 'Digitale erfenis is juridisch doolhof;
Directeur Netwerk Notarissen: Regelgeving nodig' *De Telegraaf* (16 April 2013) A. Haverkamp, 'Online doodgaan is nog een hele kunst' *BN/De Stem* (21 September 2016) 20.
[68] P. Steeman, 'Digitaal voortleven - Testament voor online profielen' (2010) Notariaat Magazine , F.M.H. Hoens, 'Wat te doen met de digitale nalatenschap?' (2010) Estate Tip Review .
[69] For example, in 2015 on Monuta; <https://www.youtube.com/watch?v=10Xx6QAWsy4> accessed 14 November 2017.
[70] Vera Hartkamp, 'De digitale nalatenschap' (2013) Nederlands Juristenblad 2746, van der Geld, 'De executeur in een nalatenschap met bitcoins en andere 'digitale bezittingen''.
[71] This also requires that the list is updated whenever an individual changes their password.
[72] Lex van Almelo, 'Digitale dienstverlening in stroomversnelling' (2014) 10 Notariaat Magazine 8.
[73] See 1Password's solution using an Emergency Kit, <https://support.1password.com/emergency-kit> accessed 14 November 2017. LastPass also allows you to appoint another LastPass account holder as a trusted person. They can then request access to your account and if you do not refuse within a specified time-period they will be granted access. See <https://helpdesk.lastpass.com/nl/emergency-access> accessed 14 November 2017.
[74] See <https://perma.cc/BF6U-B7AM> accessed 14 November 2017 for the terms and conditions of ABN AMRO's digital vault in 2004. The bank no longer offers this service.

The advantage of these practical solutions to providing access to the accounts of the deceased are that the heirs have an overview of the services and accounts of the deceased, so they know where to go with their request for information/access or closing down of the account. Moreover, where passwords and login details are also shared with the heirs, this allows them access to the accounts which they would normally only get if they provided different legal certificates stipulating that they are an heir, the deceased is indeed dead, and sometimes also a birth-certificate of the deceased.[75] The legality however of providing oneself access in this way may be questioned in light of specific arrangements made in the contract, which can stipulate that the heir is only entitled to a limited set of options, such as closing the account or turning it into a remembrance page.[76]

V. Conclusions

The legal questions surrounding the winding up of a digital inheritance span several areas of the law. Succession law provides the general rule that the heirs succeed in the rights of the deceased wherever possible, and the law of obligations, (intellectual) property and data protection law dictate those possibilities. As our assets amassed while alive are increasingly digital in nature, the variety and complexity of the legal qualification(s) of these digital assets increases as well. This has resulted in a lot of added (legal) work for the heirs who are often the surviving relatives. It is therefore also important to have a look at practice which, often aided by technology, offers interesting solutions.

[75] For example, Instagram requires this information <https://perma.cc/DQ9L-86CT> accessed 14 November 2017.
[76] See above section II, 2.