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THE NET BEYOND THE LIFE AND THE DEATH

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Over 20 years ago, Stefano Rodotà (who was an Italian jurist (professor of civil law) and politician and among others, the first Italian privacy guarantor) introduced for the first time the concept of "electronic body", a category born from the observation of the transformations that the use of technology could imply on human identity.

Today, more than ever, **individuals are increasingly present on the network** and leave more or less tangible signs of their passage. In this regard, **all the contents created** or in any case referable to the subject and on which he/she can boast an exclusive and absolute property right, whether or not suitable to economic evaluation, **constitute a real 'digital heritage'**: just think about cryptocurrencies, text documents, images and videos, software, e-books but also electronic correspondence or access and protection credentials.

Qualifying these contents as 'digital assets' raises a series of issues of great interest from a civil law point of view, for example that of their **transmissibility *mortis causa***. Recital 27 of EU Regulation 2016/679 ("GDPR") states that the regulation does not apply to personal data of deceased persons, nonetheless leaving to the Member States of the Union the possibility to fix internal rules to regulate the matter.

As far as the **Italian legislation** is concerned, art. 2-*terdecies*, paragraph 1 - of Legislative Decree no. 101 of 2018, reformulating a similar provision of the Privacy Code, amending it following the entry into force of the GDPR - states that, in case of death of the interested subject, the rights referred to in Articles 15 and 22 of the EU Regulation, can be exercised "*by those who have an interest of their own, or act to protect the interested party, as their agent, or for family reasons worthy of protection*".

The first known legal precedent on the matter is a judgment of the **German Federal Court of Cassation of Karlsruhe**, which has taken a position for the first time in relation to the matter with reference to an event dating back to 2012: the parents of a deceased fifteen-year-old triggered a proceedings against **Facebook** to have access to the contents of their daughter's social profile (data and messages).

With an order issued on 12 July 2018, the Court of Cassation, in open contrast to the ruling of the Court of Appeal, declared that "the contract concerning a user's account with a social network is transferred to the heirs of the original holder of the account ”and that the heirs“ have the right to claim access to the account from the operator, including communication data ”.

A ruling of the **Court of Milan** dated 10 February 2021 has recently joined this precedent. The case decided by the Italian court bears closest resemblance to the German one: a married couple started an injunction proceedings against **Apple Italia** S.r.l., as part of the well-known Apple group, with the request to order the company to let them have access to personal data from the accounts of their son, a young chef, who had recently passed away. The latter, in fact, was in possession of an **IPhone X** and used online synchronization systems (specifically **iCloud**). The plaintiffs, devastated by the pain of the tragic loss of their son, intended to recover the data contained therein, consisting of videos and photographs, also trying to "recover the recipes in order to create a project dedicated to his memory (for example, a recipes book)".

The Court of Milan has concluded for the legitimacy of the parents to exercise the right of access to the personal data of their suddenly deceased child, recognizing, in this case, the existence of "family reasons worthy of protection" required by the law.

At the same time, the court has declared unfounded the grounds on which Apple had based its refusal: according to the Italian court, in fact, Apple’s denial was based on the alleged absence of requirements referring to institutions of a legal system other than the Italian one and, therefore, not applicable to the case at stake.

This last ruling particularly highlights **the need for companies providing information services to rethink the rules of data governance in general and, in particular, to provide adequate mechanisms for access to the heirs and/or for the arrangement of a "digital will"**, tailored in accordance with the national rights of users.

This is certainly an important challenge to face – and, in this regard, it is significant the fact that Apple has been in default of appearance in the proceedings in question.