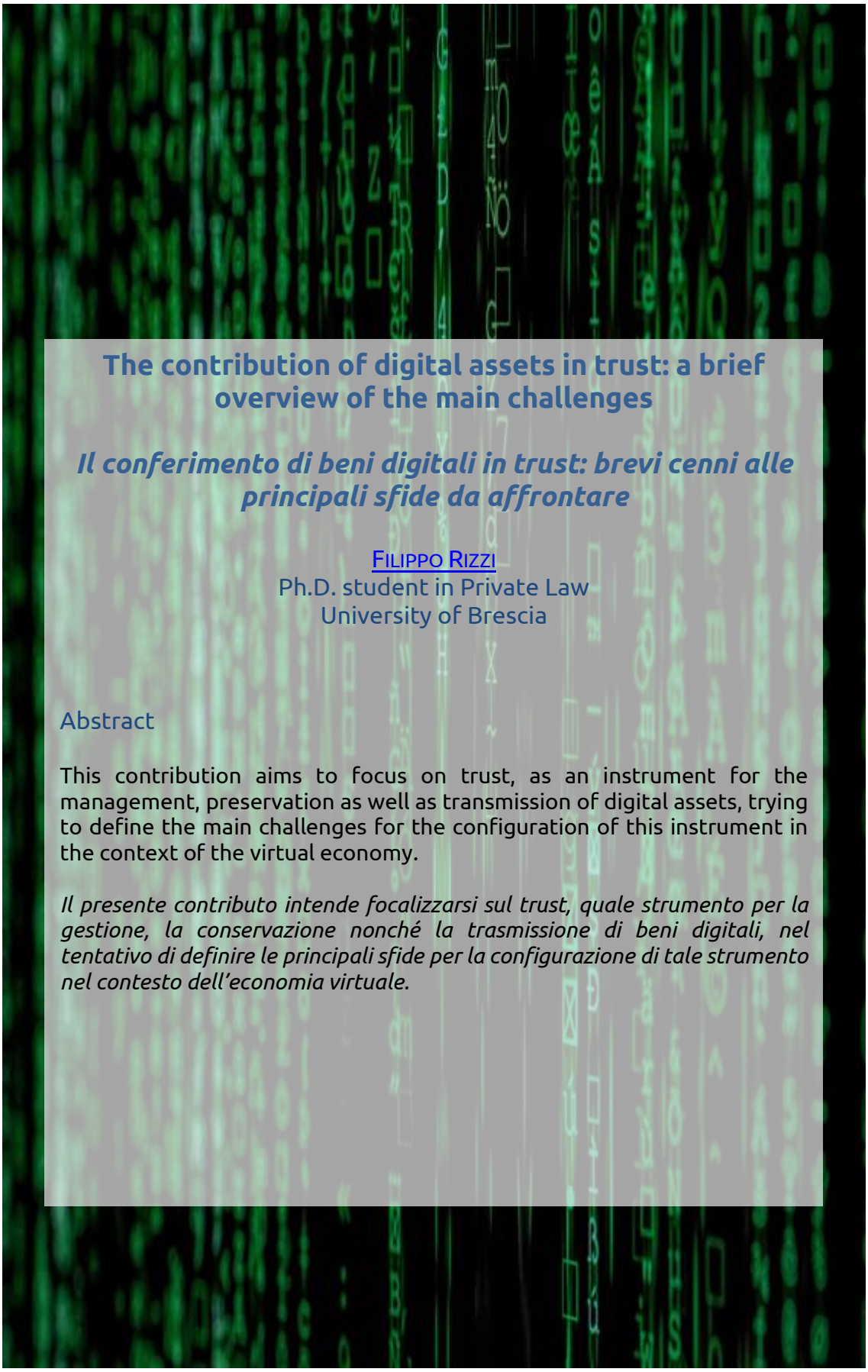
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The contribution of digital assets in trust: a brief overview of the main challenges

Il conferimento di beni digitali in trust: brevi cenni alle principali sfide da affrontare

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Abstract

This contribution aims to focus on trust, as an instrument for the management, preservation as well as transmission of digital assets, trying to define the main challenges for the configuration of this instrument in the context of the virtual economy.

Il presente contributo intende focalizzarsi sul trust, quale strumento per la gestione, la conservazione nonché la trasmissione di beni digitali, nel tentativo di definire le principali sfide per la configurazione di tale strumento nel contesto dell'economia virtuale.

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Keywords: intangible asset; digital asset; trust; trustee

Summary: 1. Introduction. – 2. The definitional and identifying legal challenges raised by digital assets. – 3. The new configuration of the ownership transfer rules applicable to tangible assets. – 4. The new skills needed by the trustee for the management of digital assets. – 5. Conclusions.

1. Introduction.

Technological progress has triggered a "Digital Revolution", which has affected numerous aspects of the individual's social and economic life and has also led to an evolution of the concept of patrimonial assets.[1]

In fact, whereas prior to this Revolution the components of an individual's wealth were mostly tangible assets, since the Revolution itself, the intangible components of an individual's wealth are increasingly expanding.[2]

In such a context, it is therefore necessary to configure the instruments used in the real economy for the conservation and transmission of wealth as well as the role of the actors involved in the creation and management of these instruments, in order to adapt them (where possible) to the virtual economy.

In the real economy, the institution of trust is extremely important in the protection and management of tangible assets.

Trust is, functionally speaking, a legal arrangement created by a settlor in which a trustee holds property for one or more beneficiaries[3] and, even though there is no domestic law regulation,[4] the broad flexibility of this tool as well as its adaptability to the concrete needs of the individual often leads the latter to prefer it over the instruments traditionally provided by the Italian legal system for this purpose.

In light of this, the present article focuses solely on the main legal challenges associated with the contribution of digital assets into trust in order to configurate this instrument in the new context of the virtual economy. Tax

[1] On the disruptive effect that the digital revolution has had on private law, see C M Christensen, *The innovator's dilemma. When new technology causes great firms to fail* (Harvard Business School Press 1997); M J Copps, 'Disruptive technology… Disruptive regulation', (2005) Mich. St. L. Rev. 309; N K Katyal, 'Disruptive Technologies and the law', (2014) 102 Geo. L.J. 1685. In the European literature, see S Grundmann, P Hacker, Philipp, 'Digital Technology as a Challenge to European Contract Law - From the Existing to the Future Architecture' (2017) 13 ERCL 255; C Twigg-Flesner, 'Disruptive technology - disrupted law? How the digital revolution affects (contract) law', in A De Franceschi (ed.), *European Contract Law and the Digital Single Market. The implications of the digital revolution* (Cambridge University Press 2016), 21.

[2] PWC, *Digital Assets - an emerging trend in capital markets* (2022) in www.pwc.com, which shows that in the United States only, the market capitalisation of digital assets increased from around USD 14 billion in November 2016 to around USD 3 trillion in November 2021, with an annual growth rate of 193 %.

[3] R H. Sitkoff, 'Trusts and Estates: Implementing Freedom of Disposition', (2014) 58 St. Louis U. L.J. 652.

[4] It should be noted, however, that following the presentation in the Senate of Bill No. 1151, containing a delegation to the Government for the adoption of "*one or more legislative decrees for the revision and integration of the Civil Code, in compliance with the following guiding principles and criteria*: (...) *p) regulating the procedures for the establishment and operation of trusts and other fiduciary contracts, ensuring adequate protection of the beneficiaries*", the Association of Italian Civil Lawyers proposed a draft law aimed at regulating trusts. To date, however, no legislative decree has been adopted by the Government. On this point, see L Gatt et al., 'Trusts', in V Cuffaro, A Gentili (ed.), *Materiali per una revisione del codice civile* (Giuffré 2022), 301.

aspects are excluded.

2. The definitional and identifying legal challenges raised by digital assets.

The contribution of digital assets in trust raises several challenges, the first of which is of a defining and classifying nature: more precisely, from a legal standpoint, the issue is to understand whether such assets can be included in the category of legal goods provided for by Article 810 of the Italian Civil Code[5] and, if the answer to this question is positive, to elaborate an unequivocal identification of such assets.

From the first point of view, the greatest legal obstacle to bringing such assets within the category of legal goods under Article 810 of the Italian Civil Code is represented by the intangible nature of such assets: in fact, if on the one hand the modern theory[6] emphasises that the term "*thing*" can take on an intangible connotation and that in any case the emergence of rights over intangible assets has led to a fragmentation of the forms of ownership[7], on the other hand the traditional theory[8] recognises the qualification of legal asset only to tangible things that can be the subject of ownership and that therefore allow exclusive appropriation as well as a power to exclude third parties from its use.

In addition to these main theories, there are also intermediate ones that, although enriching the debate among interpreters, do not help to provide a clearer picture.[9]

The uncertainty of this scenario makes necessary the formulation of a general theory of goods that is capable of identifying a classification criterion by which things are included in the category of legal assets.[10]

Under the second profile, to date there is no generally accepted identification that allows the nature and structure of such assets to be understood.[11]

On the one hand, in fact, American literature - a pioneer in the field - does

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[5] These doubts are reinforced by the ambiguity of the Article 810 of the Italian Civil Code. In this regard, see O T Scozzafava, 'I beni', in P Perlingieri (ed.), *Trattato di Diritto Civile del Consiglio Nazionale del Notariato* (ESI 2007), 13; V Zeno-Zencovich, *Cosa*' (1980) *Dig. disc. priv.*, 438; M Barcellona, '*Attribuzione normativa e mercato nella teoria dei beni giuridici* (1987) *Quadrimestre*, 615; A Jannarelli, 'La disciplina dei beni tra proprietà e impresa nel codice del 1942', in AA. VV. (ed.), *Letture di diritto privato* (Cacucci 1994), 97.

[6] B Biondi, '*Cosa (diritto civile)*', (1968) *Noviss. Dig. It.,* 1009.

[7] M Ziccardi, *Beni digitali e pianificazione ereditaria*, (2022 ESI) 48; L Gatt, 'Dei beni in generale. Commento agli artt. 810-812 c.c. ', in L Gatt, S Troiano (ed.) *Commentario del Codice Civile* (2014 Dike Giuridica Editrice), 5; B Biondi, 'I beni', in F Vassalli (ed.), *Trattato di Diritto Civile Italiano*, (1953 Utet), 15; C M Bianca, *Diritto civile. La proprietà* (2017 Giuffrè), 33; A Mollo, *Eredità digitale e piattaforme online*, (2021 Editoriale Scientifica) 22.

[8] M Are, 'Beni immateriali', (1959) Enc. giur. 247; S Pugliatti, 'Cosa (teoria generale)' (1962) Enc. dir., 27 ss.; O T Scozzafava, *I beni e le forme giuridiche di appartenenza*, (1982 Giuffrè) 84.

[9] For a review of the various legal doctrinal theses on the legal good, recently see M Giuliano, '*Le risorse digitali nel paradigma dell'art. 810 cod. civ. ai tempi della blockchain. Parte prima*' (2021) NGCC, 1215.

[10] Or at least the formulation of an appropriate legislative regulation. In this regard, recently see the speech at the Annual Roundtable organized by Accademia del Trust di San Marino of L Gatt, '*Il trustee e la segregazione dei digital asset*' (2021) available at www.accademiadeltrust.sm.

[11] L Gatt, I A Caggiano, 'Trust e digital asset', in G Cassano, F Di Ciommo (ed.), *Gli atti digitali di "Gli Stati Generali del Diritto di Internet", Luiss 16, 17, 18 dicembre 2021*, (2021), available at www.dirittodiinternet.it; L Gatt, speech ad the conference Trust, Prospettive di diritto comparato (2022).

not provide a univocal identification of digital assets, since according to some interpreters it would be necessary to subdivide them into online digital assets and offline digital assets,[12] while according to others, the subdivision should be made by distinguishing Personal Assets, Social Medial Assets, Financial Assets, and Business Accounts.[13]

On the other hand, even the Italian doctrine that has dealt with this issue has not been able to elaborate a univocal identification of these assets, since some interpreters[14] have limited themselves to transposing into domestic law, with some slight differences, the American division between online digital assets and offline digital assets, while others[15] - noting that this distinction does not in any case change the heterogeneous nature of the possible patrimonial or non-patrimonial content of these assets - have proposed to distinguish them according to their inherent patrimonial or non-patrimonial value.

Although this latter recognition is accepted by the most part of scholars, it is unable to describe the phenomenon in its entirety and complexity, because in the digital context, patrimoniality is a notion that is not entirely clear and defined, since very often there is a hybridisation of the patrimonial into the personal and conversely.[16]

In such a context, therefore, a precise identification and classification of such assets seems necessary, since without this, there would be significant negative consequences on the validity of the trust deed, on the management of the various operations for the transfer of the ownership of such assets, as well as on the rights and protections available to the beneficiary in the event that the latter is allegedly damaged.

3. The new configuration of the ownership transfer rules applicable to tangible assets.

A second challenge to be addressed concerns the ways in which the rules of transfer of legal ownership that apply to tangible assets can be adapted to the *inter vivos* or *mortis causa* transfers of digital assets that may occur within the trust.[17]

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[12] N J Dosch, J W Boucher, 'E-Legacy: Who Inherits Your Digital Assets?' (2010) 83(12) Wis. Law. available at www.wisbar.org.

[13] N Cahn, 'Postmortem Life On-Line', (2011) 25 Prob. & Prop., 36; see also, S Haworth, 'Laying Your Online Self to Reset: Evaluating the Uniform Fiduciary Access to Digital Assets Act' (2014) 68 Miami L. Rev., 537, who divided digital assets in four categories, such as access information, tangible digital assets, intangible digital assets, and metadata.

[14] M Cinque, 'La successione nel patrimonio digitale. Prime considerazioni' (2012) NGCC, 646; C Camardi, 'L'eredità digitale. Tra reale e virtuale', (2018) (34)1 Dir. inform., 73; G Marino, 'La «successione digitale»' (2018) 1 ODCC, 169.

[15] L Gatt, 'Il Trust nel mondo digitale Trust di dati e data trust', in R Bocchini (ed.), *Manuale di diritto privato dell'informatica* (2023 ESI), 237; A Mollo, *Eredità digitale e piattaforme online,* (2021 Editoriale Scientifica), 25; F Mastrobernardino, *Il patrimonio digitale* (2019 ESI), 119.

[16] L Gatt, 'Il Trust nel mondo digitale Trust di dati e data trust', in R Bocchini (ed.), *Manuale di diritto privato dell'informatica* (2023 ESI), 237, 238; L Gatt, I A Caggiano, 'Trust e digital asset', in G Cassano, F Di Ciommo (ed.), *Gli atti digitali di "Gli Stati Generali del Diritto di Internet", Luiss 16, 17, 18 dicembre 2021*, (2021), available at www.dirittodiinternet.it; G Marino, '*La «successione digitale»*' (2018) 1 ODCC, 180.

[17] L Gatt, 'Il Trust nel mondo digitale Trust di dati e data trust', in R Bocchini (ed.), *Manuale di diritto privato dell'informatica* (2023 ESI), 240, according to which *inter vivos* transfers may be from settlor to trustee, from trustee to third party; from trustee to another trustee and from trustee to beneficiaries, while mortis causa

To concretise this challenge, consider the digital assets potentially capable of being conferred in trust: cryptocurrencies, Non-Fungible Tokens (NFTs), domain names and websites, multimedia data and data packages.[18]

The contribution of cryptocurrencies[19] requires firstly the determination of the modalities by which the actual owner of the cryptocurrencies can be identified, and therefore the modalities by which a relationship between the cryptocurrencies and the settlor at the time of contribution, the trustee in the subsequent management phase, as well as the beneficiaries in the allocation or distribution phase can be determined: since the transfer of these assets is performed by means of the blockchain, that is, through a cryptographic protocol with asymmetric keys without the intervention of any intermediary, there is no direct relationship between the user and the object of the transaction.

It is also necessary to understand the way in which the user can prove his ownership of these assets,[20] as well as to identify the publicity formalities to be followed in order to make the asset segregation guaranteed by the trust enforceable against third parties.[21]

Secondly, there is also a need for clarity on the material object of the contribution in trust (does the contribution of the private key entail the transfer of ownership on the cryptocurrency?) as well as on the existence of different transfer modalities between the subjects involved according to the method of storage of the private key (do these modalities differ if the private key is stored in a hot wallet rather than in a cold wallet?).

Further questions concern the trustee[22] and the protector:[23] the issue is to understand how to configure the obligations of these subjects and, consequently, their responsibility, in the face of assets which, due to their ontological characteristics, are volatile and characterised by an unweighted risk-return ratio.

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transfers may be from settlor to trustee, from trustee to other trustee and from trustee to beneficiaries. In this regard, see also L Gatt, I A Caggiano, 'Trust e digital asset', in G Cassano, F Di Ciommo (ed.), *Gli atti digitali di "Gli Stati Generali del Diritto di Internet", Luiss 16, 17, 18 dicembre 2021* (2021), available at www.dirittodiinternet.it and the speech at the Annual Roundtable organized by Accademia del Trust di San Marino of L Gatt, 'Il trustee e la segregazione dei digital asset' (2021) available at www.accademiadeltrust.sm.

[18] L Gatt, 'Il Trust nel mondo digitale Trust di dati e data trust', in R Bocchini (ed.), *Manuale di diritto privato dell'informatica* (2023 ESI), 237, 238; L Gatt, I A Caggiano, 'Trust e digital asset', in G Cassano, F Di Ciommo (ed.), *Gli atti digitali di "Gli Stati Generali del Diritto di Internet", Luiss 16, 17, 18 dicembre 2021*, (2021), available at www.dirittodiinternet.it and the speech at the Annual Roundtable organized by Accademia del Trust di San Marino of L Gatt, '*Il trustee e la segregazione dei digital asset*' (2021) available at www.accademiadeltrust.sm.

[19] L Gatt, 'Il Trust nel mondo digitale Trust di dati e data trust', in R Bocchini (ed.), *Manuale di diritto privato dell'informatica* (2023 ESI), 237, according to which "*cryptocurrencies, to be understood as 'virtual currencies', detached from national or supranational monetary systems, not based on gold reserves as currency collateral, transferable via blockchain architecture directly between 'contracting parties' and without any intermediary operating*".

[20] This question, however, appears to have to be articulated differently depending on whether the cryptographic key is stored in an electronic wallet; in this regard, see U Malvagna, F Sartori, 'Cryptocurrencies as "Fungible Digital Assets" Within the Italian Legal System: Regulatory and Private Law Issues' (2022) The Italian Law Journal, 489.

[21] C Cinetto, S Tramontano, 'Trust interno di criptovalute: un approccio critico - I parte' (2022) Trust, Impresa, Famiglia, 7.

[22] C Cinetto, S Tramontano, 'Trust interno di criptovalute: un approccio critico - II parte' (2023) Trust, Impresa, Famiglia, 37.

[23] A Busani, *Il trust* (Giuffrè 2020), 562.

No less problems arise from the contribution and subsequent management in trust of NFTs, which are infungible, unique and unrepeatable tokens consisting of a set of cryptographic data on a blockchain containing a unique certificate.[24]

Also in this case, the question is how to configure the ownership relationship between user and token and whether and to what extent this relationship covers the underlying token: in other words, whether possession of this one makes the holder also the owner of the asset represented by the virtual token.[25]

The analysis of the latter issue would enable to address the subsequent question of whether the transfer of the token also implies the transfer of the legal positions, that it represents.[26]

In addition to these questions, further queries are related to the relationship between property rights on the NFTs and clauses imposing limits on their circulation (in this case, reference is made to limitations deriving from the rights of the author of the work[27] or those of a mandatory nature deriving from the contractual terms under which the NFT was issued or acquired[28]).

Similarly, domain names and websites are also not exempt from questions: the contribution and subsequent management of such assets in fact require the coordination of the rules governing the institution and functioning of the trust with those relating to the protection of intellectual property rights, which characterise such assets.[29]

Such coordination must also be ensured in the case of the contribution to the trust of multimedia data, of which the settlor is the owner; however, in the event that the latter does not have the ownership of such data, like as when the contribution relates to content downloaded from the network, over which the user has a mere right of use, it will be necessary to coordinate the rules governing the functioning of the trust, which presuppose the ownership of the assets conferred by the settlor with the rules governing such services, which, on the contrary, guarantee the user a mere right of use of such data.[30]

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[24] G Vulpiani, 'Blockchain, smart contract e non fungible token: tutele e responsabilità' (2023) *Actualidad Juridica Iberoamericana*, 1328.

[25] In an affirmative direction, see R Morone, 'Smart Properties', in R Battaglini, M Giordano (ed.), *Blockchain e Smart Contracts* (2019 Giuffrè), 449.

[26] A Guaccero, G Sandrelli, 'Non Fungible Tokens (NFTs)' (2022) Banca borsa tit. cred., 840.

[27] G Vulpiani, 'Nfts e crypto fashion: profili giuridici' (2022) Rassegna di diritto della moda e delle arti, 62; A Guaccero, G Sandrelli, '*Non Fungible Tokens (NFTs)* ' (2022) Banca borsa tit. cred., 847.

[28] Speech at the Annual Roundtable organized by Accademia del Trust di San Marino of L Gatt, *Il trustee e la segregazione dei digital asset* (2021) available at www.accademiadeltrust.sm.

[29] Domain names qualify as distinctive signs within the meaning of Article 22 of the Industrial Property Code and are therefore susceptible of being the subject of intellectual property rights. In this regard, see *ex multis* A Palazzolo, 'Alcuni spunti in tema di regolamentazione dei nomi di dominio: la pignorabilità, il potere di disposizione del titolare registrante e la disciplina pubblicistica' (2002) NGCC, 43; R Moro Visconti, 'La valutazione dei nomi a dominio su Internet' (2015) *Dir. ind.*, 35. Websites, where characterised by creativity, also qualify as intellectual property and are therefore subject to intellectual property rights. In this last regard, see *inter alia* S Stabile, 'Le attività di comunicazione nei siti web' (2000) Dir. Ind., 85; G Bonelli, 'Il sito web quale opera dell'ingegno' (2002) Dir. Inf., 199.

[30] In most cases, the licence of use, being of a strictly personal nature, expires upon the death of the licensee. According to some interpreters, this extinction would entail the intransferability *mortis causa* of the downloaded materials (in this regard, see L Di Lorenzo, 'Legato di password' (2014) Not., 150); on the contrary, according to others, this intransmissibility would only concern voluntary acts of disposition by the user, which would therefore not be permitted, whereas it would not concern the transmission mortis causa of the materials already downloaded, which would therefore not be impeded (see U Bechini, 'Identità ed

Lastly, the contribution of data packages, namely, large collections of big data as well as databases of personal data, also requires that the rules relating to such contribution be coordinated with the rules set forth in the General Data Protection Regulation (GDPR).

More specifically, the deed of transfer, the deed of assignment, as well as any deeds of transfer between the trustee and third parties, must be subject to the same rules and conditions of lawfulness as those set forth for transfers of data with non-segregate effect, within which the role of consent [31] and of the informational self-determination[32] of the data subjects remains central.

In addition to this issue, moreover, the analysis will have to address the numerous problems that *mortis causa* transfers of such data entail, mainly connected with the presence of contractual clauses drafted by Internet Service Providers governing the outcome of all the data uploaded on the network, in the presence or absence of specific provisions of the deceased.[33]

The questions outlined in this paragraph therefore confirm the need to review and reconfigure the ownership transfer rules traditionally applied to tangible assets.

4. The new skills needed by the trustee for the management of digital assets.

The impact of the nature of the digital assets on the standard ownership transfer rules of the assets also affects the subject who has the duty to preserve and manage such assets within the trust and, consequently, the subject who is entrusted with powers of control over the management.[34]

Therefore, a further challenge concerns the new competences that the trustee and, as a consequence, the protector (if elected in the trust deed or subsequently by separate deed [35]) must acquire: they must be capable of

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eredità digitale' in O Pollicino, V Lubello, M. Bassini (ed.), *Identità ed eredità digitali. Stato dell'arte e possibili soluzioni al servizio del cittadino* (Aracne 2016) 43).

[31] It is not disputed that consent to the processing of personal data is a prerequisite for the use of digital services or goods. On this point, see V Carbone, 'Il consenso, anzi i consensi nel trattamento informatico dei dati personali' (1988) Danno e resp., 23; S Patti, 'Il consenso dell'interessato al trattamento dei dati personali' (1999) Riv. dir. civ., 455; P Manes, *Il consenso al trattamento dei dati personali* (Cedam 2001).

[32] L Gatt, I A Caggiano, 'Trust e digital asset', in G Cassano, F Di Ciommo (ed.), *Gli atti digitali di "Gli Stati Generali del Diritto di Internet", Luiss 16, 17, 18 dicembre 2021*, (2021), available at www.dirittodiinternet.it.

[33] On this point, alongside the more radical solution of proceeding to the automatic destruction of all the user's data following his death, with the guarantee of full protection of the right to confidentiality, there are alternatives that make it possible to reconcile the need to protect personal information with the equally important interest in the transmission of digital assets to successors or possible third parties. On this point, see U Bechini, '*Password, credenziali e successione mortis causa, Studio n. 6-2007/IG approvato dalla Commissione Studi di Informatica Giuridica del Consiglio Nazionale* del *Notariato l'11 maggio 2007*' (2007) available at www.notariato.it; G Corapi, 'Successione. La trasmissione ereditaria delle "nuove proprietà"' (2011) *Fam. pers. succ.*, 379; S Deplano, 'La successione a causa di morte nel patrimonio digitale', in C Perlingieri, L Ruggeri (ed.), *Internet e diritto civile* (ESI 2015) 427 ff.

[34] Even if there are governing laws that allow the trustee to delegate the execution of its obligations as well as the exercise of its powers, such delegation does not exempt the trustee from liability if the so-called sub-trustee fails to perform its obligations. More precisely, if no such possibility is provided for in the trust deed, the trustee is personally liable for any failure of the sub-trustee to perform its obligations; if, on the contrary, there is such a provision, the trustee should nevertheless be liable for fault on the part of the sub-trustee.

[35] In general, the protector is not a mandatory person within the trust deed; however, under special circumstances, the governing laws provide for its appointment.

managing intangible assets, which are totally different from those that could be conferred in trust until now.[36]

In such a scenario, the trustee[37] will have to acquire technical and IT skills that will enable him, on the one hand, to correctly identify the digital assets and, on the other hand, to correctly understand their structural characteristics; moreover, further to these general skills, he is also required to acquire cybersecurity skills.[38]

In the absence of such skills, firstly, it is difficult to understand how the trustee can fulfil his obligation to protect the assets.[39]

In fact, in addition to the exercise of actions for the protection of ownership and possession, this obligation implies, on the one hand, the knowledge and, where necessary, the use of appropriate measures to protect the entire IT system from the risk of cyber-attacks, which may affect the trust property as well as the trust infrastructures themselves, which convey its transfer, analysis and preservation.

On the other hand, the aforesaid obligation also implies that the trustee must be able to manage such assets, making the most appropriate choices for the preservation and, where provided for, the increase of the assets in trust, so that it is not clear how such obligations could be fulfilled if the trustee himself has not understood the structural characteristics of such assets as well as the way in which they are to be transferred.[40]

Similarly, without the above-mentioned competences, it is also difficult to understand how the trustee could fulfil his reporting obligations: in fact, both the drafting of the management report or, alternatively, the drawing up of the

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[36] L Gatt, I A Caggiano, 'Trust e digital asset', in G Cassano, F Di Ciommo (ed.), *Gli atti digitali di "Gli Stati Generali del Diritto di Internet", Luiss 16, 17, 18 dicembre 2021*, (2021), available at www.dirittodiinternet.it; speech at the Annual Roundtable organized by Accademia del Trust di San Marino of L Gatt, '*Il trustee e la segregazione dei digital asset*' (2021) available at www.accademiadeltrust.sm; L Gatt, 'Il Trust nel mondo digitale Trust di dati e data trust', in R Bocchini (ed.), *Manuale di diritto privato dell'informatica* (2023 ESI), 240, 241.

[37] The competences of the protector may be deduced *per relationem* from those of the trustee.

[38] L Gatt, 'Il Trust nel mondo digitale Trust di dati e data trust', in R Bocchini (ed.), *Manuale di diritto privato dell'informatica* (2023 ESI), 241; C Cinetto, S Tramontano, '*Trust interno di criptovalute: un approccio critico - II parte*' (2023) Trust, Impresa, Famiglia, 37.

[39] With reference to the duties of trustee, see S Bartoli, *Il trust* (Giuffré 2001) 215; I Valas, 'Il trustee: funzioni, obblighi e poteri', in M Monegat, G Lepore, I Valas (ed.), *Trust. Aspetti sostanziali e applicazioni nel diritto di famiglia e delle persone* (Giappichelli 2010) 215; M Graziadei, *Diritti nell'interesse altrui. Undisclosed agency e trust nell'esperienza giuridica inglese* (Università degli Studi di Trento 1995) 343. At the regulatory level, see, by way of example, Art. 21(3) of Jersey Trust Law, available at www.jerseylaw.je, which provides inter alia that "*Subject to the terms of the trust, a trustee shall - (a) so far as is reasonable preserve the value of trust property*"; a similar provision is also contained in Law 1st March 2010 no. 42 (Law on the trust of the Republic of San Marino), available at www.cortetrust.sm, which in Article 22, paragraph 1 provides that, where the deed of trust does not provide otherwise and the nature of the property permits, "*the trustee shall manage the property with the aim of preserving* (...) *its value*".

[40] This point is well emphasised by J Tampi, 'Non-Fungible Tokens for Trustees' (2021) Private Client Business, 211, where with reference to NFT's management the Author states that: "*NFTs are not a simple asset which can be held by a trust without careful consideration. They are diverse, with different value drivers and, compared to stocks for example, NFTs are sparsely traded. Before seeking exposure to the NFT market, trustees ought to understand the blockchain technology infrastructure underlying the NFT market as well as the technology and security that the trustee must possess to hold and trade NFTs. Regulation of NFTs globally is still catching up to the rapidly developing digital market, and trustees ought to regularly obtain legal, taxation and regulatory advice to ensure that they are acting in compliance with any applicable NFT regulations as well as meeting their fiduciary duties* (…)".

inventory and its transcription in the book of events require an exact understanding of the ontological characteristics of such digital assets.

In addition to technical-computer skills, the trustee must also develop new legal skills, not limited solely to knowledge of national law, but also to knowledge of the applicable international law: indeed, the existence and operation of digital assets takes place in virtual spaces, whose boundaries with the physical reality, as well as not being clearly identified or identifiable,[41] are spread across different legal systems.[42]

Furthermore, given the novelty of the issue as well as the speed of technological change, a timely update on the constant developments of national and international legislation on crypto assets seems appropriate.

The preparation of trustees operating in the digital assets' economy must therefore be updated through multidisciplinary training strongly aimed at enhancing cross-cutting knowledge applied to the legal relationships arising from the trust.

5. Conclusions.

The above considerations make it clear that a new era of asset protection and transmission instruments, marked by the predominant presence of intangible assets, is beginning.

A new era which, other than presenting new challenges, is a good opportunity to develop a classification of digital assets that is in line with their peculiarities and with the digital context in which they are inserted.

The opportunity also appears favourable (given, moreover, the presence of a legislative proposal that is already complete) to elaborate a definitive discipline of the internal trust, which takes into consideration not only the several reflections of the interpreters on the admissibility of this instrument in the Italian legal system, but also the new needs of the individual arising from the diffusion in the economic context of virtual, non-tangible assets.

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[41] U Malvagna, F Sartori, 'Cryptocurrencies as "Fungible Digital Assets" Within the Italian Legal System: Regulatory and Private Law Issues' (2022) The Italian Law Journal, 495 who attempt to understand when a cryptocurrency token can be considered in Italy, The same question also arises with reference to NFTs, with respect to which the criterion of localisation of the asset clashes with the difficulties due to the decentralised structure of the platforms, which, moreover, are accentuated in cases of permissionless platforms, i.e., in those platforms that do not have an intermediary or manager with whom to localise the instruments that transit through the system. On the reflections that this circumstance has on private international law, see M Lehmann, 'Who Owns Bitcoin? Private Law Facing the Blockchain' (2019) 21 Minn. J.L. Sci. & Tech. 93.

[42] L Gatt, *Dal trust al trust. Storia di una chimera* (Editoriale Scientifica 2010) 29, who had previously highlighted this problem with reference to the admissibility of the trust in italian legal system. Although the Author had expressly referred this problem to notaries and judges, it may well also be referred to the trustee. On this point, it was pointed out that it does not appear totally implausible to consider that an Italian notary who is about to draw up a deed of internal trust accepting the indication of the settlor on the choice of English or Jersey law as the governing law of the trust, should be aware not only of the English or Jersey legislative acts on the trust but also of the jurisprudential solutions adopted by the local courts, that is to say, of the remedies granted by them in the event of conflicts arising in relation to the application of a clause which, even in the abstract, may be considered compatible with Italian law because it is authorised by the foreign legislative texts chosen as well as how the application of foreign law in an Italian case poses, in fact, a further major problem in addition to that, already noted, of the judge's knowledge of foreign law. The point is also highlighted by M Lupoi, 'Profili processuali del trust' (2009) *Trusts e att. fid.*, 164.

Refusing to carry out such operations means, on the one hand, denying the existence of the object of law of the majority of legal relationships that characterise today's society and on the other hand, failing to grasp - unlike what is happening in foreign legal systems - the change in the needs of the individual as a consequence of the equally changing economic context in which the latter's life is carried out.