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Access to Electronic Communications of Deceased Users

A Comparative Perspective

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One of the most controversial issues in the emerging field of digital inheritance is whether heirs and/or close relatives have a right to access electronic communications of deceased users. Such an access may be limited by service providers' terms and conditions or denied on the basis of the deceased users' post-mortem right to privacy.

Addressing this issue requires a thorough analysis of the competing rights and interests at stake. The issue is at the intersection of a variety of legal areas, such as inheritance law, privacy law, and contract law, the foundations of which are still deeply rooted in the legal history and culture of each legal system considered. In this context, the respective interests of the deceased users, service providers, heirs and close relatives must be carefully weighed.

This presentation touches on these issues from a comparative perspective. It will describe the ways in which the United States, Germany and Italy have approached the access to deceased users' electronic communications in order to draw some conclusions from a functionalist perspective. On this basis, we will briefly address the outlook under Swiss law.

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