

Legacy Stewards

Andrew Gilden

Who should manage your social life after you die? With the proliferation of social media accounts, widespread digital content production, and advances in CGI and hologram technologies, a person's social presence increasingly extends into the digital afterlife. But how a deceased individual appears in the day-to-day lives of family, friends, fans, and followers largely hinges upon who is given legal decision-making authority over their ongoing social interactions—their cultural legacy. The primary areas of law that regulate a person's cultural legacy—trusts & estates, copyright, publicity rights, and newly-enacted digital assets laws—take very different approaches towards legacy stewardship. Each area of law prioritizes one of five different stakeholders in making decisions about a decedent's continuing cultural life: (1) the family, (2) the market, (3) the state, (4) the public, and (5) the decedents themselves.

This Article examines stewardship by each of these entities, and it suggests a series of reforms that better accounts for the many stakeholders in a person's ongoing interactions with the world they leave behind. An individual's digital life is often scattered across a diverse range of social, creative, romantic, and political networks, and it is highly unlikely that any one individual can ably navigate all of these very different contexts with the necessary balance of familiarity, sensitivity, and emotional distance. This Article proposes a decentralized approach to legacy stewardship that relies primarily on testation, market mechanisms, and courts to balance the emotional attachments of the decedent's families with the often-conflicting needs of online communities and the general public.