RUTGERS LAW RECORD

VOLUME 53
ISSUE I: FALL 2025

SOCIAL MEDIA ACCOUNTS AS PROPERTY: A HISTORICAL ANALYSIS OF PERSONAL PROPERTY CLAIMS OVER PLATFORM ACCOUNTS

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I. Businesses Depend on Digital Platform Accounts

La Baguette, a retail bakery, relied on its Facebook page to reach customers.[1] La Baguette's Facebook page had 4,000 followers to whom the business communicated special promotions and from which it took customer orders.[2] The business hired two employees to run its social media accounts.[3] Those employees later changed the name of La Baguette's Facebook page to advertise their own competing bakery, Tito & Tita Langley.[4] The employees refused to provide La Baguette with its own login credentials and therefore forced La Baguette to create a new Facebook page, this time with less than three hundred followers.[5] Tito & Tita Langley's hijack of La Baguette's Facebook page allowed them to divert a significant amount of customer orders from La Baguette.[6]

Unfortunately, La Baguette's story is not unique.[7] Digital platform accounts drive significant value for businesses of all sizes. As of late 2023, 95% of small businesses in the United States used at least one digital platform.[8] Public companies that use digital platforms create "much more shareholder value" than businesses who have minimal or no digital presence.[9] The value to

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[1] Pan 4 Am., LLC v. Tito & Tita Food Truck, LLC, No. DLB-21-401 (D. Md. Mar. 3, 2022) (unpublished mem. op.) (noting La Baguette's reliance on its Facebook page).
[2] *Id.*
[3] *Id.*
[4] *Id.* (noting the Facebook name change to "Tito & Tita Langley").
[5] *Id.*
[6] *Id.*
[7] *See infra* Bearoff v. Craton, 350 Ga. App. 826, 840-41 (Ga. Ct. App. 2019); *see also* Int'l Bhd. of Teamsters Loc. 651 v. Philbeck, 464 F. Supp. 3d 863, 872 (E.D. Ky. 2020); *see also* JLM Couture, Inc. v. Gutman, No. 1:20-cv-10575, ECF No. 431 at 26 (S.D.N.Y. 2023) (amended opinion) (unpublished opinion); *see also* In re Vital Pharmaceutical 652 B.R. 392, 405 (S.D. Fl. 2023).
[8] *Empowering Small Business: The Impact of Technology on U.S. Small Business*, U.S. CHAMBER OF COM. (Sept. 14, 2023), https://www.uschamber.com/assets/documents/The-Impact-of-Technology-on-Small-Business-Report-2023-Edition.pdf.
[9] Eric Lamarre et al., *The Value of Digital Transformation*, HARV. BUS. REV. (July 31, 2023), https://hbr.org/2023/07/the-value-of-digital-transformation.

and dependence of businesses on digital platforms is unique in that it is not derived by an asset owned by the business. This can leave businesses and individuals vulnerable.

This article explores, through lawsuit tracking, how courts' reasoning regarding property rights in digital assets on platforms, like social media accounts, has transformed from the 1990s to current day. This is ultimately to consider the question: what does it mean to have a property right in an online account? What interest do users have in their accounts if the platform ceases operation?

This issue brings to light the implications of intermediary failure. The rise of online intermediaries has created a layered market structure where the rights and existence of all platform user accounts depend on the platform itself. Another example of this phenomenon is non-fungible tokens ("NFTs"). Congress is considering a bill which would prevent NFTs from being considered a security.[10] This would create a personal property interest in the NFT's owner by putting NFTs in the same class as art, music, literary works, intellectual property, collectibles, and merchandise.[11] But what would happen if the infrastructure that supports the NFT, the blockchain, fails? What personal property interest would the NFT owner have left? The answer may be only a string of code.

While users may feel that their accounts and content expressed on the Internet are their own, the legitimacy of any claim to ownership is contested and contingent on the parties to the particular ownership interest inquiry. Platforms have a superior right to ownership of accounts as against users. However, ownership rights between users are less established.

This paper first documents the rise of online platforms and examines how this evolution impacted courts' recognition of users' property rights in their online accounts. Next, this paper

[10] Mauro Wolfe & Vincent Nolan, *NFT Bill Needs Refining to Effectively Regulate Digital Assets*, DUANE MORRIS: BYLINED ARTICLES (Feb. 27, 2025), https://www.duanemorris.com/articles/nft_bill_needs_refining_effectively_regulate_digital_assets_0225.html.
[11] H.R. 10544, 118th Cong. (2024) (formerly called the New Frontiers in Technology Act).

traces twelve specific, illustrative rulings in three phases of the Internet: Early Internet: 1990-2005, The Rise of Platforms: 2005-2015, and Contemporary Internet: 2015-Present. This paper then synthesizes a set of default rules which courts have created through the caselaw as they apply common law property principles to digital accounts. Finally, this paper puts these pieces together to describe the layered ownership structure created by digital platforms.

II. History of Digital Platforms and the Conventional, Yet Pertinent, Property Law that Informs User-to-User Account Ownership Claims

The property interest that businesses and individuals have in their digital platform accounts is informed by the physical components that allow the Internet to function and shifts in the digital marketplace that have caused the Internet to become more centralized. Property law regarding disputes over digital platform account ownership has been informed by the real-world developments discussed below.[12]

a. How the Internet Works

The Internet is made up of connections between different computer networks that speak the same language, the Internet Protocol.[13] The fact that the system is 'open', meaning that anyone can access it, is what makes the network so widespread and valuable.[14] The "open standard" system that predicates access to the Internet means that there is no one entity that can control Internet

[12] *See* discussion *infra* Section II. A.
[13] Joe McNamee, *The Internet: A Network of Computer Networks, in How the Internet Works*, THE EDRI PAPERS (3d ed. 2012).
[14] *Id.*

access.[15] The Internet functions to transfer data from one device to another irrespective of location, mode of connection, or what the data actually contains.[16]

The Internet is said to have three layers.[17] The first layer is the physical layer, comprised of hardware, wires, routers, and host computers.[18] The second layer is made up of the Transmission Control Protocol ("TCP") and other application protocols such as HTTP, FTP, NNTP, and SMTP.[19] The world wide web is built in the language "HTTP", which operates atop the Internet Protocol ("IP").[20] Finally, the third layer being the "content" layer, includes platform services such as Facebook or Gmail.[21] Social media platforms can be defined as "[a]ny website that invites visitors to interact with the site and with other visitors."[22] As a function of the Internet's layered structure, content on the Internet cannot be filtered by any one entity who owns the physical, first layer.[23]

i. Progression of Platforms on the Internet

The Internet in the 1990s was conceptualized as "an apolitical laboratory of innovation and a frictionless space governed by individual choices."[24] Early writers like John Perry Barlow proclaimed that the Internet was a web of "transactions, relationships, and thought itself", and was beyond the jurisdiction of any government.[25] However, this original idea has not held up to reality. In fact, through the assertion and enforcement of intellectual property rights and assertions of

[15] *The Internet - TCP/IP,* Stan. UNIV., https://web.stanford.edu/class/cs101/network-3-Internet.html (last visited Oct. 18, 2025).
[16] MCNAMEE, *supra* note 13, at 4.
[17] Elettra Bietti, *A Genealogy of Digital Platform Regulation*, 7 GEO. L. TECH. REV. 1, 11 (2023).
[18] YOCHAI BENKLER, *THE* WEALTH OF NETWORKS: How Social Production Transforms Markets and Freedom 24 (Yale Univ. Press 2006).
[19] *Id.* at 34.
[20] MCNAMEE, *supra* note 13, at 4.
[21] BENKLER, *supra* note 18, at 62–63.
[22] MCNAMEE, *supra* note 13, at 21.
[23] Bietti, *supra* note 17, at 11.
[24] *Id.* at 21.
[25] John Perry Barlow, *A Declaration of the Independence of Cyberspac*e, 18 DUKE L. & TECH. REV. 5, 5-7 (2019) (reprt. Barlow's 1996 work).

ownership over digital assets like data, control over the Internet has become increasingly centralized.[26] Platforms, through their positioning as intermediaries, collect and control significant amounts of users' behavioral data and then use that information to exert control over those users.[27] Accordingly, the original theory of private governance, or "governance-by-code", for Internet regulation set the stage for ubiquitous surveillance practices that users are generally uninformed about.[28]

a. Early Internet: 1990-2005

The Internet of the 1990s was an "Internet of networks"–full of blogs, small websites, bulletin boards, and other grassroots initiatives.[29] In the late 1990s, the "dotcom boom" began as technology and telecommunications markets experienced unprecedented growth.[30] That growth was made possible by falling costs of sending and storing information, widespread adoption and use of personal computers, and expansion of the world wide web.[31]

The "dotcom boom" was a bubble that inflated along with "the longest period of economic expansion in the United States after World War II."[32] Despite the excitement that surrounded dotcom firms going public, many lacked viable business models.[33] Even though these firms received high dollar market capitalizations, most of them failed to ever turn a profit.[34]

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[26] Bietti, *supra* note 17, at 21.
[27] Shoshana Zuboff*, Big Other: Surveillance Capitalism and the Prospects of an Information Civilization*, 30 J. INFO. TECH. 75, 75–76 (2015).
[28] Julie E. Cohen, *Lochner in Cyberspace: The New Economic Orthodoxy of "Rights Management"*, 97 MICH. L. REV. 462 (1998); Lawrence Lessig, *The Laws of Cyberspace* (Apr. 3, 1998) (unpublished manuscript) (on file with Berkman Klein Ctr. for Internet & Soc'y),https://cyber.harvard.edu/works/lessig/laws_cyberspace.pdf; Jame Boyle, *Foucault in Cyberspace: Surveillance, Sovereignty, and Hardwired Censors*, 66 UNIV. OF CIN. L. REV. 177 (1997).
[29] Bietti, *supra* note 17 at 22–23.
[30] *The Late 1990s Dot-Com Bubble Implodes in 2000*, GOLDMAN SACHS (2019), https://www.goldmansachs.com/our-firm/history/moments/2000-dot-com-bubble.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*

Other businesses started during this phase of the Internet were not so unjustifiably inflated. In 1994, Jeff Bezos founded Amazon as an online bookseller.[35] The goal was to build a platform to "coordinate infinite preferences and infinite supplies."[36] In 1998, Google was a general search engine that utilized the "PageRank" algorithm which ordered search results based on how often other websites linked to them.[37] Further, eBay was founded in 1995 as "AuctionWeb," a digital space to bring buyers and sellers together.[38]

All this to say, the early days of the Internet, prior to 2005, were filled with "network optimism."[39] The interplay between "permissionless innovation, decentralization, and deregulation or the absence of law" bolstered early Internet optimism.[40] At the same time, inconspicuous plans toward centralization in the form of "technical and economic manifestations of private power" were beginning to take hold.[41]

b. The Rise of Platforms: 2005-2015

In 2008, Jonathan Zittrain cautioned that the Internet had the potential to evolve into "gated communities" and recommended initiatives to keep the Internet open.[42] Zittrain's premonition materialized as technology firms acquired other technology firms as an efficient way to expand into new markets. Between 2005 and 2015, Google acquired approximately 113 companies.[43]

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[35] Chaim Gartenberg, *Bezos' Amazon: from bookstore to backbone of the internet*, THE VERGE (Feb. 3, 2021), https://www.theverge.com/2021/2/3/22264551/jeff-bezos-amazon-history-timeline-look-back-company.
[36] Goldman Sachs, *supra* note 30.
[37] *Id.* at 26–27.
[38] *Our History*, EBAY, https://www.ebayinc.com/company/our-history/ (last visited Oct. 18, 2025).
[39] Bietti, *supra* note 17, at 29.
[40] *See id.*; *see also* Bietti, *supra* note 17, at 6 ("We are creating a world that all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth").
[41] Bietti, *supra* note 17, at 29; Yochai Benkler, *A Political Economy of Utopia?*, 18 DUKE L. & TECH. REV. 78, 79–80 (2019) (arguing early Internet optimism masked emerging private assertions of power).
[42] JONATHAN ZITTRAIN, Chapter 7: Stopping the Future of the Internet: Stability on a Generative Net, in THE FUTURE OF THE INTERNET AND HOW TO STOP IT, 165 (Yale Univ. Press 2008) (For example, he suggests that computers could be "designed to pretend to be more than one machine, capable of cycling from one split personality to the next").
[43] Eric Sachs, *A TIMELINE OF ALL OF GOOGLE'S ACQUISITIONS SINCE 2001*, SACHS MARKETING GROUP (Apr. 17, 2017), https://sachsmarketinggroup.com/timeline-googles-acquisitions/.

These included YouTube in 2006, DoubleClick adtech player in 2007, Motorola Mobility in 2011, Waze in 2013, and DeepMind in 2014.[44] Mark Zuckerberg founded Facebook in 2004.[45] The company then acquired Instagram in 2012 and acquired WhatsApp and Oculus in 2014.[46] Other than Google and Facebook, incumbent firms in the platform economy in the mid 2000s included Apple and Microsoft.[47]

During this time, "challenger" platforms also started to crop up.[48]

Company	**Founding**
Twitter	2006[49]
Airbnb	2007[50]
Spotify	2008[51]
DuckDuckGo	2008[52]
Uber	2008[53]
Pinterest	2010[54]

[44] *Id.*
[45] *Meta Media Gallery: Executives: Mark Zuckerberg*, META, https://www.meta.com/media-gallery/executives/mark-zuckerberg/?srsltid=AfmBOopMl2U8pmZHj4ar1oFQKg_PNcAE1XMo-3N6IGGMXOBP7At4R2NA.
[46] Sam Shead, *Facebook owns the four most downloaded apps of the decade*, BBC (Dec. 18, 2019), https://www.bbc.com/news/technology-50838013.
[47] Bietti, *supra* note 17, at 28.
[48] *Id.*
[49] Sudeep Singh Rawat, *Twitter was founded on this day in 2006, here's all you need to know*, BUSINESS STANDARD (July 15, 2024), https://www.business-standard.com/world-news/twitter-was-founded-on-this-day-in-2006-here-s-all-you-need-to-know-1240715003941.htm
[50] *About us*, AIRBNB, https://news.airbnb.com/about-us/#:~:text=Airbnb%20was%20born%20in%202007,every%20country%20across%20the%20globe (last accessed Oct. 18, 2025).
[51] *About Spotify*, SPOTIFY, https://newsroom.spotify.com/company-info/ (last accessed Oct. 18, 2025).
[52] Celebrating 15 Years of DuckDuckGo, DuckDuckGo (Sept. 25, 2023), https://spreadprivacy.com/15-years-of-duckduckgo/.
[53] *The history of Uber*, UBER NEWSROOM, https://www.uber.com/newsroom/history/ (last visited Oct. 18, 2025).
[54] Abby Turner, *When Did Pinterest Start? A Brief History of Pinterest*, PINGROWTH, https://www.pingrowth.com/when-did-pinterest-start-a-brief-history-of-pinterest/ (last visited Oct. 18, 2025).

SnapChat	2011[55]
Deliveroo	2013[56]
TikTok	2014[57]

These platforms can be considered "challenger" platforms because they compete with larger incumbent technology firms.[58] The flood of challenger platforms to the market along with large platform consolidation demonstrates recognition of significant value in a firm's positioning as a digital intermediary. These market shifts laid the groundwork for the Internet we have today, where most content is accessed via some digital platform, as opposed to content being hosted by small websites and accessed by a number of specific uniform resource locators ("URL").

c. Contemporary Internet: 2015-Present

Julie Cohen defined platforms as "intermediar[ies] that use . . . data-driven algorithmic methods and standardized, modular interconnection protocols to facilitate digitally networked interactions and transactions."[59] Today, there are multiple platform structures. Some generate revenue through collection of data and advertising, allowing them to not charge the consumer.[60] Others use a subscription or commission model where the firm garners revenue from

[55] Josephine Campbell, *Snap Inc*, EBSCO (2025), https://www.ebsco.com/research-starters/business-and-management/snap-inc.
[56] *About us*, DELIVEROO, https://deliveroo.co.uk/about-us?srsltid=AfmBOopKYcMWIx_rZqioFRMpV0EH5EKIoXdKaxUpZAU24QCsXEDlY-0y (last accessed Oct. 18, 2025).
[57] David Hamilton, *How Tiktok grew from a fun app for teens into a potential national security threat*, ASSOCIATED PRESS (Jan. 19, 2019, 7:16 AM), https://apnews.com/article/tiktok-timeline-ban-biden-india-d3219a32de913f8083612e71ecf1f428.
[58] Bietti, *supra* note 17, at 28.
[59] Julie E. Cohen, *Tailoring Election Regulation: The Platform Is the Frame*, 4 GEO. L. TECH. REV. 641, 656 (2020).
[60] Bietti, *supra* note 17, at 28.

intermediaries or from consumers themselves.[61] There are also platforms that are only accessible through closed devices such as smart phones or tablets while others are accessible on the web.[62]

In the last ten years, modern Internet governance has received mounting criticism for its potential for misuse due to centralization.[63] Most Internet traffic flows through platforms, which has changed the physical structure of the Internet because "network operators put physical links and infrastructure where the traffic flows."[64] This fact fosters reliance on platforms that make a small number of companies capable of control over speech and whole services.[65]

Centralization of the Internet is a consequence of the emergence and growth of platforms because they provide consumers ease of access to content and interactions that might not otherwise be available. Specifically, platforms connect many different actors and are therefore "two-sided or multi-sided markets" because they form a "triangular relationship[ ] between a platform and its users, who can be further differentiated as buyers and sellers."[66] This is how content on the Internet has gone from ownership by its creator, on websites, to ownership by platforms.

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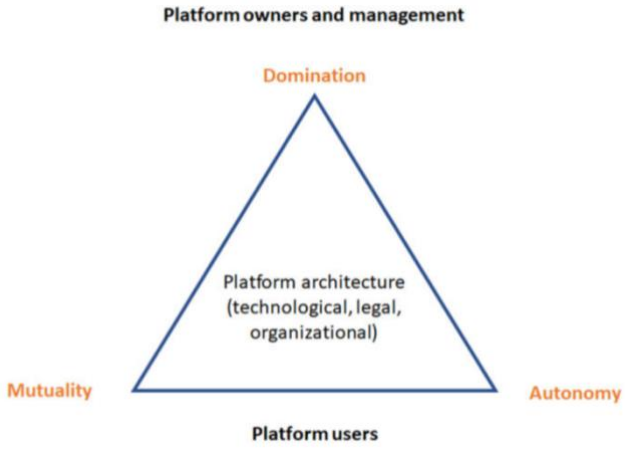
[61] *Id.*
[62] *Id.*
[63] *See, e.g.,* Adrian Shahbaz, *The Rise of Digital Authoritarianism*, FREEDOM HOUSE (Nov. 2018), freedomhouse.org/sites/default/files/10192018_FINAL_FOTN_2018.pdf; Janna Anderson & Lee Rainie, *Concerns about democracy in the digital age*, PEW RSCH. CTR. (Feb. 21, 2020), https://www.pewresearch.org/internet/2020/02/21/concerns-about-democracy-in-the-digital-age/#:~:text=The%20infrastructure%20of%20technology%2C%2; Charley Snyder, *Too Connected to Fail*, HARV. KENNEDY SCH. BELFER CTR. (May 2017), https://www.belfercenter.org/publication/too-connected-fail#:~:text=This%20paper%20argues%20that%20threats%20to%20core,internet%20services%20and%20infrastructure%20and%20exp.
[64] Russ White, *The Centralization of the Internet*, PUB. DISCOURSE (Aug. 11, 2011), https://www.thepublicdiscourse.com/2021/08/77139/.
[65] *Id.*
[66] Elke Schüßler et al., *Between Mutuality, Autonomy and Domination: Rethinking Digital Platforms as Contested Relational Structures*, 19 SOCIO-ECON. REV. 4, 1217, 1220 (2021), https://academic.oup.com/ser/article-abstract/19/4/1217/6354162?redirectedFrom=fu

Figure. [67]



Some scholars argue that platforms can be understood as a structure where three phenomena operate at the same time: mutuality, autonomy, and domination.[68] Platforms are "mutual" in that users "share a commitment to each other" as sharing and reciprocity are encouraged.[69] Users benefit from one another just as the users benefit the platform by boosting engagement.[70] Platforms are 'autonomous' because users are transient and untied to any one platform, and therefore platforms "deliberately avoid internalizing users."[71] This avoidance benefits the platform as its core revenue structure is "asset light", in that it takes a small part from a lot of transactions "without investing in assets or taking responsibility for them."[72] Platforms are dominant because they require long-term user relationships to thrive.[73] Finally, even though users are technically independent, there exist fundamental information and power asymmetries between

[67] *Id.* at 14.
[68] *Id.*; Christopher Rosenqvist & Orjan Sjöberg, *The difference that the institutional environment makes: Leveraging coordination to balance platform dominance, mutuality, and autonomy in geographically fragmented hospitality labour markets*, 6 DIGIT. GEOGRAPHY & SOC'Y (2024), https://www.sciencedirect.com/science/article/pii/S2666378323000302?via%3Dihub.
[69] Schüßler, *supra* note 66, at 14.
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*

platform owners and users.[74] These factors are important because they inform how platforms have risen to significant levels of influence. Their literal and theoretical structure presents a unique phenomenon both for the end user and for the law to make sense of.

ii. Property Claims By the User Against the Platform Generally Fail

The reality that user accounts on platforms are of great importance to businesses has not escaped the courts. In 2011, one New York court recognized that some businesses depend on "their online presence to advertise", and if they cannot do so, there will be "a negative effect on [their] reputation and ability to remain competitive[.]"[75] *Ardis Health, LLC v. Nankivell* involved a dispute between a business and a former employee with the business seeking to recover login credentials to various platforms used by the business.[76] Between individuals, courts do not hesitate to recognize that the accounts belong to whomever was agreed to own it between the parties.[77]

However, when it comes to recognition of user rights against the platform, the platform's ownership prevails. In *Crawford v. Meta Platforms, Inc.*, Facebook suspended a user's account without any violation of the company's terms of service by the user.[78] The user, Mr. Crawford, sued in Georgia civil court and received a $50,000 judgement.[79] The judgement was entered after representatives from Meta failed to appear in court.[80] In any event, default judgements are entered on the merits.[81] The crux of the court's decision was that Facebook violated its own terms of service

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[74] *Id.*
[75] Ardis Health, LLC v. Nankivell, No. 11 Civ. 5013 at 4-7 (S.D.N.Y. Oct. 19, 2011).
[76] *Id.* at 1–4.
[77] *Id.* at 7–10 ("Defendant's unauthorized retention of the information may therefore form the basis of a claim of conversion").
[78] Lawrence Richard, *Georgia man sues Facebook and wins after platform denied access to his account, personal photos: report*, FOX NEWS (June 15, 2023, 1:11AM), https://www.foxnews.com/tech/georgia-man-sues-facebook-wins-platform-denied-access-account-personal-photos-report.
[79] *Id.*
[80] *Id.*
[81] GA. CODE § 9-11-55(a) (2024) (A plaintiff can be awarded a default judgment if the court finds the complaint warrants relief after treating "every item and paragraph of the complaint" as if it "were supported by proper evidence").

when it took away Mr. Crawford's access to his account.[82] Mr. Crawford's recovery was not because Facebook violated some property right vested in Mr. Crawford. Rather, Mr. Crawford recovered because Facebook did not play by its own rules. This demonstrates that the platform's contractual and property rights prevail when a case is brought against it by the user, and the user only prevails when the platform fails to conform to its own terms.

Mr. Crawford is not the only platform user who has had their account suspended without a justifiable reason.[83] Businesses have been suspended by Facebook without any apparent reason.[84] Facebook suspended Mearth, an Australian scooter company valued at approximately $12.5 million, and made the account no longer capable of use for advertising.[85] The business owner filed an action against Meta demanding reinstatement of the account and $1.25 million in damages.[86] Businesses invest significant amounts of money in social media advertising with the intent of customer return. Mearth spent $174,000 on Facebook and Instagram advertising and an additional $720,000 for an employee to manage the company's social media.[87] The company's CEO attempted to file the claim in the NSW Civil and Administrative Tribunal of Australia in early 2024 but has since run into mounting jurisdictional disputes with Meta.[88]

While the platform seems like the appropriate defendant when a user's account is senselessly suspended, claims against the platform generally fail. Ultimately, the software is the

[82] Crawford v. Meta Platforms Inc., No. SC2022CV001070 (State Ct. Muscogee Cnty. Feb. 21, 2023) (unpublished decision); Richard, *supra* note 78.
[83] *See, e.g.,* Rob Bates, *The Strange Story of One Jewelry Blogger's Instagram Suspension*, JCK ONLINE (Feb. 6, 2024), https://www.jckonline.com/editorial-article/story-instagram-suspension/ ; Alex Turner-Cohen, *His business is in "Facebook jail". So this Aussie is taking Meta all the way to the Supreme Court*, NEWS CORP. AUSTL. (Nov. 29, 2024), https://www.news.com.au/finance/work/leaders/his-business-is-in-facebook-jail-so-this-aussie-is-taking-meta-all-the-way-to-the-supreme-court/news-story/8d08726e898e3dd81f09ab6087684670.
[84] Turner-Cohen, *supra* note 83.
[85] *Id.*
[86] *Id.*
[87] *Id.*
[88] *Id.*

platform's property, and its terms of service negate any property interest a user might have against it.[89] For instance, even in cases where a user makes a conversion claim against Facebook, putting forth evidence that their content was destroyed without any reason, the court defers to the contract between the platform and the user: the terms of service.[90] If Facebook did not violate its own terms of service, it is impossible for the user to have any kind of conversion claim because the property the user claims to have been converted was never theirs at all.[91] Even though courts are skeptical of the level of informed consent present in agreement to terms of service, they are still uniformly upheld.[92]

Further, not only do terms of service bar these claims, Section 230 of the Communications Decency Act does as well.[93] The decision to remove user-generated content, or third-party content or accounts, is considered "editorial."[94] Therefore, any platform is immune from liability for the decision to remove content.[95]

iii. Courts' Conception of Property Rights in Digital Assets is Varied

Courts have transposed physical property rights onto digital content disputes. For example, the Supreme Court in *Reno v. American Civil Liberties Union* and in *Packingham v. North Carolina* analogized the Internet and social media to a public square–a commons. The applicability of this analogy hinges on the user's interaction with the platform as a resource.[96] The Court's analysis

[89] King v. Facebook, Inc., 572 F. Supp. 3d 776, 788 (N.D. Cal. 2021) ("The fact that Facebook recognized in the Terms of Service that a user 'own[s] the intellectual property rights … in any content that you create and share on Facebook,' TOS § 3.3, does not mean that Facebook implicitly agreed to preserve that intellectual property. In fact, § 3.3 of the Terms of Service simply states that the user gives Facebook a license to that intellectual property. The Terms of Service say nothing about the duty of Facebook to retain user postings.").
[90] *Id.* at 791–92.
[91] *Id.* at 792.
[92] United States v. Smith, No. 23-60321, at 28 (5th Cir. 2024) ("anyone with a smartphone can attest, electronic opt-in processes are hardly informed, and in many instances, may not even be voluntary").
[93] Shared.com v. Meta Platforms, Inc., No. 22-CV-02366, at 4-8 (N.D. Cal. Sept. 21, 2022) (unpublished opinion).
[94] *Id.* at 5–6 (citing Barnes v. Yahoo!, Inc., 570 F.3d 1096, 1099-100 (9th Cir. 2009)).
[95] *Id.*
[96] Reno v. ACLU, 521 U.S. 844, 850 (1997); Packingham v. North Carolina, 582 U.S. 98, 99 (2017).

anchors to physical analogies when the claim is predicated on the user's interaction with the platform as a place of public discourse or source of information.[97]

Interestingly, in the context of the Americans with Disabilities Act ("ADA"), courts have sometimes come to differing conclusions in applying a physical space analogy to digital spaces. In *Young v. Facebook, Inc.*, the court held that Facebook was not a place of public accommodation.[98] The court explained that because "Facebook operates only in cyberspace", it cannot be a place of public accommodation.[99] However, in *National Federation of the Blind v. Scribd, Inc.*, a digital library with no connection to a physical space was held to be a place of public accommodation within the meaning of the ADA.[100] The court in *Scribd* reasoned that holding otherwise would frustrate the fundamental purpose of the ADA, particularly in light of its legislative history.[101] In 1990, representative Jerrold Nadler explained that "Congress could not have foreseen these advancements in technology . . . [y]et Congress understood that the world around us would change and believed that the nondiscrimination mandate contained in the ADA should be broad and flexible enough to keep pace."[102]

The easiest explanation for the difference in outcomes here seems to be a difference in perspective over what the Internet is and how it functions. In some sense, to equate the Internet to a physical space requires suspension of the reality of what the Internet actually is: a system of networks "which allows users to search for and retrieve information stored in remote computers, as well as, in some cases, to communicate back to designated sites."[103] The physical analogy stems

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[97] *See e.g., Reno*, 521 U.S. at 853 ("The Web is thus comparable, from the readers' viewpoint, to both a vast library . . . and a sprawling mall. . ."); *Packingham*, 582 U.S. at 99 ("North Carolina bars access to . . . the modern public square . . .").
[98] Young v. Facebook, 790 F. Supp. 2d 1110, 1115 (N.D. Cal. 2011).
[99] *Id.*
[100] Nat'l Fed'n of the Blind v. Scribd, Inc., 97 F. Supp. 3d 565, 567 (D. Vt. 2015).
[101] *Id.* at 568.
[102] *Id.* at 575.
[103] *Reno*, 521 U.S. at 852.

from our *experience* with the Internet, rather than the physical components that make the Internet function.[104]

In order to more deeply explore the property interests that may exist in users' experiences with the Internet, this paper explores whether digital assets are or should be *personal* property, as opposed to real property.

b. Basic Property Theory Background

Having established the scope of this paper, this section will outline the property law that underpins most personal property cases regarding ownership of social media accounts. Property law functions to recognize and protect phenomena that already exist in the world.[105] Put differently, the existence of a thing can form the basis for its recognition in property law, rather than recognition in property law creating the existence of the thing. Property, rather than being a simple right, is really "a legal complex of various normative relations."[106] Property as a concept depends on the criteria of the thing; the law dictates what is property based on "various incidents of indicia" that constitute analogies to things we *know* are property.[107]

More concretely, a right to property is really a right to make decisions about the use of an alienable thing to the exclusion of others' property rights, including "the right to abandon it, to share it, to license it to others (either exclusively or not), and to give it to others in its entirety."[108]

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[104] *See id.* at 890 (providing that: "Cyberspace differs from the physical world in another basic way: Cyberspace is malleable."); *See also* Orin S. Kerr, *The Problem of Perspective in Internet Law*, 91 GEO. L. J. 357, 360–61 (2003) (stating that an external perspective emphasizes the physical components of the Internet while an internal perspective emphasizes the Internet user's experience).
[105] J.E. Penner, *The "Bundle of Rights" Picture of Property*, 43 UCLA L. REV. 711, 766 (1996) ("The law did not create the capacity to make agreements for consideration, though it is right to say that we have the legal power to enter contracts. Neither did the law of property create the capacity to eat apples; property protects my natural capacity to eat apples only in respect of those apples which are mine").
[106] *Id.* at 713.
[107] *Id.* at 723.
[108] *Id.* at 742.

Importantly, these rights are severable in that one or more of them could be transferred to another while the rest remain with the original owner.[109] Personal property claims between users generally hinge on the torts of conversion and trespass, where one user interfered with the true account owner's rights.

i. Conversion

The common law tort of conversion was based on the 'writ of trover', which provided a remedy for personal property lost for a period of time.[110] This is why, before the Internet, courts limited conversion claims to only those based on tangible property lost.[111] Academics have therefore posited that for this tort to be properly applied to intangible assets, courts must either shed this history or create an entirely new tort.[112] This is because the common law tort of conversion has expanded over time to include physical documents that represent intangible assets, such as, promissory notes, stock certificates, insurance policies, and bank books.[113] The basis for this expansion is the merger principle: where an intangible right is evidenced by a physical thing, recognition of the intangible right is permissible, in that the remedy can include the value of the intangible rights.[114]

The merger principle, a way to shove the intangible rights square peg into the round conversion mold, is partly justified by the reality that modern "property and wealth take an

[109] *Id.*
[110] Shmueli v. Corcoran Grp., 802 N.Y.S.2d 871, 875 (N.Y. App. Div. 2005).
[111] *Id.*; Kremen v. Cohen, 337 F.3d 1024, 1030 (9th Cir. 2003) (citing W. PAGE KEETON ED., 5TH ED. (1984)) ("[c]onversion was originally a remedy for the wrongful taking of another's lost goods, so it applied only to tangible property").
[112] *See* Val D. Ricks, *The Conversion of Intangible Property: Bursting the Ancient Trover Bottle with New Wine*, 1991 B.Y.U. L. REV. 1681, 1715 (1991); *See also Susannah Lei Kan Shaw, Conversion of Intangible Property: A Modest, But Principled Extension? A Historical Perspective*, 40 VA. L. REV. 419 (2009).
[113] *Shmueli*, 802 N.Y.S.2d, at 875.
[114] *Id.* at note 3 (citing RESTATEMENT (SECOND) OF TORTS § 242).

increasingly intangible form."[115] However, in reality, the common law tort of conversion is founded on the theory that the converted property was "findable."[116] Regardless, courts' willingness to distort the conversion principle seems to suggest that courts see protection of intangible assets as a proper result when the facts are appropriate for such recognition.

ii. Trespass to Chattels

Trespass to chattels, under the Restatement (Second) of Torts, is when someone purposely dispossesses another of their chattel, or uses or interferes with the chattel in the possession of another.[117] Trespass to chattels is considered the "little brother of conversion" because trespass allows recovery in instances of interference with possession of personal property "not sufficiently important to be classified as conversion, and so to compel the defendant to pay the full value of the thing with which he has interfered."[118] A trespass claim is generally successful when the action caused some injury to the plaintiff's chattel or the plaintiff's rights in the chattel.[119]

The basic issue with applying trespass to chattels to intangible assets is similar to that of conversion. Courts often have to reason around the tangible versus intangible dichotomy in order to make the shoe fit.[120] A secondary issue is one of exclusive control; however, social media accounts skirt this issue by being capable of access by only its 'owner.'[121]

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[115] FOWLER V. HARPER ET AL., THE LAW OF TORTS §§ 2.7–2.38 (2d ed. 1986).
[116] Ricks, *supra* note 112, at 1699.
[117] Taylor E. White, *Cyberspace Property Rights: Private Property Interests in the Context of Internet Webpages*, 5 J. BUS. & TECH. L. PROXY 20, 25–26 (2010).
[118] W. PAGE KEETON ET. AL., PROSSER AND KEETON ON THE LAW OF TORTS § 14, at 85–86 (5th ed. 1984).
[119] Intel Corp. v. Hamidi, 30 Cal.4th 1342, 1350 (Cal. 2003).
[120] White, *supra* note 117.
[121] *Id.* (Unlike websites, social media accounts can be only accessible by one person such that "a single Internet user" could dispossess the account owner of its account).

III. Personal Property Claims Made Between Users

As established, a user generally does not have a viable claim against the platform itself when his or her ownership interest is jeopardized.[122] Therefore, all cases cited in this section are personal property claims made by one user against another user. With the research limited to these parameters, this paper is able to more closely examine the property interest a rightful platform account owner holds.

a. Early Internet: 1990-2005

There is a dearth of caselaw regarding social media accounts before 2005. The claims regarding intangible assets that survived were only because they were digitized versions of what would otherwise be a physical document. Courts mostly did not have difficulty recognizing a property interest in digitized documents because of the close and obvious connection to tangible things. For example, in *Shmueli v. Corcoran Group*, the court held that the plaintiff's computerized client list was property that could form the basis of a conversion claim.[123] The court explained that the concept of conversion, or "wrongful exclusionary retention of an owner's physical property," applies "to an electronic record created by a plaintiff and maintained electronically as much as it would to a paper record."[124] In part, the justification is made because the property converted could be transformed to physical form by "the mere expedient of a printing key function."[125]

On the other hand, in *Thrifty-Tel, Inc. v. Bezenek*, the court found a conversion claim failed when brought based on unauthorized use of a long-distance telephone service.[126] Instead, the court found the plaintiff could prevail on a claim of trespass to chattels because the conduct complained

[122] *See* discussion *supra* II. Article 2.
[123] *Schmueli*, 802 N.Y.S.2d at 876.
[124] *Id.* at 875.
[125] *Id.* at 874.
[126] Thrifty-Tel, Inc. v. Bezenek, 46 Cal. App. 4th 1559, 1565–66 (Cal. Ct. App. 1996).

of constituted "intermeddling with or use of . . . the personal property" rather than a taking of another's physical property.[127] Through its application of the trespass to chattels theory, the court sidestepped the question of "[w]hether the intangible computer access code" could form the basis of a conversion claim.[128] The court's apprehension in directly answering this question makes sense against the historical backdrop. Prior to 2005, the dot-com bubble was inflating, and it remained to be seen whether the new Internet structure would hold real value.[129]

As the caselaw developed, courts, considering conversion claims brought, began to work around the tangible-intangible distinction by applying a three-part test to determine whether a property right exists: whether (1) there exists "an interest capable of precise definition," (2) the interest "must be capable of exclusive possession of control," and (3) "the putative owner must have established a legitimate claim to exclusivity." [130] Through the application of this test, the court in *Kremen* found that a domain name was a form of intangible property that could serve as a basis for the plaintiff's conversion claim.[131] The court came to such a conclusion through its recognition that California did not strictly apply the merger requirement for conversion claims to apply to intangible property.[132]

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[127] *Id.* at 1567 (citing Zaslow v. Kroenert, 29 P.2d 541, 551 (Cal. Dist. Ct. App. 1946)).
[128] *Id.* at 1565–66; *See also* Am. Online, Inc. v. St. Paul Mercury Ins. Co., 207 F. Supp. 2d 459, 462 (E.D. Va. 2002) ("Computer data, software and systems are incapable of perception by any of the senses and are therefore intangible").
[129] *See* discussion *supra* II. A. 1. a.
[130] *Kremen*, 337 F.3d at 1030 (citing G.S. Rasmussen & Assocs., Inc. v. Kalitta Flying Serv., Inc., 958 F.2d 896, 903 (9th Cir. 1992)).
[131] *Id.* at 1031.
[132] *Id.*

b. The Rise of Platforms: 2005-2015

As the Internet centralized, one court exclaimed that the time had come for intangible property rights to be recognized.[133] Another was still concerned with the need for a connection to tangible things.[134] In contrast, another began to develop a novel factor test to determine the ownership of social media accounts.[135] The varied approaches to personal property claims regarding social media accounts is informed by the unsettled market in 2005 through 2015. Many platforms were just starting while others were gaining a foothold in the market, but the reality of their impact and the value to be created was just beginning to be recognized.[136]

In *Thyroff v. Nationwide Mutual Insurance*, the court held that computerized data could properly be made the subject of a conversion claim, despite its recognition of the merger doctrine.[137] The court justified this conclusion in two ways. First, the court said that this kind of data was "indistinguishable from printed computer documents", and therefore met the requirements of the merger doctrine.[138] Second, the court explained that "the tort of conversion must keep pace with the contemporary realities of widespread computer use."[139] Though the court limited its holding to computerized data, it broadly recognized that "[c]omputers and digital information are ubiquitous and pervade all aspects of business, financial, and personal communication activities"–again reacting to a user's experience rather than the reality underneath.[140]

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[133] Thyroff v. Nationwide Mut. Ins. Co., 864 N.E.2d 1272, 1277 (N.Y. 2007) ("'[I]t is the strength of the common law to respond, albeit cautiously and intelligently, to the demands of commonsense justice in an evolving society.' That time has arrived." (citing Madden v. Creative Servs., 646 N.E.2d 780 (N.Y. 1995)); *See also* Hymowitz v. Eli Lilly and Co., 539 N.E.2d 1069 (N.Y. 1989)).
[134] DHI Grp., Inc. v. Kent, No. CV H-16-1670, 2017 WL 8794877, at *5 (S.D. Tex. Apr. 21, 2017).
[135] In re CTLI, LLC, 528 B.R. 359, 367 (Bankr. S.D. Tex. 2015).
[136] *See* discussion *supra* II. A. 1. b.
[137] *Thyroff,* 864 N.E.2d at 1276, 1278.
[138] *Id.* at 1278.
[139] *Id.*
[140] *See id*. at 1277–78; *See also* Kerr, *supra* note 104.

In *Eysoldt v. Pro Scan Imaging*, the court found that an account holder's conversion claim against a webpage registrar could encompass intangible property.[141] The plaintiff registered a domain name with a webpage registrar to be used in a business the plaintiff started with other investors.[142] When the relationship between the plaintiff and investors began to degrade, one of the minority investors gained control of the domain name from a customer service representative of the web page registrar.[143] The customer service representative defied company policy in giving domain name access to the defendant-investor.[144] Further, due to the customer representative's actions, the plaintiff lost control of the domain name for the business started with defendant-investors, and lost control of domain names he registered for other businesses.[145] The court explained that the general rule that only tangible property could be converted "ha[d] changed" because other courts had held "that identifiable property rights can also be converted."[146] Here, the subject of the conversion was "conditional and private email communications" that were housed in a platform account.[147] Therefore, the appellate court held there was sufficient evidence to support a finding that the webpage registrar converted the plaintiff's communications stored on the webpage registrar's platform.[148]

In *DHI Grp., Inc. v. Kent*, the court refused to recognize a trespass to chattels claim predicated on access and interaction with a company's website, computer systems, and servers, even though harm was caused to the extent that data was scraped.[149] The trespass claim was

[141] *See* 957 N.E.2d 780, 786 (Ohio Ct. App. 2011).
[142] *Id.* at 783.
[143] *Id.*
[144] *Id.*
[145] *Id.* at 783.
[146] *Eysoldt*, 957 N.E.2d at 786.
[147] *Id.*
[148] *Id.*
[149] DHI Grp., Inc. v. Kent, No. CV H-16-1670, 2017 WL 8794877, at *5 (S.D. Tex. Apr. 21, 2017).

brought in the defendant's counterclaims.[150] The plaintiff made an account on defendant-social media company's website and then downloaded and published member profiles and resumes in violation of defendant's terms of service.[151] The court flatly rejected the defendant's counterclaim because the jurisdiction's law had "not recognized claims for trespass to chattels concerning intangible property."[152] This is at odds with the earlier holding in *Bezenek* where the court declined to recognize a conversion claim in favor of a trespass to chattels claim because of the intangible element of the claim.[153]

Finally, a test to determine the ownership of social media accounts began to surface in bankruptcy cases. In *In re CTLI, LLC*, the court plainly found, as a matter of first impression, that social media accounts were classified as property for purposes of a debtor's estate.[154] The court also promulgated the first test for ownership of a social media account.[155] The test encompassed four factors: (1) the title or type of account (business or personal); (2) the account's linkage to a business' website; (3) former use or control of the account prior to the individual claiming ownership; and (4) access by others.[156] As noted in the next section, courts in other jurisdictions had mixed reactions.[157] Some adopted and modified this test[158] while another flatly rejected it in favor of its own formulation.[159]

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[150] *Id.* at *2.
[151] *Id.*
[152] *Id.* at *5.
[153] *Compare id. with Bezenek*, 46 Cal. App. at 1565-66.
[154] *In re CTLI, LLC*, 528 B.R. at 366.
[155] *Id.*
[156] *Id.* at 369.
[157] *See* discussion *infra* Section III.C.1.
[158] Int'l Bhd. of Teamsters Loc. 651 v. Philbeck, 464 F. Supp. 3d 863, 871 (E.D. Ky. 2020); JLM Couture, Inc. v. Gutman, No. 20 Civ. 10575, 2023 WL 2503432, at *9 (S.D.N.Y. Mar. 14, 2023) (CTLI test accepted by the District Court, and later flatly rejected by the Second Circuit).
[159] In re Vital Pharmaceutical, 652 B.R. 392, 407 (S.D. Fl. 2023).

c. Contemporary Internet: 2015–Present

Post 2015, an account owner's right to exclusive possession and control is included in their recognized personal property interest in online accounts. This is the law's recognition of the reality of social media user's rights after the market had become more defined.[160] While the concern for a connection to tangible things still exists, the courts reason around the requirement by analyzing the account through the lens of its close connection to the business' operation and profit making function.[161]

Courts now almost uniformly recognize a user's personal property interest in their social media accounts when the claim is against another user. In *Salonclick LLC v. SuperEgo Management LLC*, the court recognized a successful conversion claim predicated on a domain name and a social media account.[162] The court, relying on *Thyroff* in part, justified its holding on the fact that other cases in the jurisdiction had recognized intangible digital asset personal property rights.[163] The court did not broach the tangible versus intangible distinction, but rather, opted to analyze legal precedent to conclude conversion claims could be validly stated for intangible assets.[164]

Similarly, in *Bearoff v. Craton*, a business' social media accounts were converted when they were sold to a competitor.[165] The sale was settled with a promissory note and a non-competition agreement in which the defendant agreed not to compete with the selling business for a certain period of time.[166] The accounts were recognized to be a business asset, especially because

[160] *See* discussion *supra* Section II. B.
[161] MacKenzie v. Howerton, No. 1-CA-CV 23-0728, 2024 WL 4512520, at *6-7 (Ariz. App. Oct. 17, 2024).
[162] Salonclick LLC v. SuperEgo Mgmt LLC, No. 16-CV-2555, 2017 WL 239379, at *4 (S.D.N.Y. Jan. 18, 2017).
[163] *Id.*
[164] *Id.*
[165] *Bearoff*, 350 Ga. App., at 840–41.
[166] *Id.* at 827–28.

there was an agreement between the parties to the litigation that the plaintiff-business had a security interest in its intangible property.[167] The damage to the business was also significant in that the competitor then used the plaintiff's accounts to promote their own business.[168]

Even where a jurisdiction still requires the merger doctrine to be met in order for a conversion claim to successfully be made, courts still find a proper conversion claim where the basis is digital marketing and social media accounts.[169] In *Kenzie v. Howerton*, the court reasoned that even though the accounts themselves were not tangible, they were "online resources that clients [could] use to do business" with the plaintiff.[170] Fundamentally, because the account was one capable of exclusive control, it seemed to fit the parameters for a conversion claim.[171]

i. Contemporary Application of the Test to Determine Social Media Account Ownership

Since the promulgation of the *CTLI* test, courts have debated whether the test for determining ownership of a social media account is correct. *International Brotherhood. of Teamsters Location 651 v. Philbeck* took the less-favored position and found that the defendant converted social media accounts by retaining them after losing re-election.[172] Specifically, the plaintiff-union alleged that the outgoing union president converted the union's accounts by changing the account credentials to prevent its access.[173] The union suffered harm when the outgoing president published inaccurate information to its members during his wrongful possession of the account.[174] Under this jurisdiction's law, one of the elements to a conversion

[167] *Id*. at 840.
[168] *Id*. at 841.
[169] *MacKenzie*, 2024 WL 4512520 at *6–7.
[170] *Id*. at *7.
[171] *Id.* at *7.; *see also* White, supra note 117.
[172] *Philbeck*, 464 F. Supp. 3d, at 872.
[173] *Id.* at 868.
[174] *Id.* at 872.

claim is that "the plaintiff had legal title to the converted property."[175] Applying the *CTLI* test, the court concluded that the plaintiff had the right to possess the social media accounts when the defendant changed the passwords and took possession.[176] In the final stage of its analysis, the court found cognizable damage resulting from the defendant's usurpation because the defendant published "inaccurate information" that harmed the plaintiff's ability to communicate with the members of its organization.[177] The court justified its use of the *CTLI* test based on the similarity of the facts to the present case.[178]

In stark contrast, the court in *In re Vital Pharmaceutical* expressly rejected the application of the *CTLI* test for two main reasons.[179] First, the court explained that the *CTLI* test was promulgated eight years prior and therefore failed to account for the fact that rights to social media accounts can be devised through contract.[180] Second, the court explained that the test was materially outdated in that it predated the existence of social media influencers.[181] This is material because social media influencers inherently post on behalf of other businesses, which, under the *CTLI* framework, might create a presumption that the business owns the social media influencers' account.[182] Instead, the *Vital* court promulgated its own test predicated on "documented property interest," "control over access," and "use."[183]

The district court in the dispute of *JLM Couture, Inc. v. Gutman* adopted the *CTLI* test and determined that the social media account in dispute belonged to the entity, not the individual who

[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] *Philbeck*, 464 F. Supp. 3d at 871.
[179] *In re Vital Pharm.*, 652 B.R. at 405.
[180] *Id.*
[181] *Id.* at 407.
[182] *Id.*
[183] *Id.* 407–08.

created it.[184] The court distilled the five factors promulgated in *CTLI* into three distinct categories: "(1) the manner in which the account is held out to the public, (2) the purpose for which the account has been utilized, and (3) whether employees of the business accessed the account in furtherance of the business interests."[185] Then, the case went up on appeal to the Second Circuit. There, the Court flatly rejected the *CTLI* test, explaining that while "the ownership of social-media accounts is . . . a relatively novel exercise, . . . that novelty does not warrant a new six-factor test."[186] The court explained that the account ownership should be simply "treated like any other form of property" which begins with a determination of the original owner.[187] Therefore, if the defendant created the social media account using their own personal information and for the defendant's personal use, then the rights to the account belong to the defendant, regardless of how the account "may have been used later."[188]

Further, the court criticized the *CTLI* test and the district court's determination for failing to recognize the potential for subsequent change of ownership.[189] The court explained that after the original owner is determined, courts must consider whether there is a subsequent owner by operation of contract.[190] In applying "[t]raditional property principles," the court held that the original owner can contract to transfer "some or all of her rights in particular content" without transferring ownership of the account in full.[191] The *CTLI* test was further confused in that it risks creating a presumption of ownership where "an account owner permits another" to manage the

[184] *JLM Couture, Inc.*, 2023 WL 2503432 at *11.
[185] *Id.* at *10.
[186] JLM Couture, Inc. v. Gutman, 91 F.4th 91, 102 (2d Cir. 2024).
[187] *Id.*
[188] *Id.* at 103.
[189] *Id.*
[190] *Id.*
[191] *Gutman*, 91 F.4th at 103.

account on their behalf.[192] As a matter of policy, the test risks "transfer by surprise" and the complication of clear contractual arrangements.[193]

IV. Default Rules Synthesized

The broad pattern of the caselaw demonstrates that the once required connection to the physical world has become obsolete, and claims are now recognized without it. This pattern coincides with growing recognition of the potential for social media presence to drive business growth. Post 2015, users' property interests in their accounts against other users have been protected by courts. This protection seems so well recognized now that the Second Circuit overruled a developing six factor test in favor of a fundamental 'chain of ownership' theory to resolve an account ownership dispute between users.[194]

In terms of whether social media account rights can even be considered personal property, contemporary caselaw is clearly affirmative. Initially, courts wrestled with the tangible versus intangible distinction due to the history of common law conversion.[195] Later, the merger doctrine began to operate as an exception to the tangible requirement of common law conversion.[196] In the face of real world operation of social media, the doctrine was essentially ignored.[197] Today, intangible property rights are well recognized not because of their "perception by any of the senses"[198] but because of the undeniable reality that they matter and can cause real cognizable

[192] *Id.*
[193] *Id.*
[194] *Id.*
[195] Ricks, *supra* note 112.
[196] *Thyroff*, 864 N.E.2d at 1277.
[197] *MacKenzie*, 2024 WL 4512520 at *6–7.
[198] *Bezenek*, 46 Cal. App. 4th at 1565.

harm to businesses.[199] This reality compelled courts to convert common law conversion into a doctrine available to claims for intangible rights to social media accounts.

As the law stands today, operation by contract is the most defensible way for a user to protect his or her rights to a social media account.[200] Prior to 2005, distinction between tangible and intangible property was critical for recognition of a property right.[201] But, common law conversion was later modified to fit reality, and recognition of a user's property right is informed by "[t]raditional principles of property law" once again.[202]

V. Conclusion

Ownership of digital platform accounts is a layered set of rights held by different actors. Platforms own their platforms. Layered atop that ownership are the platform's account holders– the account creators, and atop account creators is anyone else the account creator might devise some of their rights to. Like the Internet itself, ownership of digital assets can be significantly more complicated than property law's recognition of one's right to eat an apple.[203] With respect to digital platform accounts, if the intermediary, the platform, fails, account creators and subsequent transferees will have nothing. Account owners clearly have personal property in the rights to their account, but those rights are drastically circumscribed by the platform's terms of service. Ultimately, an account owner's rights are defensible as against everyone, except the platform itself.

[199] *Bearoff,* 350 Ga. App. at 840; *See also Philbeck*, 464 F. Supp. 3d at 872.
[200] *Bearoff,* 350 Ga. App. at 840; *see also Gutman*, 91 F.4th at 103.
[201] *See* discussion *supra* Section III. A.
[202] *Gutman*, 91 F.4th at 103.
[203] Penner, *supra* note 105.